

Romani Women's Right to Water: Bringing Intersectional Discrimination Claims in the E.U.

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“Water, water every where, nor any drop to drink.”¹ Coleridge’s famous words reflected the situation of sailors on a ship, but the words hold true for the situation of many on land today. 2.1 billion people lack access to safe drinking water at home,² and by 2025, half of the world will live in a water-stressed area.³ While the mind may more readily think of deserts, sixty-two million people lack access to adequate sanitation and drinking water sources in Europe.⁴ Europe’s largest minority—Roma—are disproportionately impacted regarding access to water.⁵ Romani women are particularly affected as they bear the burden of collecting water, cooking with it, and cleaning with it.⁶

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1. SAMUEL TAYLOR COLERIDGE, *THE RIME OF THE ANCIENT MARINER* 20 (Dover Publ'n Ins. 1970) (1834).

2. Nada Osseiran, *2.1 Billion People Lack Safe Drinking Water at Home, More than Twice as Many Lack Safe Sanitation*, WORLD HEALTH ORGANIZATION [WHO] (July 12, 2017), <https://www.who.int/news-room/detail/12-07-2017-2-1-billion-people-lack-safe-drinking-water-at-home-more-than-twice-as-many-lack-safe-sanitation>.

3. *Fact Sheet: Drinking Water*, WORLD HEALTH ORGANIZATION [WHO] (Feb. 7, 2018), <https://www.who.int/news-room/fact-sheets/detail/drinking-water>.

4. *Water and Sanitation Are Still a Luxury for Millions of Europeans*, WHO: EUROPE (2017), <http://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation/water-and-sanitation>.

5. Martha F. Davis & Natasha Ryan, *Inconvenient Human Rights: Water and Sanitation in Sweden's Informal Roma Settlements*, 19 HEALTH & HUM. RTS. J. 61, 64 (2017).

6. Camilla Ravnboel, *The Human Rights of Minority Women: Romani*

As females who are members of an ethnic minority and part of an impoverished community, Romani women face multiple forms of discrimination related to the right to water. These forms of discrimination come from both inside and outside of their own communities. As Europe prides itself on its overall adherence to human rights treaties, Romani women's access to water is an exemplar case study on culturalization⁷ and intersectional discrimination within the European Union ("E.U.").

This note addresses the intersectional discrimination that Romani women face regarding access to water in the E.U. and suggests legal routes that should be taken to remedy Romani women's harm. Part I provides a brief overview on Romani women's situation within the E.U. and the harms caused by their lack of access to water and sanitation. Part II discusses how intersectional discrimination can best be addressed regarding Romani women's water rights by targeting treaty bodies, supranational courts, and state courts. By starting with treaty body committees, Romani women can bring multiple discrimination claims against states violating their right to water and sanitation, thereby remedying Romani women's human rights violations and counteracting culturalization.

I. BACKGROUND

A. THE SITUATION OF ROMANI WOMEN: MULTIPLE DISCRIMINATION

1. Discrimination against Roma

Discrimination and hatred towards Roma in Europe have a long and storied history.⁸ There are an estimated six million

Women's Rights from a Perspective on International Human Rights Law and Politics, 17 INT'L J. ON MINORITY & GROUP RTS. 24 (2010) ("[G]ender is a significant factor in Romani women's human rights concerns.").

7. LISE ROLANDSEN AGUSTÍN, GENDER EQUALITY, INTERSECTIONALITY, AND DIVERSITY IN EUROPE 152 (Ange-Marie Hancock & Nira Yuval-Davis eds., 2013) (defining culturalization as relating discrimination to the culture of the "other" at the level of discourse).

8. See, e.g., CELIA DONERT, THE RIGHTS OF THE ROMA: THE STRUGGLE FOR CITIZENSHIP IN POSTWAR CZECHOSLOVAKIA 1 (Cambridge University Press 2017) ("Roma have typically appeared at the center of human rights stories as victims . . ."); Ravnbøl, *supra* note 6, at 2 ("Roma are also characterized as being amongst the most marginalized and discriminated."); *id.* at 5 ("Romani history [is] also . . . a history of negative stereotyping and social exclusion.").

