

**Expert Opinion submitted by the Center for Reproductive Rights in the case of J.D. et al. v. the Czech Republic, CEDAW Communication No. 102/2016**

**24 November 2017**

**I. INTRODUCTION**

1. This expert opinion has been requested by the European Roma Rights Centre and the League of Human Rights, the applicants' representatives, for submission to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) for its consideration of Communication No. 102/2016, J.D. et al. v. the Czech Republic.
2. The Center for Reproductive Rights is a global legal human rights organization dedicated to advancing women's reproductive rights worldwide. The Center has undertaken extensive work to expose, and seek accountability for, forced and coercive sterilization of marginalized groups of women. In Europe, the Center, together with the Slovak Center for Civil and Human Rights, issued a report in 2003, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*,<sup>1</sup> which documented and exposed cases of forced and coercive sterilization and other violations of Roma women's rights in reproductive health care facilities in Slovakia.<sup>2</sup> The Center submitted an expert opinion to the CEDAW Committee in the case of *A.S. v. Hungary* (No. 4/2004) and to the European Court of Human Rights in the case of *Gauer and Others v. France* (No. 61521/08). In Latin America, the Center has litigated and advocated on the issue of forced and coercive sterilization of marginalized groups of women in Chile and Peru, including by representing the applicants in complaints to the Inter-American Commission on Human Rights.
3. The communication submitted by the European Roma Rights Centre and the League of Human Rights on behalf of the applicants raises questions regarding the nature and scope of the Czech Republic's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to provide effective remedies and reparations to Roma women survivors of forced and coercive sterilization. Namely the Committee is called upon to determine whether or not the applicants have been afforded remedies and reparation that meet the requirements of the Czech Republic's obligations to ensure effective remedies and access to justice

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<sup>1</sup> CENTER FOR REPRODUCTIVE RIGHTS & PORADŇA PRE OBČIANSKE A ĽUDSKÉ PRÁVA, *BODY AND SOUL: FORCED STERILIZATION AND OTHER ASSAULTS ON ROMA REPRODUCTIVE FREEDOM IN SLOVAKIA* (2003), available at <https://www.poradna-prava.sk/en/documents/body-and-soul-forced-sterilization-and-other-assaults-on-roma-reproductive-freedom-in-slovakia/>.

<sup>2</sup> This monitoring followed up on information concerning violations of Roma women's reproductive rights in former Czechoslovakia.

under the Convention. This entails a contextual consideration of what constitutes effective remedies and reparation for Roma women survivors of a systemic state policy and practice of forced and coercive sterilization amounting to cruel, inhuman or degrading treatment and gender-based violence.

4. In order to assist the Committee with its deliberations on this matter, this expert opinion focuses on the content of states' obligations under CEDAW and general international human rights law to provide effective remedies and redress to Roma women who have survived forced and coercive sterilization. Section II provides a brief overview of the systemic state policy and practice of forced and coercive sterilization of Roma women in the Czech Republic and synthesizes the manner in which survivors have faced significant barriers in access to justice and effective remedies. Section III addresses the manner in which discriminatory and systematic practices of forced and coercive sterilization contravene the prohibition on gender-based violence and torture or cruel, inhuman or degrading treatment and constitute a gross violation of international human rights law. Section IV details the specific content of the obligations on the Czech Republic under CEDAW and general international human rights law to ensure access to justice and effective remedies for Roma women survivors of forced and coercive sterilization. It outlines that remedies for discriminatory and systematic forced and coercive sterilization cannot be deemed effective unless they: a) take account of the extreme marginalization of Roma women in the Czech Republic and the particular barriers they face in access to justice; b) ensure survivors' access to justice is not hampered by arbitrary or otherwise inequitable statutes of limitation; and c) that reparations schemes are established as a vital component of effective and transformative remedial measures. Section V provides a brief comparative overview of reparation schemes that other European countries have established in order to ensure survivors of discriminatory and systematic violations have access to effective remedies and justice.

## **II. THE SYSTEMATIC PRACTICE OF FORCED AND COERCIVE STERILIZATION OF ROMA WOMEN IN THE CZECH REPUBLIC AND STATE FAILURE TO ACKNOWLEDGE RESPONSIBILITY**

5. In the early 1970s sterilization began to be actively promoted as a method of population control through a set of legal and policy measures in the former Czechoslovakia. State regulations related to sterilization were adopted that set forth specific requirements and conditions for performing sterilization<sup>3</sup> and municipalities started to provide a financial incentive to those who underwent sterilization.<sup>4</sup> The provision of incentives for undergoing sterilization was incorporated into law in 1988 and remained in place until 1991.<sup>5</sup>

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<sup>3</sup> See Smernice Ministerstva zdravotnictví České socialistické republiky, č. 1/1972 Sb. o provádění sterilizace [Directive of the Ministry of Health of the Czech Socialist Republic no. 1/1972 Coll. on Performing Sterilization] (Czech).

<sup>4</sup> EUROPEAN ROMA RIGHTS CENTRE, COERCIVE AND CRUEL: STERILISATION AND ITS CONSEQUENCES FOR ROMANI WOMEN IN THE CZECH REPUBLIC (1966-2016) (2016), at 23.

<sup>5</sup> See, e.g., Vyhláška ministerstva zdravotnictví a sociálních věcí České socialistické republiky č. 152/1988 Sb., kterou se provádí zákon o sociálním zabezpečení a zákon České národní rady o působnosti orgánů České socialistické republiky v sociálním zabezpečení [Decree of Ministry of Health and Social Affairs of Czech Socialist Republic no. 152/1988 Coll. that Executes the Act on Social Security and the Act of the Czech National Council on the Powers of Czech Socialist Republic Bodies Concerning Social Security] secs. 31 & 35. See also Návrh věcného záměru zákona o odškodnění protiprávně sterilizovaných osob [Draft of the Legislative Intent of the Law on the Compensation for Illegally Sterilized Persons] (2015), at 6, available at <https://apps.odok.cz/veklep-detail?pid=KORN9UYE4ZVB>; Claude Cahn, HUMAN RIGHTS, STATE SOVEREIGNTY, AND MEDICAL ETHICS: EXAMINING STRUGGLES AROUND COERCIVE STERILISATION OF ROMANI WOMEN (2015), at 46.

