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The forced removal of children from their Roma families is, in and of itself, inherently symptomatic of wider systemic issues that emanate from the historic and continued victimisation, segregation, and oppression of the Romani peoples. The interaction between social worker, parent, child, state institution, and what indeed constitutes the "best interests of the child" has become problematic in tilting the precarious balance between what constitutes assimilation or preservation and integration or segregation. Notably, the intersectionality of oppressions must necessarily recognise the ways in which ethnicity, gender, age, and class integrate, perpetuate, and exacerbate the individualised realities of both parent and child. In the International Convention on the Rights of the Child (CRC),<sup>2</sup> Article 3(1) establishes the "best interests of the child" as the primary consideration. What has emerged is (1) a recognition of underlying macro causes which contribute to inadequate (sub)standards of living; (2) parental, community, and familial rights to raise a child; and (3) the role of the state as guardian and the measures and processes that occur before, during, and after a child is forcibly removed. The current literature surrounding this issue is sporadic and at times inadequate. Nevertheless, the persistence of this phenomenon requires a review of the ways in which the forced removal of Romani children from their families both historically and currently manifest in order to prevent continued patterns of oppression.

## Historical Antecedents

The historic treatment of Romani people has shaped a people profoundly entangled in a cyclical pattern of survival and oppression. Within this contextual reality is the recognition of the forced removal of Roma children as indicative of the longstanding and widespread implementation of active and aggressive policies of forced assimilation. For example, under the Hapsburg monarchy of the 18th century, assimilation took the form of a direct prohibition against the itinerant Roma lifestyle under the 1761 edict of Maria Theresa. In addition, an express ban on the use of Roma names and language was accompanied by the forced removal of Roma children into non-Roma peasant families to be "educated".<sup>3</sup> Since this period, the historical patterns of forced assimilation and extermination have persisted, from the devastation of the Holocaust to the Swedish Sterilisation Acts of 1934 and 1941. This legacy has resulted in what has been described as a "high level of isolation", a greater "feeling of solidarity and kinship within the group"<sup>4</sup> and the correlating anti-assimilationist attitude towards majority culture and values. The institutionalisation of Romani children has therefore emerged as particularly problematic and is noted by social workers and other experts in Romania:

Roma have historically been noteworthy for refusing to institutionalise their children, even when families had sunk so deep into poverty that children were regularly left without adequate food. According to these experts, the high numbers of Romani children in institutions indicate an alarming crisis in the traditionally strong Romani family.<sup>5</sup>

What this observation reveals is child protection in the form of institutionalisation runs contrary to the fundamental familial and community values of the Romani peoples. It is useful, therefore, to examine how more historical events and current realities now shape the issue in changing cultural contexts.

## International Adoption

Patterns of assimilation and paternalism have, in more recent times, shifted. Two examples are illustrative of this. The first arose in Romania following the Ceausescu regime in the form of international adoption. Here, international humanitarian rhetoric, women's rights, and the rights of the child intertwine to address what has been referred to as the "baby trade".<sup>6</sup> Through the 1990s, the growth in international adoption notably and disproportionately impacted on Romani children. What has been observed is the following:

Given that prejudice against the Gypsies in Romania is unlikely to be eliminated in the near future, adoption was thought to provide a humanitarian road out for some of these children, whose chances for productive lives would otherwise be slim. Many Romanians viewed the exodus of adopted Gypsy children as a legitimate means to rid the country of them at the expense of foreigners; there are others who resented the squandering of Western altruism and resources on Gypsies.<sup>7</sup>

What emerged as problematic were private, illegitimate adoptions that structured a system that situated the Romani within a power hierarchy. Foreigners indirectly became the privileged and Romani peoples (and Romani women, in particular), the victimised. As Kligman notes, the victims of the baby trade were:

poor or single (or both) Romanian mothers, many of whom were Gypsies. Some poor women considered their bearing of children to be little more than the means of production that yielded a valuable commodity... Coercion of Romanian mothers happened in various ways. By law, a mother had fifteen days in which to change her mind about consenting to the adoption of her child... When a mother had a change of heart (or conscience), her decision was not necessarily accepted graciously by the adoptive parents or their negotiators, regardless of the law. One Romanian woman was told by the translator that she would be responsible for the costs accrued during the stay of the American adoptive parents...<sup>8</sup>

This situation has, since 1991, been apparently remedied by a new adoption law that removes private profit incentives and requires that children be institutionalised to ensure that the child's legal status is that of an orphan or abandoned. A child must also reside in an orphanage for six months before adoptive parents (preferably Romanian) may be found.