Roma living in the E.U.⁹, making them the largest minority in both the E.U. and Europe.¹⁰ Roma in Europe are subject to both systemic and everyday racism.¹¹ Most often, this takes the form of anti-gypsyism. Anti-gypsyism is defined as “a specific form of racism, an ideology founded on racial superiority, a form of dehumanization and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatization and the most blatant kind of discrimination.”¹² It includes an expression of biases, prejudices, and stereotypes that motivate the behavior of the majority of the population towards the Roma community.¹³ Anti-gypsyism is deeply rooted in Europe,¹⁴ and there has been a recent upsurge in aggression, hate speech, and physical attacks on Roma in Central and Eastern Europe.¹⁵ The most recent E.U.

9. Julija Sardelić, *No Child Left Behind in the European Union?: The Position of Romani Children*, 39(1) J. OF SOC. WELFARE & FAM. L. 140, 140 (2017).

10. European Union Agency for Fundamental Rights, *Second European Union Minorities & Discrimination Survey: Roma – Selected Findings 7* (2016) [hereinafter *MIDIS II*]; WILLIAM E. CONKLIN, STATELESSNESS: THE ENIGMA OF AN INTERNATIONAL COMMUNITY 124 (2014) (noting that there are 10–12 million Roma in Europe and that Roma constitute the largest ethnic minority in Europe); Ravnbøl, *supra* note 6, at 2 (“Roma are often referred to as Europe’s largest ethnic minority group.”); Sardelić, *supra* note 9, at 140. *But see* Marek Szilvasi, *Parallel Claims for the Human Right to Water: The Case of Roma in Slovenia*, in CLAIMING CITIZENSHIP RIGHTS IN EUROPE: EMERGING CHALLENGES AND POLITICAL AGENTS 148, 157 (Daniele Archibugi and Ali Emre Benli eds., 2018) (noting that Roma are considered a “special ethnic community” in many countries and not a national minority).

11. Ravnbøl, *supra* note 6, at 6 (“Social and institutional discrimination of Roma remains a significant problem in many European states and is often of a structural character.”); Sardelić, *supra* note 9, at 141; Bernard Rorke, *Is the EU Roma Framework Floundering? Commission Reports Patchy Progress, Limited Impact and Rising Racism*, EUR. ROMA RTS. CTR. (Sept. 4, 2017), <http://www.errc.org/news/is-the-eu-roma-framework-floundering-commission-reports-patchy-progress-limited-impact-and-rising-racism> (“Many officials are in a state of denial about both the extent of poverty in the country and of the systemic and deep-rooted discrimination against the extremely poor, especially the Roma.”) (quoting the U.N. Special Rapporteur on extreme poverty and human rights).

12. European Union Agency for Fundamental Rights, *A Persisting Concern: Anti-Gypsyism as a Barrier to Roma Inclusion*, 8 (2018) [hereinafter *Anti-Gypsyism*].

13. COMM’R FOR HUMAN RTS., *Human Rights of Roma and Travelers in Europe* 19, 39 (Council of Europe Publications 2012).

14. *Id.* at 11, 39.

15. Will Guy, *Anti-Roma Violence, Hate Speech, and Discrimination in the New Europe: Czech Republic, Slovakia, and Hungary*, in REALIZING ROMA RIGHTS 145, 145–46, 151 (Jacqueline Bhabha, Andrzej Mirga & Margareta

Agency on Fundamental Rights (“FRA”) report noted that one-third of Roma reported experiencing harassment and hate-motivated crime in 2016 and that Roma were among the least wanted neighbors next to only drug addicts, heavy drinkers, and people with a criminal record.¹⁶ The same report found that 27% of Roma did not know of laws prohibiting discrimination based on race/ethnicity, and 82% of Roma surveyed did not know of organizations providing support to victims of discrimination.¹⁷ Thus, Roma are unlikely to pursue claims or seek help based on the grounds of discrimination.

2. Intersectional Discrimination and Romani Women

a. *An Overview of Intersectional Discrimination*

In addition to the above forms of discrimination, Romani women face intersectional discrimination.¹⁸ As one Roma-scholar stated, “There is no such thing as a single-issue struggle because we do not live single-issue lives.”¹⁹ Romani women face discrimination internally (i.e. within the Roma community), externally (i.e. from the non-Roma community), and on three primary fronts: ethnic, gender, and socio-economic discrimination.²⁰ Understanding intersectionality helps understand how these multiple forms of discrimination build upon one another regarding Romani women’s right to water.

Intersectionality examines the “convergence of different forms of oppression and how they operate to limit the opportunities of individuals in various groups” thereby accounting for multiple forms of discrimination.²¹ Kimberlé

Matache, eds., 2017); Rorke, *supra* note 11 (noting increased levels of racism in Europe towards the Roma community including amongst national leaders).