6. While on their face these laws and policies related to sterilization did not apply solely to ethnic minorities, in practice state officials and professionals interpreted and applied them disproportionately to Roma women because Roma were considered to be socially, mentally, and sexually deviant.<sup>6</sup> Sterilization thus became an institutionalized and official means of seeking to control the “high, unhealthy” birth rate of Roma women.<sup>7</sup> The Czech Public Defender of Rights’ investigation into the practice of forced and coercive sterilization found that sterilization was used as a tool to advance a wider state policy towards the assimilation of the Roma community.<sup>8</sup>
7. As a result of these laws, policies and practices, from the early 1970s until the early 1990s, Roma women in Czechoslovakia were forcibly or coercively sterilized by medical practitioners with assistance from social workers and support from state authorities.<sup>9</sup> The Czech Public Defender of Rights found that evidence indicated that many Roma women had been coercively or forcibly sterilized in the former Czechoslovakia as a result of the policy.<sup>10</sup> Although the law was changed in 1991, reports show that some public medical professionals continued the practice of sterilizing

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<sup>6</sup> Věra Sokolová, “Planned Parenthood Behind the Curtain: Population Policy and Sterilization of Romani Women in Communist Czechoslovakia, 1972-1989,” *Anthropology of East Europe Review*, Vol. 23 (1) (2005), at 79-98. Sokolová notes that in communist Czechoslovakia “‘Gypsy’ reproduction and sexuality were defined explicitly in terms of primitiveness, unhealthiness, and ignorance, while ‘Czechoslovak’ sexuality was defined in terms of civilization, health, rationality, and progress.” She explains that “[t]he circumstances surrounding the practice of sterilization show how important the regulation of sexuality was in reaffirming lines of ethnic difference between the Roma and non-Roma in communist Czechoslovakia. Sterilization among Romani women was encouraged by local professionals because cultural means (i.e. education or labor ethic) were seen as ineffective to remedy the problem of ‘Gypsy’ deviance. Social deviance was allegedly so ingrained in the ‘Gypsy’ character that it was essential to cure it through biological means. ... While sterilization was seen as a possible solution to the ‘Gypsy question’ as such, in reality it was strictly a female issue. In order to regulate the reproduction of the Roma, the Czechoslovak society had to regulate the bodies of Romani women. This conceptual link resulted in a gendered notion of Romani deviance since Romani fertility became a problem of sexually irresponsible and promiscuous Romani women and since other forms of social deviance, such as mental retardation, were born within the woman’s body.” *Id.* at 88, 94-95. *See also* EUROPEAN ROMA RIGHTS CENTRE, *COERCIVE AND CRUEL: STERILISATION AND ITS CONSEQUENCES FOR ROMANI WOMEN IN THE CZECH REPUBLIC (1966-2016)* (2016).

<sup>7</sup> Věra Sokolová, “Planned Parenthood Behind the Curtain: Population Policy and Sterilization of Romani Women in Communist Czechoslovakia, 1972-1989,” *Anthropology of East Europe Review*, Vol. 23 (1) (2005); Council of Europe Commissioner for Human Rights, *Human rights of Roma and Travellers in Europe* (2012), at 94, available at [https://www.coe.int/t/commissioner/source/prems/prems79611\\_GBR\\_CouvHumanRightsOfRoma\\_WEB.pdf](https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf).

<sup>8</sup> Veřejný ochránce práv, *Závěrečné stanovisko veřejného ochránce práv ve věci sterilizací prováděných v rozporu s právem a návrhy opatření k nápravě* [Public Defender of Rights, Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures] (2005) (Czech Rep.) at 3, 24, 25, 27, 43; European Commission against Racism and Intolerance, ECRI report on the Czech Republic (fourth monitoring cycle), para. 134, (2009).

<sup>9</sup> Claude Cahn, *HUMAN RIGHTS, STATE SOVEREIGNTY, AND MEDICAL ETHICS: EXAMINING STRUGGLES AROUND COERCIVE STERILISATION OF ROMANI WOMEN* (2015), at 42. *See also* Council of Europe Commissioner for Human Rights, *Human rights of Roma and Travellers in Europe* (2012), at 15–16, available at [https://www.coe.int/t/commissioner/source/prems/prems79611\\_GBR\\_CouvHumanRightsOfRoma\\_WEB.pdf](https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf); Věra Sokolová, “Planned Parenthood Behind the Curtain: Population Policy and Sterilization of Romani Women in Communist Czechoslovakia, 1972-1989,” *Anthropology of East Europe Review*, Vol. 23 (1) (2005), at 79-98.

<sup>10</sup> Veřejný ochránce práv, *Závěrečné stanovisko veřejného ochránce práv ve věci sterilizací prováděných v rozporu s právem a návrhy opatření k nápravě* [Public Defender of Rights, Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures] (2005) (Czech Rep.), at 43-44, 48-52, 58-59. The Czech Public Defender of Rights noted that “[w]hat should be primarily condemned from today’s perspective is that the state controlled social services set itself controlled birth rate curbing in the Romani community as one of its socio-prophylactic and unconcealed eugenic measures (see the constant references to improving the quality of population) and that for this purpose it developed practical administrative procedures leading in individual cases as far as the legally and morally dubious persuading of women to undergo sterilisation, i.e. a virtually irreversible intervention.” *Id.* at 59.

Roma women without their full and informed consent in the Czech Republic after the dissolution of Czechoslovakia and until 2000s.<sup>11</sup> Indeed, as late as 2009 the European Commission against Racism and Intolerance expressed grave concern at continued reports of Roma women being subject to pressure by social workers (including through threats that their children would be removed from their care) to undergo sterilization.<sup>12</sup>

8. Up until now, the Czech government has never acknowledged responsibility for the practice. In November 2009, the government expressed regret solely “over instances of error” in performing sterilization contrary to the law.<sup>13</sup> It has entirely disavowed responsibility for the systematic forced and coercive sterilizations of Roma women that was conducted as a result of state laws and policies.
9. As a result of State failures to acknowledge responsibility for the practice and establish a reparations scheme, almost all Roma women who are survivors of forced and coercive sterilization in the Czech Republic have never obtained recognition of the violations they suffered, or any form of remedy or reparation.<sup>14</sup> The Czech government has failed to take steps to ensure that survivors are provided with adequate reparations and due to the strict implementation by the Czech courts of a three-year statute of limitations most survivors have been prevented from bringing civil claims for damages.<sup>15</sup>
10. In 2015, the Czech Minister for Human Rights, Equal Opportunities and Legislation introduced a draft legislative proposal for a law that would have established a reparation scheme for survivors of illegal sterilizations.<sup>16</sup> If adopted the law would have allowed individuals who were sterilized

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<sup>11</sup> See, e.g., Veřejný ochránce práv, *Závěrečné stanovisko veřejného ochránce práv ve věci sterilizací prováděných v rozporu s právem a návrhy opatření k nápravě* [Public Defender of Rights, Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures] (2005) (Czech Rep.), at 24–59; Council of Europe Commissioner for Human Rights, *Human rights of Roma and Travellers in Europe* (2012), at 93–94, available at [https://www.coe.int/t/commissioner/source/prems/prems79611\\_GBR\\_CouvHumanRightsOfRoma\\_WEB.pdf](https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf); EUROPEAN ROMA RIGHTS CENTRE, *COERCIVE AND CRUEL: STERILISATION AND ITS CONSEQUENCES FOR ROMANI WOMEN IN THE CZECH REPUBLIC (1966-2016)* (2016). See also CENTER FOR REPRODUCTIVE RIGHTS & PORADŇA PRE OBČIANSKE A ĽUDSKÉ PRÁVA, *BODY AND SOUL: FORCED STERILIZATION AND OTHER ASSAULTS ON ROMA REPRODUCTIVE FREEDOM IN SLOVAKIA* (2003).