### Documentation and Citizenship

A second trend is perhaps more aptly described as an indirect system of discrimination and better recognised in terms of substantive effect rather than a formalised application of a law. In recent decades, reports on the forcible removal of children in Italy, Sweden, the Czech Republic, and Romania have revealed that assimilation can not simply be reduced to a historical footnote, but in fact exists in a complex contextual reality. By deconstructing how a

seemingly neutral application of the law combines with one's actual lived experience, this may assist in demonstrating how discrimination perpetuates in practice.

Between the years 1990 to 1996, legal documentation requirements revealed that the implementation

of formalised laws resulted in the forced removal of newborn children from Romani parent(s) in Italy. The requirements established that a mother, father or a relative of the father must submit identity documents for a newborn within 10 days of birth. In cases where there was a failure to comply, the Court of Minors would then inform the parent(s) that failure to produce the appropriate documents would result in the child being taken and possibly put up for adoption. Upon request of the relatives, the deadline would then be extended for a period of three months.<sup>9</sup> For Romani families, however, this process often proved to be difficult, if not impossible. For example, two fairly common scenarios have been reported. The first relates to the Romani custom of marrying through traditional rites and common law marriages not recognised by the Italian State. A family would thus become "illegal", further isolating parents and children from basic entitlements to social protection. If this were the case, a child born into a marriage not legally recognised would render the father or the relative of the father unable to identify the newborn. As has been noted in other countries, the administrative effect is that "the state considers the father unknown, and as a result, the father loses de jure and de facto parental rights."<sup>10</sup> In this case, only a relative with valid documents on the mother's side could fulfill this undertaking, thus further complicating the process when the mother herself is unable to do so.<sup>11</sup> One result of this is the presence of various last names within a single family where children born of the same mother would become recognized by different family names in different circumstances. This is a situation that may give rise to suspicions of child abduction. Secondly, if the parents are not residents of Italy, then a document signed by the consulate of the country of origin must state that the person who seeks to identify the child has the right to do so according to the law of his/her home country. This proved especially problematic in the former Yugoslavia where communication and preservation of documents was difficult during times of war. In Florence, for example, the nearest Bosnian consulate was situated in Rome and the cost of a passport could amount to as much as 700 Euros. The circumstance, however, is one that is not exclusive to Florence. Human Rights Watch (in 1996) reports that in the Czech Republic, the reality of stateless children (as a result of a failure to submit documentation requirements) is believed to affect over 1,000 children in orphanages throughout the country.<sup>12</sup> This situation instigated and perpetuated a situation where "[s]ocial workers and juvenile courts consider it their duty to take Romani children away from their parents and entrust them to Italian families -- often as a prelude to adoption."<sup>13</sup> The problem was further compounded by the Minor's Adoption Law (184/1983), "which considers children as abandoned when their parents cannot provide them with continuous moral and material support."<sup>14</sup>

The reaction in Roma communities to the forced removal of children "created absolute panic" resulting in women giving birth and paradoxically failing to submit the appropriate documentation in fear of losing her child. The result was severe isolationism, risk of incarceration, and a stateless child. This historical example of the forcible removal of children is noteworthy in demonstrating how complex the practice can indeed become. Fortunately, the situation has ameliorated as a likely result of increased and proactive scrutiny on the part of the Florence magistrate, Emma Cosentino.<sup>15</sup>