16. *Anti-Gypsyism*, *supra* note 12, at 10, 15, 18 (noting that in the Czech Republic, 76 percent of the population “dislikes” or “strongly dislikes” Roma).

17. *MIDIS II*, *supra* note 10, at 11.

18. Ravnbøl, *supra* note 6, at 3.

19. *Id.* at 31 (quoting A. Lorde in PEGGY ANTROBUS, *THE GLOBAL WOMEN’S MOVEMENT: ORIGINS, ISSUES & STRATEGIES* (2004)).

20. *Id.* at 3.

21. Alexandra Oprea, *Toward the Recognition of Critical Race Theory in Human Rights Law: Roma Women’s Reproductive Rights*, in *REALIZING ROMA RIGHTS* 39, 41 (Jacqueline Bhabha, Andrzej Mirga, & Margareta Matache, eds., 2017); Ravnbøl, *supra* note 6, at 38 (citing K. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43(6) *STAN. L. REV.* 1241, 1244 (1991)) (defining intersectionality as “the meeting point and overlap of roads of racial, gender, class and other forms of

Crenshaw first used the term “intersectionality” to describe the multiple forms of discrimination against black women.²² Crenshaw explained that black women sometimes experienced discrimination similarly to white women, sometimes similarly to black men, and sometimes in ways wholly unique to black women.²³ The sum of race and sex discrimination did not always add up to the discrimination that black women were experiencing; it became a form of “double discrimination” which meant black women faced experiences “much broader than the general categories that discrimination discourse provides.”²⁴

Intersectionality allows the different axes of social division to be considered at the same time.²⁵ This allows researchers, activists, legislators, and other officials to consider how the different axes interact with one another and compound various issues of equality.²⁶ These axes address several important themes: social inequality, power, relationality, social context, complexity, and social justice.²⁷ Intersectional approaches allow different forms of discrimination to be grouped around different nodes.²⁸ These groupings allow discrete forms of discrimination to be seen in a larger picture at the individual, group, and institutional levels.²⁹ As it relates to Romani women, multiple discrimination can be grouped around gender, race, and poverty.

discrimination”).

22. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 141 (1989).

23. *Id.*

24. *Id.*

25. PATRICIA HILL COLLINS & SIRMA BILGE, INTERSECTIONALITY 4 (2016); Oswald B. Cousins & Jocelyn Chan, *The Judicial Approach to Intersectional Discrimination: Significant Decisions from a Defense Perspective*, 2017 A.B.A. SEC. OF LAB. AND EMP. L. CONF. 1, 3.

26. HILL COLLINS ET AL., *supra* note 25, at 11; Cousins & Chan, *supra* note 25, at 3.

27. HILL COLLINS ET AL., *supra* note 25, at 27–30.

28. Dagmar Schiek, *On Uses, Mis-Uses, and Non-Uses of Intersectionality Before the Court of Justice (EU)*, 18 INT'L J. DISCRIMINATION & L. 82, 87–88 (2018).

29. *Id.* at 87–88; ROLANDSEN AGUSTÍN, *supra* note 7, at 41.

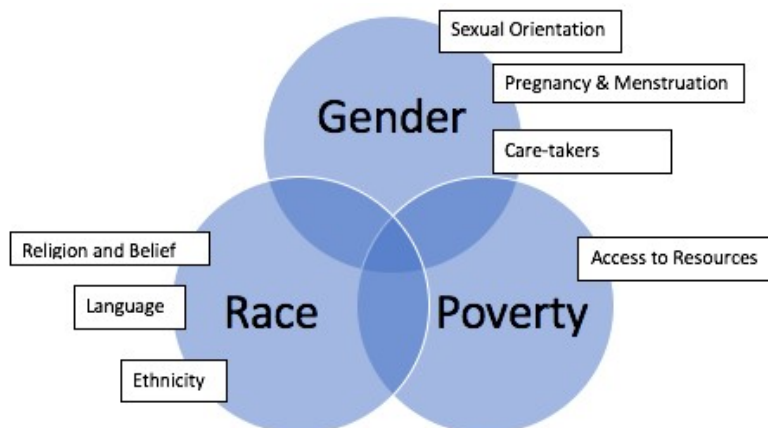


Figure 1: Reorganizing anti-discrimination law around nodes³⁰

Within the context of the E.U., judges and legislators tend to discuss gender discrimination over other forms of discrimination.³¹ This creates certain institutionalized forms of discrimination in E.U. institutions and in the interactions of these institutions with civil societies. This results in culturalization.³² Culturalization (also called exclusionary intersectionality related to culture) relates discrimination to the culture of the “other” at the level of discourse; stigmatizes/marginalizes minority groups; ignores structural dimensions of violations; downplays the seriousness of violence; and fails to address pertinent issues to violence suffered by vulnerable target groups.³³ Culturalization also creates invisible framing of internal violence.³⁴ In the context of Romani women’s right to water, culturalization allows E.U. member states to relate Roma’s right to water to a cultural issue (i.e. delinquency or nomadism) and ignore internal community discrimination