<sup>12</sup> European Commission against Racism and Intolerance, ECRI report on the Czech Republic (fourth monitoring cycle), para. 139 (2009).

<sup>13</sup> Usnesení Vlády České republiky ze dne 23. listopadu 2009 č. 1424 k Podnětu ministra pro lidská práva ke sterilizacím žen v České republice provedeným v rozporu s právem.

<sup>14</sup> Only a very small number of Roma women who suffered involuntary sterilizations obtained financial compensation. See European Roma Rights Centre, *Parallel Report by the European Roma Rights Centre Concerning the Czech Republic to the Human Rights Council, within its Universal Periodic Review, for consideration at the 28th Session (6 – 17 November 2017)* (March 2017), para. 12.

<sup>15</sup> According to the Council of Europe Commissioner for Human Rights only one woman, who was sterilized without her informed consent, has been able to file a claim for compensation within the three-year statute of limitations. See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, *Following his visit to the Czech Republic from 17 to 19 November 2010*, para. 76, CommDH(2011)3 (2011). See also European Roma Rights Centre, *Parallel Report by the European Roma Rights Centre Concerning the Czech Republic to the Human Rights Council, within its Universal Periodic Review, for consideration at the 28th Session (6 – 17 November 2017)* (March 2017), para. 11.

<sup>16</sup> Návrh věcného záměru zákona o odškodnění protiprávně sterilizovaných osob [Draft of the Legislative Intent of the Law on the Compensation for Illegally Sterilized Persons] (2015), available at <https://apps.odok.cz/veklep-detail?pid=KORN9UYE4ZVB>.

without their informed consent in the period between 1966 and 2012<sup>17</sup> to file a claim for reparation, it would have provided for a review of individual claims by the Ministry of Health and for the provision of reparations, including financial compensation up to 300,000 Czech Crowns (approximately 11,000 euros).<sup>18</sup> However, in late 2015 the government rejected this proposal and no new proposals to establish a reparations scheme have been initiated.<sup>19</sup>

### **III. DISCRIMINATORY AND SYSTEMATIC PRACTICES OF FORCED AND COERCIVE STERILIZATION CONTRAVENE THE INTERNATIONAL PROHIBITION OF TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT AND GENDER-BASED VIOLENCE AND CONSTITUTE GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW**

11. Forced and coercive sterilization impairs and undermines fundamental aspects of women's dignity and freedom and causes them severe physical, mental and psychological harm and suffering. Sterilization without a woman's free and informed consent is an acute interference with her physical integrity.
12. As a result, international human rights mechanisms, including this Committee and the European Court of Human Rights, the Human Rights Committee, and the Committee against Torture, have repeatedly confirmed that forced and coercive sterilization is a form of gender-based violence and violates the prohibition on torture or cruel, inhuman or degrading treatment.<sup>20</sup>
13. For example, in a series of cases, the European Court of Human Rights has found that depriving women of their reproductive capacity through sterilization without their free and informed consent violates women's right to be free from inhuman and degrading treatment.<sup>21</sup> It has held that forced and coercive sterilization constitutes a major interference with a person's reproductive health status and affects women's personal integrity, including their physical and mental well-being and

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<sup>17</sup> This period covers the time between when the Act on the Care of People's Health entered into force in July 1966 and its replacement by the new Act on Specific Healthcare Services in March 2012.

<sup>18</sup> Návrh věcného záměru zákona o odškodnění protiprávně sterilizovaných osob [Draft of the Legislative Intent of the Law on the Compensation for Illegally Sterilized Persons] (2015), available at <https://apps.odok.cz/veklep-detail?pid=KORN9UYE4ZVB>.

<sup>19</sup> "Věcný záměr zákona o odškodnění protiprávně sterilizovaných osob neprošel vládou" (1 Oct. 2015), <https://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/aktualne/vecny-zamer-zakona-o-odskodneni-protipravne-sterilizovanych-osob-neprosel-vladou-135342/>; "Czech Government rejects bill to compensate victims of illegal sterilizations" (1 Oct. 2015), <http://www.romea.cz/en/news/czech/czech-government-rejects-bill-to-compensate-victims-of-illegal-sterilizations>.

<sup>20</sup> See, e.g., Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, para. 18, U.N. Doc. CEDAW/C/GC/35 (2017) [hereinafter CEDAW Committee, *Gen. Recommendation No. 35*]. See also CEDAW Committee, *General Recommendation No. 19: Violence against women*, para. 22 (11<sup>th</sup> Sess., 1992) [hereinafter CEDAW Committee, *Gen. Recommendation No. 19*]; A.S. v. Hungary, CEDAW Committee, Commc'n No. 4/2004, U.N. Doc. CEDAW/C/36/D/4/2004 (2006); V.C. v. Slovakia, No. 18968/07 Eur. Ct. H.R. (2011); N.B. v. Slovakia, No. 29518/10 Eur. Ct. H.R. (2012); I.G. and Others v. Slovakia, No. 15966/04 Eur. Ct. H.R. (2013); Human Rights Committee, *General Comment No. 28: Article 3 (The equality of rights between men and women)*, para. 11, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2000); *Concluding Observations: Czech Republic*, para. 10, U.N. Doc. CCPR/C/CZE/CO/2 (2007); *Czech Republic*, para. 11, U.N. Doc. CCPR/C/CZE/CO/3 (2013); *Slovakia*, para. 26, U.N. Doc. CCPR/C/SVK/CO/4 (2016); Committee against Torture (CAT Committee), *Concluding Observations: Czech Republic*, para. 12, U.N. Doc. CAT/C/CR/4-5 (2012); *Slovakia*, para. 12, U.N. Doc. CAT/C/SVK/CO/3 (2015); *Peru*, para. 15, U.N. Doc. CAT/C/PER/CO/5-6 (2013).

<sup>21</sup> V.C. v. Slovakia, No. 18968/07 Eur. Ct. H.R. (2011), para. 120; N.B. v. Slovakia, No. 29518/10 Eur. Ct. H.R. (2012), para. 81; I.G. and Others v. Slovakia, No. 15966/04 Eur. Ct. H.R. (2013), paras. 124, 126.

emotional, spiritual and family life.<sup>22</sup> The Court has further found that forced and coercive sterilization is “liable to arouse ... feelings of fear, anguish and inferiority” and that Roma women who were subjected to forced and coercive sterilization endured lasting suffering, including serious physical and psychological after-effects as well as difficulties in their relationships with a partner or husband and the Roma community.<sup>23</sup>

14. Similarly, several United Nations human rights mechanisms have also recognized forced and coercive sterilization as a form of ill-treatment and violence against women.<sup>24</sup> For instance, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (the “Special Rapporteur on torture”) has explained that “[f]orced sterilization is an act of violence and a form of social control, and violates a person’s right to be free from torture and ill-treatment.”<sup>25</sup> He has also underlined that where forced and coercive sterilizations are carried out by state officials in accordance with coercive family planning policies they may amount to torture.<sup>26</sup> The Special Rapporteur on violence against women has specified that forced sterilization violates women’s physical integrity and security and as such constitutes violence against women.<sup>27</sup> The Special Rapporteur on torture has also explained that “[g]ender often intersects with other characteristics such as race, nationality, sexual orientation, socioeconomic status, age and HIV status to render women and girls at risk of torture and other ill-treatment in the context of sterilization.”<sup>28</sup> Other United Nations human rights mechanisms have also recognized that forced and coercive sterilization disproportionately affects women from marginalized groups due to intersecting forms of discrimination to which they are exposed. For example, the Committee on the Elimination of Racial Discrimination has recognized that coercive sterilization of women is a form of racial and gender discrimination.<sup>29</sup> The Special Rapporteur on minority issues has specifically expressed concerns about “discriminatory stereotypes and hate speech against Roma women,

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<sup>22</sup> V.C. v. Slovakia, No. 18968/07 Eur. Ct. H.R. (2011), para. 106.