## Prison Laws

The current situation of incarcerated women and children raises numerous concerns relating to underlying patterns of individual and systemic discrimination that surrounds the issue of the forcible removal of children. On a fundamental level, the disproportionate representation of Roma in prisons raises alarming concerns in regards to the overall treatment of Roma within the criminal system as a whole. Specifically, however, the legal and ethical dilemma that must necessarily be addressed here is how a child's best interests may best be realised in a situation that offers very few desirable outcomes. Certainly, if an alternative guardian (i.e. a relative) is not available, neither raising a child in prison nor institutionalization in an orphanage is ideal. The reality engenders important questions regarding how this debate is conceptualized given the widespread discrimination, racism, and biases currently facing

the Roma peoples. Notably, for signatories to the CRC, any decision must be in accordance with international law. In situations where Roma children are adopted from state institutions without the knowledge or consent of their parents, article 21 of the CRC applies. From the standpoint of the ensuring the best interests of the child,

State Parties that recognize and/or permit the system of adoption shall ...ensure that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary...<sup>16</sup>

Certainly, the imprisonment of Roma parents on the basis of negligence is problematic. In the Czech Republic, Hana Capkova reports a disturbing case where both parents were sentenced to one year imprisonment for a failure to ensure a proper education and for allowing children to commit property crimes and petty theft.<sup>17</sup> What Capkova notes is (1) a striking failure to prosecute parents of neo-Nazi minors who committed similar acts, (2) that this law is almost exclusively used in cases of Roma parents, and (3) that the Chair of the Court was unconcerned with a racially motivated approach that effectively prevented parents from caring for their children.<sup>18</sup> This pattern of imprisonment and institutionalisation has had devastating repercussions on both family cohesion and child development; children are frequently left in situations far worse than the original circumstance. In recent years, there has been a growing recognition that child protection can not simply fall within the scope of the justice system. What must be incorporated is an acknowledgment of the role of the social worker as integral to establishing constructive policies that aim to educate parents and families about the needs of the child, rather than applying punitive acts of imprisonment and/or forced removal.

## **Florence, Italy**

The prison situation reported in Florence, Italy is as follows.<sup>19</sup> According to the state law (July 26, 1975 NĚš 354, Article 11), a child may remain with his/her mother until the age of three whereupon the mother may then appoint a relative to take guardianship of the child. This relative must (1) be a legal resident in order to undertake the child's guardianship, and (2) must live in conditions with "sufficient guaranties" in terms of minimal standards of housing and income as determined by the Court of Minors. Not surprisingly, Roma camps are deemed to rarely satisfy the "sufficient guarantee" requirement. In this case, the Court of Minors, based on a report by a social worker, will enforce a ruling requiring the institutionalization of the child.<sup>20</sup>

According to the administration (direzione) from the Nuovo Complesso Penitenziario Sollicciano prison in Florence, Italy, there were reportedly 27 cases of women with children from the period of August 2003 to August 2004, fifty percent of whom were of Roma ethnicity. Italian human rights monitors describe prison conditions for mothers and their children as deplorable and akin to 'a long [and] continuous nightmare'. Mothers and their children are known to share cells with regular detainees, a practice also noted in Albania by Amnesty International in June 2004.<sup>21</sup> In addition, pediatric doctors are not readily available and the purchasing of items can be a very slow, complicated, and arduous process. A special branch of social workers employed by the appropriate Ministry is responsible for reporting prison conditions as regulated by a body of laws related to imprisonment regulations (Ordinamento Penitenziario). Recent concern has been raised in regard to negative reports with disproportionately serious repercussions for seemingly trivial causes. For example, in the event a child is hurt while playing, a negative report by a social worker may result in different forms of punishment, ranging from exclusion from regular prison activities (as determined by the director of the prison) to an extension of the prison term as a result of formal, more serious, charges.<sup>22</sup> The rationale that underlies just such a report seems paradoxically incoherent with the legal rights of the child and leaves one to question whether a child's best interest is indeed to further penalise the sole caregiver.