30. See Schiek, *supra* note 28, at 88.

31. ROLANSEN AGUSTÍN, *supra* note 7, at 1–4, 42; see also Gwendolyn Albert & Marek Szilvasi, *Intersectional Discrimination of Romani Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic*, 19 HEALTH & HUM. RTS. J. 23, 29 (Dec. 4, 2017) (“The ECtHR judgments have so far not found ethnic discrimination or intersectional injustice against these women.”).

32. ROLANSEN AGUSTÍN, *supra* note 7, at 152.

33. *Id.*

34. *Id.* at 153.

occurring against Romani women.³⁵

b. Intersectional Discrimination and Romani Women

Romani women face discrimination on multiple fronts. Not only do they face discrimination based in their gender, ethnicity, and poverty, but Romani women also face internal and external discrimination. In other words, Romani women face discrimination from inside and outside of their community.³⁶ For example, a shocking 71% of Romani girls leave education early.³⁷ To begin with, many Roma children with no signs of mental disability are placed in schools for mentally disabled children, which limits the types of careers Roma children can later pursue, despite some improvements over the past few years.³⁸ There are also internal pressures forcing girls to drop out of school, including family responsibilities. This is a form of external discrimination affecting Romani access to education.³⁹ Roma women also have lower literacy rates than their male counterparts and higher school non-attendance rates than non-Roma, despite some improvements.⁴⁰ Because many Romani

35. See, e.g., Ravnø, *supra* note 6, at 16; Nikolai Gughinski, *The European Court of Human Rights Turns Down the First Case Involving a Gypsy Applicant*, EUR. ROMA RTS. CTR. (Oct. 12, 1996), <http://www.errc.org/roma-rights-journal/the-european-court-of-human-rights-turns-down-the-first-case> (discussing *Buckle v. United Kingdom*, App. No. 20348/92 (Sept. 25, 1996), in which a Romani woman's property and family rights were violated, but the court failed to consider the multiple discriminations the plaintiff faced). Compare *Buckle*, with Case C-157/15, *Achbita v. G4S Secure Solutions NV*, 2017 E.C.L.I 203, and Case C-188/15, *Bougnaoui v. Micropole SA*, 2017 E.C.L.I 204. In *Achbita* and *Bougnaoui*, women with non-Western names were dismissed from work for wearing headscarves. The ECJ failed to examine multiple forms of discrimination in either of these cases.

36. LOREN SOSA, INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN 179 (2017) (discussing Romani women's lack of decision-making power as well as their emotional and economic dependence on their husbands and families); Ravnø, *supra* note 6, at 4.

37. Sardelić, *supra* note 9, at 144.

38. *Horvath v. Hungary*, App. No. 11146/11, 2–4; Ravnø, *supra* note 6, at 7; *Horvath and Kiss v. Hungary*, EUR. ROMA RTS. COUNCIL (Jan. 29, 2013), <http://www.errc.org/cikk.php?cikk=4200>. Note, this is not unique to Romani women. Roma children in general are still being placed in schools for mentally disabled children. There has been some improvement since the landmark *Horvath* case, but the discrimination still continues.

39. Ravnø, *supra* note 6, at 6–7.

40. European Union Agency for Fundamental Rights, *Analysis of FRA Roma Survey Results by Gender*, at 4–5 (September 2013), <https://fra.europa.eu/sites/default/files/ep-request-roma-women.pdf>.

girls choose or are forced to marry at a young age, these family responsibilities include those accompanying marriage.⁴¹ Within the Romani community, women are regarded as the “household’s care-taker, mother and spouse, and thus placed in a private sphere of home and family.”⁴² Internal discrimination based on gender and patriarchal traditions confines women to the private sphere. This confinement has resulted in higher rates of female Roma unemployment, lack of political participation,⁴³ and lack of access to public resources (including health care and education).⁴⁴ External discrimination also encourages Romani women to stay in the private sphere; Romani women are subjected to forms of violence from the non-Roma community related to their gender and ethnic origin including abusive name-calling, assaults, rape, and coercive sterilization.⁴⁵