<sup>23</sup> V.C. v. Slovakia, No. 18968/07 Eur. Ct. H.R. (2011), para. 118.

<sup>24</sup> See, e.g., Human Rights Committee, *General Comment No. 28: Article 3 (The equality of rights between men and women)*, para. 11, HRI/GEN/1/Rev.9 (Vol. I) (2000); Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44*, paras. 45, 51-52, U.N. Doc. E/CN.4/1999/68/Add.4 (1999); CAT Committee, *Concluding Observations: Czech Republic*, para. 12, U.N. Doc. CAT/C/CR/4-5 (2012); *Slovakia*, para. 12, U.N. Doc. CAT/C/SVK/CO/3 (2015); *Peru*, para. 15, U.N. Doc. CAT/C/PER/CO/5-6 (2013); Human Rights Committee, *Concluding Observations: Czech Republic*, para. 10, U.N. Doc. CCPR/C/CZE/CO/2 (2007); *Czech Republic*, para. 11, U.N. Doc. CCPR/C/CZE/CO/3 (2013); *Slovakia*, para. 26, U.N. Doc. CCPR/C/SVK/CO/4 (2016). See also Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, Human Rights Council, para. 46, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).

<sup>25</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, para. 45, U.N. Doc. A/HRC/31/57 (2016).

<sup>26</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, para. 69, U.N. Doc. A/HRC/7/3 (2008).

<sup>27</sup> Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44*, paras. 51, U.N. Doc. E/CN.4/1999/68/Add.4 (1999).

<sup>28</sup> Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, para. 45, U.N. Doc. A/HRC/31/57 (2016).

<sup>29</sup> Committee on the Elimination of Racial Discrimination, *General recommendation XXV on gender-related dimensions of racial discrimination*, para. 2, Fifty-sixth session (2000).

including depictions of them as particularly fertile or promiscuous, which expose them to different forms of gender-based violence, including forced sterilization.”<sup>30</sup>

15. It is widely recognized that gross violations of international human rights law include torture and cruel, inhuman or degrading treatment and systematic gender based violence or other forms of discrimination based on race or gender.<sup>31</sup> As a result, where Roma women are systematically subjected to forced and coercive sterilization as a result of state policies this results in a gross or systematic violation of human rights.
16. The Commissioner for Human Rights of the Council of Europe has underlined that the forced and coercive sterilization of Roma women in the Czech Republic, which was carried out as a state-backed policy until 1991, constitutes a gross or systematic violation of human rights.<sup>32</sup> Relevant policies embodied deep seated bias and discrimination against Roma women and were grounded in discriminatory notions that Roma women should not have more or many children.<sup>33</sup>

#### **IV. CEDAW AND GENERAL INTERNATIONAL HUMAN RIGHTS LAW REQUIRE THE CZECH REPUBLIC TO ENSURE ROMA WOMEN’S ACCESS TO JUSTICE AND EFFECTIVE REMEDIES FOR FORCED AND COERCIVE STERILIZATION**

17. States’ obligations to ensure effective remedies for discriminatory and systematic forced and coercive sterilization require the provision of equal and effective access to justice and adequate, effective and prompt reparation for harm suffered.<sup>34</sup> Survivors must be provided with full and effective reparation proportional to the gravity of the violation and their individual circumstances. Required reparations include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>35</sup>
18. The extent of these obligations has been articulated in some detail in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Committee against Torture’s General Comment No. 3 on the implementation of Article 14, in the jurisprudence of the CEDAW Committee, in particular General Recommendation No. 33 on

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<sup>30</sup> Special Rapporteur on minority issues, *Report of the Special Rapporteur on minority issues, Rita Izsák, Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism*, para. 27, U.N. Doc. A/HRC/29/24 (2015).

<sup>31</sup> Geneva Academy, Briefing paper, What amounts to ‘a serious violation of international human rights law’? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty, p. 12-15 (August 2014). *See also* Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report submitted by Mr Theo van Boven, Special Rapporteur, para. 13, U.N. Doc. E/CN.4/Sub.2/1993/8 (2 July 1993).

<sup>32</sup> *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to the Czech Republic from 17 to 19 November 2010*, para. 82, CommDH(2011)3 (2011).

<sup>33</sup> *See, e.g.,* Veřejný ochránce práv, *Závěrečné stanovisko veřejného ochránce práv ve věci sterilizací prováděných v rozporu s právem a návrhy opatření k nápravě* [Public defender of Rights, Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures] (2005) (Czech Rep.), at 58-59.

<sup>34</sup> General Assembly Resolution 60/147 of 16 December 2005, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, para. 11, U.N. Doc. A/RES/60/147 (2006), available at [http://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_ph\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf) [hereinafter *Basic Principles and Guidelines on the Right to a Remedy and Reparation*].

<sup>35</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 18.

women's access to justice and General Recommendation No. 35 on gender-based violence against women, and the Committee's Views on individual communications.<sup>36</sup>

19. As this Committee has articulated, the Convention requires states to ensure that women who have suffered violations of their rights have "recourse to affordable, accessible, and timely remedies, with legal aid and assistance as necessary."<sup>37</sup> States must guarantee that the right to redress is effective in practice and have a duty to remove barriers to access to justice whether they be of a physical, economic, social or cultural nature.<sup>38</sup>
20. As outlined in the following sub-sections, to give effect to these obligations in respect of Roma women who were subjected to discriminatory and systematic forced and coercive sterilization the Czech Republic must ensure: a) that remedies are designed to take account of the marginalization of Roma women and the particular barriers they face in access to justice; b) that arbitrary or otherwise inequitable statutes of limitation are not allowed to impede survivors' access to justice and effective remedies; c) that reparations schemes are established as a vital component of effective and transformative remedial measures ; and d) that reparations are provided that take account of the nature, impact and stigma attached to forced and coercive sterilization.