As an alternative and an example of a positive initiative, the passing of a law in 2001 (Law 8 March 2001, NĚŠ41) approved the possibility of home detention for mothers of children under the age of three. The effect of this law in practice, however, was problematised by the Court's (Tribunale di sorveglianza) assessment of 'sufficient guarantees' as determined by a social worker who must first deem that a home meets certain minimal standards in terms of housing (space, plumbing, heating, etc.) that are rarely adequate in Roma camps. According to the Prison's Educators Office, Gianfranco Politi,<sup>23</sup> in the four years since the law's implementation, not a single Roma mother and child has benefited from this law in the Florence prison system.

As a second alternative, mothers may petition to have their child (or children) sent to an institution. When a suitable guardian is not available, many would argue that institutionalization is a more suitable temporary alternative to raising a child than in a prison under the current conditions described above. This raises two major issues, namely (1) the legitimate concern of a parent losing one's child to adoption, and (2) the impact of this as a solution which perpetuates assimilationist policies while failing to address the systemic issues that underlie disproportionate imprisonment as indicative of race-based discrimination. The first issue is one that Romani mothers have repeatedly expressed concern over, having heard that institutions will put children up for adoption.<sup>24</sup> In Florence, this has not in itself been confirmed, but the practice is one noted in other regions throughout Europe. In a report from 2003, testimony by Roma parents identified the situation of adoptions occurring without the knowledge or consent of the parents. Ms. Lia Calo, a 31 year old Roma woman from the Patarăt Romani settlement just outside of Cluj in northwestern Romania describes the following:

Seven years ago my six-month-old son Alexandru was ill so I brought him to a hospital for treatment. At the hospital, the doctors told me that I should put my son in a children's home because he would get better care there than he would from me. So I put my son in the pre-school children's home in Cluj. I visited my son whenever I was able while he was in the home in Cluj. Then, when he reached school age, he was moved to a home in Ghęrla because it offered education. I was informed of the move, but I was never able to afford to go to Ghęrlato visit him. Some time ago, there was a trial. The Child Protection Office wanted to prove that I had abandoned my son. At the trial I was asked if I wanted to give up my right to my son and I said I did not. I didn't sign any papers. I didn't know about a decision. In 2001, I went with Titilia Klozsi to ask for my son back and was told that he had been given away to a family from Turda, Romania. I was never told before I went to the home that my son had been given away.<sup>25</sup>

## Social Worker

The second issue of addressing systemic discrimination necessarily addresses the role of the social worker as central to the monitoring and reporting that may result in the forced removal of a child. The most challenging cases are those where there is neither a clear example of abuse or neglect, nor a situation where a family is definitively incapable of caring for a child. In determining whether state protection or a family's potential capacity to improve a child's standard of living is in a child's best interest is a decision essentially and most often made by a social worker at the outset. Notably, the impact of preconceived conceptions and a social worker's view of the Romani community were noted in a research document known as the "Bratinka Report".<sup>26</sup> This report found that 38% of social workers felt that the main obstacle to better relationships were the "unsavoury characteristics of the Roma", that the Romani minority should attempt to adapt to the majority, that affirmative action programmes for the Roma were a waste of money and their influence negligible, and that it would be good to strike hard at Romany criminality and disregard for generally accepted norms. Forty-two percent of social workers felt that pro-active programmes for the Roma were an unfair privilege for one group of citizens.<sup>27</sup> The ramifications of these perceptions may indeed correlate with the disproportionate representation of

Roma children in institutions and necessarily question whether Romani families are given a just assessment of their rightful capacity to raise their own children.

## Ethnic Statistics

The need for ethnic statistics is clearly necessary in order to identify the concrete and tangible patterns of indirect discrimination and systemic oppression. In half of the Council of Europe member states, the collection of ethnic data is rendered difficult through complicated or prohibitive legal regimes.<sup>28</sup> Nevertheless, unofficial reports from non-governmental organizations, observers, and those working in relevant fields have noted alarming unofficial ethnic figures indicating a disproportionate representation of Roma in prisons and institutions throughout Europe. Clearly, the need for reliable, cross-sectional, and comprehensive data becomes increasingly apparent in order to identify the scope of this issue and the most appropriate forms of action needed in order to remedy the problem.