External discrimination encourages Romani women to stay within the walls of the Roma community, thereby externally confining Romani women to the private sphere and causing their marginalization from society. This is exacerbated by the ghettoization of Roma communities.⁴⁶ Local authorities attempt to hide the presence of Roma inhabitants by cordoning off Roma communities from the majority of the population with physical barriers including walls and other devices.⁴⁷ Other municipalities have transferred Roma to remote areas of the communities or have created Roma-only tenements.⁴⁸ These actions have effectively created Roma ghettos.⁴⁹ These ghettos

41. Ravnøel, *supra* note 6, at 19, 29 (discussing patriarchal traditions of early marriages, virginity cults, and the silencing of sexuality and domestic violence).

42. *Id.* at 23.

43. *Id.* at 6; *see also* Sardelić, *supra* note 9, at 144 (explaining effects of Eurosceptic positions on Roma data collection).

44. Ravnøel, *supra* note 6, at 24; Sardelić, *supra* note 9, at 144.

45. Ravnøel, *supra* note 6, at 24; Ethel Brooks, Assoc. Professor, Rutgers Univ., Addressing Violence Against Women – the Responsibility of the State States as Perpetrators of Gendered and Intersectional Violence Against Roma, Speech at the Supplementary Human Dimension Meeting in Vienna (July 2, 2018), <http://www.errc.org/news/states-as-perpetrators-of-gendered-and-intersectional-violence-against-roma>.

46. COMM’R FOR HUMAN RTS., *supra* note 13, at 20; Davis et al., *supra* note 5, at 64 (noting that approximately 60% of Roma live in segregated communities in Romania).

47. Guy, *supra* note 15, at 156.

48. COMM’R FOR HUMAN RTS., *supra* note 13, at 142 (noting that there is Roma-only housing segregated from other parts of the community in Slovakia); Guy, *supra* note 15, at 156; Szilvasi, *supra* note 10, at 158.

49. Guy, *supra* note 15, at 156.

often lack access to healthcare and other basic facilities.⁵⁰ In addition to reduced access to resources, the housing itself is paltry.⁵¹ Inadequate housing and the absence of water and sanitation facilities increase stigmatization.⁵² The effects of this ghettoization affect Romani women in particular.⁵³ Ghettoization is directly related to increased high school dropout rates and child/forced marriage.⁵⁴ It also places women in environments that lack access to safe drinking water, sanitation facilities, and waste disposal facilities.⁵⁵ Because Romani women have been relegated to the private sphere by internal and external discrimination, marginalization and ghettoization are particularly harmful to their physical and mental well-being.

B. PAST E.U. ATTEMPTS AT INCORPORATION AND ROMA RIGHTS RECOGNITION

While the European Commission (“E.C.”) and the E.U. recognize that Roma discrimination is a major issue, efforts to combat it have failed. For example, the E.C. reframed Romani identities as European in an effort to include Roma.⁵⁶ Instead of leading towards Roma inclusion, this led to the perpetuation of stereotypes.⁵⁷ For example, Roma migration into Western Europe was framed as part of a “nomadic lifestyle” and not as freedom of movement within the E.U.⁵⁸ Reframing Roma assertions of the freedom of movement as part of a “nomadic lifestyle” and Roma culture is a denial of a core component of their E.U. citizenship and their Europeanness.⁵⁹

50. See COMM’R FOR HUMAN RTS., *supra* note 13, at 141; Elena Rozzi, *Roma Children and Enduring Educational Exclusion in Italy*, in REALIZING ROMA RIGHTS 17, 20–22 (Jacqueline Bhabha, Andrzej Mirga & Margareta Matache, eds., 2017) (discussing the segregation of Roma into “nomad camps,” which hinders social inclusion).

51. *Anti-Gypsyism*, *supra* note 12, at 14, 42–46.

52. Sardelić, *supra* note 9, at 145.

53. Comm. on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined Eight and Ninth Periodic Reports of Portugal*, ¶¶ 42–43, U.N. Doc. CEDAW/C/PRT/CO/8-9 (Nov. 20, 2015).

54. *Id.* at ¶ 42.

55. *Id.*

56. DONERT, *supra* note 8, at 262.

57. *Id.* at 263.