#### A. EFFECTIVE REMEDIES MUST BE TAILORED TO THE SPECIFIC SITUATION OF ROMA WOMEN AS A HIGHLY MARGINALIZED GROUP

21. Reparations for discriminatory and systematic practices of forced and coercive sterilization must ensure that the remedies available to Roma women respond to the particular circumstances of, and meet the particular needs of, the survivors. The process for providing redress must be tailored to the situation and realities of victims.<sup>39</sup>
22. This means that special measures must be taken to guarantee that marginalized or disadvantaged groups of women who are often unable to access justice are able to do so in practice. Marginalized groups must be provided with free legal aid and targeted measures must be adopted to ensure that they are aware of their rights and that they receive necessary support in access to justice and states have a duty to ensure that victims are adequately informed of their right to seek redress.<sup>40</sup> Barriers that can have a particular impact on marginalized groups of victims' access to justice include inequities in practical access to complaint procedures and judicial bodies, failure to provide legal aid and the impact of costs of bringing a complaint, and evidentiary burdens and other procedural requirements.<sup>41</sup>
23. States have a duty to promptly initiate a process to provide reparations to victims where there are reasonable grounds for believing that ill-treatment has occurred.<sup>42</sup> States may not avoid obligations

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<sup>36</sup> Vertido v. Philippines, CEDAW Committee, U.N. Doc. CEDAW/C/46/D/18/2008, para. 8.3.

<sup>37</sup> CEDAW Committee, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 34, U.N. Doc. CEDAW/C/GC/28 (2010).

<sup>38</sup> CEDAW Committee, *General Recommendation No. 33 on women's access to justice*, para. 3, U.N. Doc. CEDAW/C/GC/33 (2015) [hereinafter CEDAW Committee, *Gen. Recommendation No. 33*].

<sup>39</sup> *Id.*, para. 6.

<sup>40</sup> CAT Committee, *General Comment No. 3: Implementation of article 14 by States parties*, paras. 29-30, U.N. Doc. CAT/C/GC/3 (2012) [hereinafter CAT Committee, *Gen. Comment No. 3*].

<sup>41</sup> *Id.*, para. 38.

<sup>42</sup> *Id.*, para. 27.



to ensure access to justice and effective remedies by waiting for victims to initiate legal proceedings or file criminal complaints. Furthermore, states must make available to victims all evidence of acts of ill-treatment, including medical records, as failure to provide this evidence can undermine victims' access to reparations.<sup>43</sup> States must take measures to remove barriers that may prevent survivors of forced and coercive sterilization from seeking redress, such as stigma and feelings of shame.<sup>44</sup>

24. CEDAW and general international human rights law also require that reparations for victims of gender-based violence and ill-treatment must be proportionate to the gravity of the violations and the harm they have suffered.<sup>45</sup> The Special Rapporteur on violence against women has recognized that harms resulting from forms of gender-based violence are often “compounded with social stigmatization and ostracism by the family and/or community, subsequent emotional distress, loss of status.”<sup>46</sup>
25. Where states fail to adopt adequate measures to accommodate and take account of the needs of marginalized groups of survivors of forced and coercive sterilization for reparations and to facilitate their access to justice they have failed to discharge their duty to provide all victims of grave human rights violations with effective and equal redress. Failures to provide access to legal assistance and aid, to safely maintain and ensure access to medical records, and to remove a range of social and cultural barriers that impede Roma women survivors of forced and coercive sterilization from accessing justice and reparations violate State obligations to provide effective remedies.
26. International and European human rights mechanisms have specifically expressed serious concerns about the inadequate legal framework that has prevented Roma women survivors of forced and coercive sterilization in the Czech Republic from obtaining justice and adequate compensation.<sup>47</sup> Many Roma women survivors of forced and coercive sterilization face a range of practical obstacles in their access to justice in the Czech Republic. These include their lack of awareness about possible avenues for redress or the non-availability of their medical records.<sup>48</sup> In addition, the survivors often need to overcome feelings of shame in order to come forward and bring a claim.<sup>49</sup>

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<sup>43</sup> *Id.*, para. 30.

<sup>44</sup> *Id.*, para. 38.

<sup>45</sup> CEDAW Committee, *Gen. Recommendation No. 35*, para. 33(a); *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 15.

<sup>46</sup> Special Rapporteur on violence against women, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, para. 45, U.N. Doc. A/HRC/14/22 (2010).

<sup>47</sup> CEDAW Committee, *Concluding Observations: Czech Republic*, para. 28, U.N. Doc. CEDAW/C/CZE/CO/6 (2016); Human Rights Committee, *Concluding Observations: Czech Republic*, para. 10, U.N. Doc. CCPR/C/CZE/CO/2 (2007); *Czech Republic*, para. 11, U.N. Doc. CCPR/C/CZE/CO/3 (2013); CAT Committee, *Concluding Observations: Czech Republic*, para. 12, U.N. Doc. CAT/C/CR/4-5 (2012); *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to the Czech Republic from 17 to 19 November 2010*, para. 75, CommDH(2011)3 (2011).

<sup>48</sup> *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to the Czech Republic from 17 to 19 November 2010*, para. 75, CommDH(2011)3 (2011).

<sup>49</sup> *Id.*

## B. STATUTES OF LIMITATION AND OTHER PROCEDURAL BARRIERS MUST NOT BAR ACCESS TO JUSTICE AND EFFECTIVE REMEDIES FOR SURVIVORS OF FORCED AND COERCIVE STERILIZATION

27. Where statutes of limitations impose short deadlines for claims seeking reparations for human rights violations, failures to waive, adapt or ensure the discretionary nature of such limitation periods can render the right to an effective remedy futile and contravene states' obligations to guarantee access to effective remedies and reparation.
28. The Committee against Torture has stated that statutes of limitation should not apply to ill-treatment due to the continuous nature of the impacts of this human rights violation and has affirmed that states have a duty to ensure that victims of ill-treatment, regardless of when the violation occurred, are able to obtain redress.<sup>50</sup> In the words of Mr. Theo van Boven, author of the UN study on the right to reparations for victims of gross human rights violations, "claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations...for many victims of gross violations of human rights, the passage of time has no attenuating effect; on the contrary, there is an increase in post-traumatic stress, requiring all necessary material, medical, psychological and social assistance and support over a long period of time."<sup>51</sup> The Basic Principles on the Right to a Remedy and Reparation clearly specify that where they are retained, statutes of limitations must not be restrictive, while this Committee has held that any statute of limitation must conform with the interests of the victims.<sup>52</sup>
29. As a result, international human rights mechanisms have repeatedly criticized the three-year statute of limitation that applies under Czech law to compensation claims for forced and coercive sterilization.<sup>53</sup> The Council of Europe Commissioner for Human Rights noted that "this framework is inadequate to accommodate reality, which is characterised by the fact that in some cases the women concerned have learnt that sterilisation had been performed on them, or realised its full implications, only at a later stage. Further realities with which these women are confronted include the fact that they often need to overcome shame, their lack of awareness about possible avenues for redress."<sup>54</sup> As a result, he called on the Czech Republic to extend the statute of limitations. Similar recommendations have been made by this Committee.<sup>55</sup>

## C. REPARATIONS SCHEMES ARE A VITAL COMPONENT OF EFFECTIVE MEASURES TO ENSURE SURVIVORS OF FORCED AND COERCIVE STERILIZATION OBTAIN JUSTICE AND COMPENSATION

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<sup>50</sup> CAT Committee, *Gen. Comment No. 3*, para. 40.