In particular, when researching the forced removal of children, two problematic trends can be noted. The first, as witnessed in the Chisinau municipality in the Republic of Moldova, indicates a 2% growth in the number of institutionalised children registered in the country from 2003 to 2004<sup>29</sup> where "out of 13,500 institutionalised children only five per cent are orphans."<sup>30</sup> In fact, in 2000, a noted 90% of institutionalised children are reported to have living parents.<sup>31</sup> The second trend, as was also evidenced in unofficial prison statistics, is the disproportionate number of Romani children in institutions. As reported in Romania by Mr Alexandru Başa, the Deputy Director for the Salaj Country Office for the Protection of Children, unofficial figures indicate that sixty percent of the children in the country's state institutions were Romani despite accounting for only 0.2 percent of the Romanian population.<sup>32</sup> A UNICEF official estimates that 20% of children in Romanian institutions were of Romani<sup>33</sup> descent despite comprising only 5-8% of the total population in Romania. This figure, however, is believed to be a minimum. A representative from Save the Children Romania (2001) has found that many do not state that they are Romani when asked and the number of institutionalised Romani children is therefore likely to be higher than 20%. In fact, Professor Ian Hancock estimates that in 1993, the number of Romani children may number as high as 80% in certain regions of Romania.<sup>34</sup> More recent non-governmental organisations report that in 2000, 90% of institutionalised children were of Romani descent in the Târgu Mureş region.<sup>35</sup> A similar situation appears to prevail in the Czech Republic where a visit to the orphanage in Bielec by the Tolerance Foundation found that of the thirty-one boys between the ages of six and eighteen, 80 percent are believed to be Roma of Slovak origin.<sup>36</sup> In fact, recent statistics indicate that the Czech Republic has the highest number of infants under the age of three forced into institutional care of all EU countries.<sup>37</sup>

## Conclusion

How and why Roma children become separated from their families becomes a complicated intertwining of legal and social realities. Here, there is an intersection of three vulnerable points of oppression, namely ethnicity, gender, and age. As illustrative of the often complex manner in which children become forcibly removed, several themes emerge and re-emerge within the current systems of imprisonment, institutionalization, adoption, and solutions which fail to acknowledge how general policies and practices ultimately discriminate, exacerbate, and perpetuate the current plight of the Roma peoples. There is a need to consider alternative remedies both within the criminal and penal systems as well as to acknowledge and transform the biases and remedies available under the social work system. When a child is forcibly removed from the family, the child's best interest becomes paramount although the ultimate ramifications impact the individual, the family, and the Romani people as a whole. A child protection system must therefore strive to acknowledge the particular vulnerabilities that arise for Roma children and Roma families and the resulting practices must be geared towards future, long term

solutions rather than the application of policies that ultimately perpetuate continued patterns of oppression and assimilation.

## Endnotes:

1. Jolie Chai completed a post-graduate Bachelor of Laws (LL.B.) and a Bachelor of Arts (B.A), double major in Sociology and Music, from the University of British Columbia in Vancouver, Canada. Recently worked as an intern with ERRC while on academic exchange with the Central European University in Budapest, Hungary.
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13. Piero Colacicchi. ?Down by Law: Police Abuse of Roma in Italy?. In Roma Rights, Winter 1998.
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18. Ibid.
19. Author?s communication with Piero Colacicchi, April, 2005.
20. Ibid.
21. See Europe and Central Asia: Summary of Amnesty International?s Concerns in the Region (January-June 2004), at: <http://web.amnesty.org/library/index/engneur010052004>.
22. Author?s communication with Piero Colacicchi, April, 2005.
23. Piero Colacicchi?s communication with Gianfranco Politi (Director of the prison?s educators office). Reported on April, 2005.
24. This is noted in other sources where women fear accessing basic services in fear of being reported to a social worker who would take away the child. See Kumar Vishwanathan. ?Towards Improving the Situation of Marginalised Roma in One Czech City?. In Roma Rights 1/2002 ?Extreme Poverty?.
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