<sup>51</sup> Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report submitted by Mr Theo van Boven, Special Rapporteur, para. 135, U.N. Doc. E/CN.4/Sub.2/1993/8 (2 July 1993).

<sup>52</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 7; CEDAW Committee, *Gen. Recommendation No. 33*, para. 51.

<sup>53</sup> CEDAW Committee, *Concluding Observations: Czech Republic*, para. 28, U.N. Doc. CEDAW/C/CZE/CO/6 (2016); CAT Committee, *Concluding Observations: Czech Republic*, paras. 12-13, U.N. Doc. CAT/C/CR/4-5 (2012); *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to the Czech Republic from 17 to 19 November 2010*, para. 74, CommDH(2011)3 (2011).

<sup>54</sup> *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to the Czech Republic from 17 to 19 November 2010*, para. 75, CommDH(2011)3 (2011).

<sup>55</sup> *Id.*, para. 85; CEDAW Committee, *Concluding Observations: Czech Republic*, para. 29, U.N. Doc. CEDAW/C/CZE/CO/6 (2016).

30. International human rights law and standards recommend that procedures be developed to allow groups of victims who have suffered gross violations of their human rights to present claims and receive reparations.<sup>56</sup> Such procedures should complement and not replace avenues for individual access to justice before the courts. For example, this Committee has stated that for victims of gender-based violence States parties should provide administrative reparations schemes and design transformative reparations programs to address the underlying discrimination and disadvantaged position that contributed to the violation.<sup>57</sup> The Committee against Torture has also recommended that culturally sensitive collective reparation measures be provided to minority groups.<sup>58</sup>
31. Where forced and coercive sterilization takes place as part of a discriminatory state policy and practice, reparation schemes should be established so as to ensure survivors do not have to pursue case-by-case civil remedies for the harm suffered.<sup>59</sup> Failures to establish appropriate remedial schemes, and thus requiring victims of gross and systematic violations to pursue individual claims for civil remedies before the courts, as the only available mechanism through which they can obtain remedies or reparations, fails to recognize the nature, gravity and scope of the harm and can place an undue burden on victims.
32. Although, it is imperative that states ensure women can pursue judicial remedies for harm endured if they wish to do so, states should also recognize that “women confronted with the traditional structural and administrative limitations in accessing justice, especially if they are poor or belong to minority or excluded groups, need to overcome specific obstacles when making claims to redress historical injustices.”<sup>60</sup> The Special Rapporteur on violence against women has acknowledged that “administrative reparations programmes can obviate some of the difficulties and costs associated with litigation, including high expenses, the need to gather evidence which may sometimes be unavailable, ... and the lack of trust in the judicial system.”<sup>61</sup>
33. Furthermore, the establishment of reparations schemes can be transformative and address the entrenched structural forms of discrimination that have allowed violations to occur. The Special Rapporteur on violence against women has stated that reparations should aspire “to subvert instead of reinforce pre-existing patterns of crosscutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience.”<sup>62</sup> This Committee has also affirmed that in designing transformative reparations programs “priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims/survivors”<sup>63</sup> and consideration should be given to “addressing the underlying discrimination and disadvantage that contributed to the violations.”<sup>64</sup>
34. The Council of Europe Commissioner for Human Rights has acknowledged the severe obstacles faced by Roma women in seeking justice through the courts for forced and coercive sterilization, highlighting the strict and short statute of limitations, as well as, “the slow and costly nature of

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<sup>56</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 13.

<sup>57</sup> CEDAW Committee, *Gen. Recommendation No. 35*, para. 33(b).

<sup>58</sup> CAT Committee, *Gen. Comment No. 3*, para. 32.

<sup>59</sup> Special Rapporteur on violence against women, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, para. 37, U.N. Doc. A/HRC/14/22 (2010).

<sup>60</sup> *Id.*, para. 69.

<sup>61</sup> *Id.*, para. 37.

<sup>62</sup> *Id.*, para. 85.

<sup>63</sup> CEDAW Committee, *Gen. Recommendation No. 35*, para. 33(b).

<sup>64</sup> *Id.*

obtaining legal counsel, the extremely high evidentiary standards, and the possible difficulties of the investigators and the court system to deal sensitively with the needs of the Roma people.”<sup>65</sup> He therefore stressed that in addition to eradicating barriers which prevent Roma women from seeking justice through judicial processes, the Czech Republic should, “provide other remedies as well for example in the form of an independent commission of inquiry to provide compensation or an apology to the victims.”<sup>66</sup>

35. This Committee has recently criticized the Czech government’s rejection of the proposed draft outline for a law seeking to establish an inquiry and reparations scheme.<sup>67</sup> It has urged the Czech Republic to adopt measures that would ensure Roma women’s access to reparations for the practice of forced and coercive sterilizations. The Committee has specifically recommended that the Czech Republic establish a compensation procedure for survivors of forced and coercive sterilizations.<sup>68</sup> Importantly, it has also urged the Czech Republic to “prosecute and adequately punish those who illegally practised coercive or non-consensual sterilizations” and that it “appoint an independent committee to research the full extent of the harm caused by the practice of involuntary sterilization, and support continuing outreach to all potential applicants for compensation.”<sup>69</sup> The Council of Europe Commissioner for Human Rights has also expressed regret about the government’s decision to reject the proposal and urged the government to reconsider and adopt the bill.<sup>70</sup> None of these recommendations have been implemented.

## V. COMPARATIVE EXAMPLES OF OTHER EUROPEAN COUNTRIES’ EFFORTS TO ENSURE EFFECTIVE REMEDIES THROUGH THE ESTABLISHMENT OF TAILORED REPARATION SCHEMES

36. In recent years, a number of European countries have established reparations schemes to provide survivors of reproductive rights violations with remedies. Examples of such schemes from Sweden, Switzerland and Norway are briefly outlined below.<sup>71</sup>

### A. SWEDEN

37. Between 1934 and 1976, approximately 63,000 people in Sweden were sterilized pursuant to a law that targeted “inferior” members of society,<sup>72</sup> affecting an estimated 25 per cent of all Roma

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<sup>65</sup> Council of Europe Commissioner for Human Rights, *Final report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the human rights situation of the Roma, Sinti and Travellers in Europe*, para. 74, CommDH(2006)1 (2006).

<sup>66</sup> *Id.*

<sup>67</sup> CEDAW Committee, *Concluding Observations: Czech Republic*, para. 28, U.N. Doc. CEDAW/C/CZE/CO/6 (2016). See also Human Rights Committee, *Concluding Observations: Czech Republic*, para. 11, U.N. Doc. CCPR/C/CZE/CO/3 (2013).

<sup>68</sup> CEDAW Committee, *Concluding Observations: Czech Republic*, para. 29, U.N. Doc. CEDAW/C/CZE/CO/6 (2016).

<sup>69</sup> *Id.*

<sup>70</sup> “Commissioner Muižnieks urges the Czech authorities to adopt the bill on reparations for involuntary sterilisation of Roma women,” (22 Oct. 2015), available at <http://www.coe.int/en/web/commissioner/-/commissioner-muiznieks-urges-the-czech-authorities-to-adopt-the-bill-on-reparations-for-involuntary-sterilisation-of-roma-women>.

<sup>71</sup> For further country examples, see European Roma Rights Centre, Third Party Intervention to the European Court of Human Rights in the case of Anna Maděrová v. Czech Republic, No. 32812/13, available at <http://www.errc.org/cms/upload/file/third-party-intervention-anna-maderova-v-czech-republic-8-december-2015.pdf>.

<sup>72</sup> Among those sterilized, 93% were women and nearly half (over 40%, or more than 25,000 persons) were sterilized without their free and full consent, while in another 7% of cases it was not possible to determine whether consent had been obtained. Official reports of the Swedish Government, SOU 2000:20 “Steriliseringsfrågan i Sverige 1935–1975—Historisk

households in Sweden.<sup>73</sup> The Swedish government has offered public apologies to the survivors on several occasions, and in 1999 also by law established a formal compensation scheme for all persons who were sterilized without their informed consent.<sup>74</sup>

38. The law set up a National Sterilization Compensation Board to review claims from survivors of forced or coercive sterilization.<sup>75</sup> Survivors were given two and a half years, until December 2002, to bring their claims. During this time, 1,564 survivors—75% of all applicants—successfully secured compensation.<sup>76</sup> In order to ensure that the maximum number of survivors would be able to obtain reparations, evidentiary standards for showing lack of consent to be sterilized were relatively lenient.<sup>77</sup>
39. The statutory scheme provided for SEK 175,000 to be paid out as *ex gratia* compensation to each survivor of forced sterilization.<sup>78</sup> This compensation amount was set to exceed the ordinary level of compensation for tort awarded to survivors of sexual assault or criminal infliction of sterility;<sup>79</sup> the amount was intended not only to serve a symbolic purpose, but also to take into consideration the

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belysing—Kartläggning—Intervjuer", p. 16, *available at*

<http://www.regeringen.se/contentassets/68b217b7f8e746a799536f3ad851c05e/steriliseringsfragan-i-sverige-1935---1975>;

*see also* SOU 1999:2 "Steriliseringsfrågan i Sverige 1935–1975. Ekonomisk ersättning", *available at*

<https://data.riksdagen.se/fil/4E2BF9ED-42DC-4D42-A3FC-E24EA85F087E>; SOU 2000:22 "Från politik till praktik. De svenska steriliseringslagarna, 1935–1975", *available at* <http://www.jure.se/ns/default.asp?url=visatitel.asp?tuid=6362>.

<sup>73</sup> Ministry of Culture for Sweden, *The Dark Unknown History: White Paper on Abuses and Rights Violations Against Roma in the 20<sup>th</sup> Century* 106-108, Doc. No. Ds 2014:8 (2015),

<http://www.government.se/49b72f/contentassets/eab06c1ac82b476586f928931cfc8238/the-dark-unknown-history---white-paper-on-abuses-and-rights-violations-against-roma-in-the-20th-century-ds-20148>. In addition, Sweden has enacted several policies targeting Roma for population control over the last century, including forced removal of children from Roma families, entry and immigration bans on ethnic Roma, police registries of Roma citizens with no criminal backgrounds, and exclusionary policies in the fields of housing and education. *See generally id.*

<sup>74</sup> Lag (1999:332) 'om ersättning till steriliserade i vissa fall' ["Act relating to compensation to sterilized persons in certain cases (1999:332)"] of 1 July 1999 [hereinafter Law on Compensation for Sterilization], *available at* [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs\\_sfs-1999-332/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs_sfs-1999-332/).

<sup>75</sup> *Id.*, Section 5.

<sup>76</sup> "Compensation to Romani/Taters Subjected to Coercive Sterilization," Working group report, submitted to the Ministry of Local Government and Regional Development (Norway, 2003), p. 28,

[https://www.regjeringen.no/globalassets/upload/fad/vedlegg/sami/nasjmin/rapport\\_tvangsster\\_romani\\_en.pdf](https://www.regjeringen.no/globalassets/upload/fad/vedlegg/sami/nasjmin/rapport_tvangsster_romani_en.pdf).

<sup>77</sup> An applicant could demonstrate victim status by showing that she or he did not sign a sterilization application or otherwise give written consent; was in a position where a lack of mental capacity was likely (e.g., the person was a minor, lived in a nursing home, or suffered from certain mental health disorders); was subject to coercive government incentives (e.g., when government benefits were conditioned on sterilization); or was subject to undue influence from or was not fully informed by a government agent when they gave their consent to be sterilized. Law on Compensation for Sterilization, Section 2. *see also* "Compensation to Romani/Taters Subjected to Coercive Sterilization," Working group report, submitted to the Ministry of Local Government and Regional Development (Norway, 2003), at 30-31; Karin Johansson 2005, '1 600 tvångssteriliserade har fått skadestånd, Sydsvenskan' [1,600 forcibly sterilized persons have been awarded compensation], 20 April 2005, [www.sydsvenskan.se/sverige/1-600-tvangssteriliserade-har-fatt-skadestand/](http://www.sydsvenskan.se/sverige/1-600-tvangssteriliserade-har-fatt-skadestand/).

<sup>78</sup> The amount was determined by the legislature in cooperation with an independent investigatory committee. Input was sought from involuntarily sterilized persons, and regard was given to other foreign compensation arrangements as well as to the survivors' situations and financial resources as a group at the time of compensation. The state had paid out around SEK 280 million in total by 2003. "Compensation to Romani/Taters Subjected to Coercive Sterilization," Working group report, submitted to the Ministry of Local Government and Regional Development (Norway, 2003), at 28.

<sup>79</sup> At the time the compensation amounts for these torts were benchmarked at SEK 50,000 and SEK 110,000, respectively.

weight of the government's systemic involvement in these violations and to remedy some suffering on the part of survivors.<sup>80</sup>

## B. SWITZERLAND

40. Switzerland operated a range of compulsory social measures from 1942 to 1981, including a program of forced sterilization. These measures primarily affected young women of lower socioeconomic status, those considered to have mental health disorders or low intelligence, as well as those who had become pregnant outside marriage or were deemed 'incapable of running a household'.<sup>81</sup> Often, the government conditioned access to legal marriage or continued freedom from imprisonment or custodial care on accepting sterilization. The government has set up several bodies to analyse and publicise this history, and put in place a number of measures to ensure compensation for victims of all compulsory social measures.<sup>82</sup>
41. In 2013, the Swiss Federal Councillor issued a formal apology to all victims of compulsory social measures.
42. In 2016, the legislature introduced a bill to establish a compensation mechanism. The law, effective since April 2017, gives survivors until March 2018 to submit an application to the Federal Office of Justice (FJ).<sup>83</sup> The FJ examines survivors' applications in cooperation with a Consultative Commission, half of whose members must themselves be survivors of the compulsory social measures.<sup>84</sup> Each survivor will receive the maximum compensation of CHF 25,000 unless more than 12,000 applications are approved; in the latter case, the FJ shall assign a compensation amount to each survivor.<sup>85</sup> The applications of survivors who are over 75 years of age or are seriously ill receive expedited review.<sup>86</sup>
43. Survivors must show that as a result of the compulsory social measures, their "physical, psychological or sexual integrity or mental development was directly and seriously impaired" as a result of acts listed in the law, which include forced sterilization.<sup>87</sup> The national government and the cantons are legally obliged to assist survivors in retrieving evidence of past violations from

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<sup>80</sup> See SOU 1999:2 "Steriliseringsfrågan i Sverige 1935–1975. Ekonomisk ersättning". In addition, survivors who had previously received compensation at lower amounts were eligible to receive the difference.

<sup>81</sup> See Bundesamt für Justiz [Federal Office of Justice], *Fürsorgerische Zwangsmassnahmen und Fremdplatzierungen in der Schweiz vor 1981: Bericht und Massnahmenvorschläge des Runden Tisches für die Opfer von fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen vor 1981* [Coercive social measures and Foreign Placements in Switzerland before 1981: Report and Proposed Measures for the Round Table for Victims of Forensic Coercive Measures and Displacements before 1981], 12-13 (2014); see also Von Eva Maria Belser & Andrea Egbuna-Joss, "Vom Umgang mit vergangenem Unrecht" ["Dealing with Past Injustices"] SKMR-Newsletter No. 14 vol. 30, June 2014, p. 4.

<sup>82</sup> This includes victims of coercive acts that occurred after 1981.

<sup>83</sup> Referred to in the law by its German initials, "BJ", or the Bundesamt für Justiz (the Federal Office for Justice).

<sup>84</sup> The Commission should consist of between seven and nine persons, three or four of whom are survivors. Verordnung zum Bundesgesetz über die Aufarbeitung der fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen vor 1981 (AFZFBV) [Ordinance on the Federal Law on the Reconsideration of Maternity Coercive Measures and Foreign Placements before 1981 (AFZFBV)], Art. 5, Sept. 2016 (decreeing that the Commission shall be consulted in particular regarding procedure and policy towards "requests that raise particularly sensitive issues"), <https://www.bj.admin.ch/dam/data/bj/gesellschaft/gesetzgebung/fszm/vo-d.pdf>.

<sup>85</sup> *Id.*, Art. 6.

<sup>86</sup> *Id.*, Arts. 1-4.

<sup>87</sup> Translation by the Swiss government, Federal Act on Compulsory Social Measures and Placements prior to 1981 (CSMPA), Art. 2(d), 2015, <https://www.fuersorgerischezwangsmassnahmen.ch/pdf/gegenvorschlag/entw-e.pdf>.

government archives; where such documentation is unavailable, oral testimony may provide acceptable evidence.<sup>88</sup> In addition, the law explicitly provides for the privacy and strict preservation of records from the period when the violations occurred.<sup>89</sup>

44. Prior to the establishment of the permanent compensation mechanism, an emergency aid fund for survivors of compulsory social measures was set up to enable aging and financially distressed survivors to immediately access some compensation.<sup>90</sup>

### C. NORWAY

45. Similar to Sweden, Norway implemented a statutory policy of coercive sterilization against certain groups of its population under the Sterilization Act of 1934 and the National Lineage Act of 1942, which continued in force until 1977.<sup>91</sup> Evidence indicates that approximately 44,000 people were sterilized over that period, of whom 30,000 were women. Tater/Roma people were significantly overrepresented among those sterilized during this period.<sup>92</sup>
46. In 2002, the Norwegian Parliament established an inter-ministerial working group to consider compensation schemes for the survivors. Since most cases in courts would be time-barred under Norwegian law, a special process was established to provide *ex gratia* compensation for forced sterilization and other human rights violations.<sup>93</sup> More than 1,200 survivors received such compensation on one or more of these grounds between 2006 and 2013.<sup>94</sup> However, only fifteen applied for compensation for forced sterilization, of whom seven were awarded compensation.<sup>95</sup>

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<sup>88</sup> Verordnung zum Bundesgesetz über die Aufarbeitung der fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen vor 1981 (AFZVF) [Ordinance on the Federal Law on the Reconsideration of Maternity Coercive Measures and Foreign Placements before 1981 (AFZVF)], Art. 3(4)–3(5), Sept. 2016,

<https://www.bj.admin.ch/dam/data/bj/gesellschaft/gesetzgebung/fszm/vo-d.pdf>.

<sup>89</sup> *Id.*, Arts. 7-9.

<sup>90</sup> Commissioner for the Victims of Compulsory Social Measures and Forced Fostering of Children and Young People Before 1981 Luzius Mader, “Coming to Terms with Compulsory Social Measures and Forced Fostering”, [http://www.fuersorgerischezwangsmassnahmen.ch/pdf/Ueberblick\\_en.pdf](http://www.fuersorgerischezwangsmassnahmen.ch/pdf/Ueberblick_en.pdf). This emergency aid mechanism operated from June 2014 to June 2015, during which time it received over 1,300 applications. At the time of its preliminary assessment of July 2015, it had made about 600 payments and distributed around CHF 4.6 million, or slightly less than CHF 8,000 per person. *See* Federal Dept. of Justice and Police, *Soforthilfe für Opfer von fürsorgerischen Zwangsmassnahmen: erste Bilanz* [Emergency Aid for Victims of Forced Coercive Measures: First Assessment], 9 July 2015, [https://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2015/ref\\_2015-07-09.html](https://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2015/ref_2015-07-09.html).

<sup>91</sup> “Compensation to Romani/Taters Subjected to Coercive Sterilization,” Working group report, submitted to the Ministry of Local Government and Regional Development (Norway, 2003), at 10-13.

<sup>92</sup> “Forced and Coercive Sterilization of Roma Women: Justice and Reparations for Victims in the Czech Republic,” Summary Report of the Conference, OSCE-ODIHR Contact Point for Roma and Sinti Issues (2016), at 12-13, [http://www.osce.org/odihr/sterilization\\_report](http://www.osce.org/odihr/sterilization_report). *See also* “Compensation to Romani/Taters Subjected to Coercive Sterilization,” Working group report, submitted to the Ministry of Local Government and Regional Development (Norway, 2003), at 19.

<sup>93</sup> “Forced and Coercive Sterilization of Roma Women: Justice and Reparations for Victims in the Czech Republic,” Summary Report of the Conference, OSCE-ODIHR Contact Point for Roma and Sinti Issues (2016), at 13, [http://www.osce.org/odihr/sterilization\\_report](http://www.osce.org/odihr/sterilization_report).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*