58. *Id.*

59. See CLAIMING CITIZENSHIP RIGHTS IN EUROPE: EMERGING CHALLENGES AND POLITICAL AGENTS 4 (Daniele Archibugi & Ali Emre Benli eds., 2018).

The E.C. is not the only European institution to denigrate Roma human rights violations via culturalization. The E.U. and European Court of Human Rights (“ECtHR”) have also reframed Roma human rights violations as “culture.” Romani women’s vulnerability to “sexual violence, domestic violence and trafficking, often has no protection and no recourse, because much of the violence . . . from inside or outside of our communities—is framed as ‘culture.’”⁶⁰ By reframing issues as “culture,” the E.U. and ECtHR avoid holding states accountable for discrimination against Romani women. Similarly, Romani women’s water rights violations are reframed as part of Roma’s culture and “nomadic lifestyle,” thereby allowing states to avoid liability.⁶¹ Romani women are thus forced to choose between culture and protection.

In addition to systemic issues caused by reframing Roma human rights violations as “culture,” the E.U. has limited information to prove international human rights compliance because it does not collect ethnic data.⁶² For this reason, no statistical indicators for factors such as employment, poverty, and education can be specifically disaggregated for Roma or other ethnicities.⁶³ This means that there is no effective data collection on Roma discrimination, which begs the question: how can the E.U. verify its compliance with both E.U.-specific and international human rights treaties regarding discrimination? While data collection is paltry, studies have shown that 80% of the Roma population in the E.U. lives below the at-risk-of-poverty threshold and that every third Roma child lives in a household where someone went to bed hungry at least once in the previous month.⁶⁴ Further data collection would help

60. Brooks, *supra* note 45.

61. See Szilvasi, *supra* note 10, at 149 (“[T]he complex discourse of water movements and the very specific position of Roma living in social exclusion and housing informality.”).

62. *MIDIS II*, *supra* note 10, at 7.

63. *Id.*; see generally OPEN SOCIETY FOUNDATION, NO DATA—NO PROGRESS COUNTRY FINDINGS: DATA COLLECTION IN COUNTRIES PARTICIPATING IN THE DECADE OF ROMA INCLUSION 2005–2015 (2010) (finding that E.U. member states do not collect ethnic data effectively).

64. *Anti-Gypsyism*, *supra* note 12, at 12 (noting that 80% of Roma are at risk of poverty and 27% of Roma live in households where someone went to bed hungry); *MIDIS II*, *supra* note 10, at 9 (noting that 80% of Roma live below the at-risk-of-poverty threshold and that every fourth Roma (27%) and every third Roma child (30%) live in a household where someone went to bed hungry once a week for at least a month); Szilvasi, *supra* note 10, at 150; Sardelić, *supra* note 9, at 141, 144.

confirm or disprove international human rights compliance.

One attempt the E.U. has made at reconciling these issues with its human rights obligations is the creation of a Framework for National Roma Integration Strategies (“Strategies”).⁶⁵ The Strategies were aimed at the social and economic integration of Roma by 2020 in four areas: employment, healthcare, housing, and education.⁶⁶ This policy explicitly urged states to intervene in supplying Romani communities with water and sanitation facilities.⁶⁷ Despite this measure, Roma access to water remains a major issue in the E.U.⁶⁸ Furthermore, the Strategies fail to consider the multiple forms of discrimination Romani women face regarding water.

C. ROMA COMMUNITIES AND ACCESS TO WATER AND SANITATION FACILITIES

1. Violations of Roma’s Right to Water in the E.U.

Despite both international and European programs aimed at ensuring access to water and sanitation, large parts of the Roma population lack access to running water at levels comparable to the worst situations observed by the Special Rapporteur on Human Rights to Water and Sanitation (“Special Rapporteur on Water”) in Central Asia, Southern Africa, and Central America.⁶⁹ Systemic disadvantages in Europe have caused Roma’s current water situation.⁷⁰ Almost half of Roma

65. *An EU Framework for National Roma Integration Strategies up to 2020*, COM (2011) 173 final (Apr. 5, 2011).

66. *Id.* at 3; *MIDIS II*, *supra* note 10, at 7; Szilvasi, *supra* note 10, at 151; Sardelić, *supra* note 9, at 142; Press Release, European Union Council on Emp’t, Social Policy, Health and Consumer Affairs, Council Recommendation on Effective Roma Integration Measures in the Member States, ¶ 12 (Dec. 9–10, 2013).

67. Szilvasi, *supra* note 10, at 151.

68. *See Many EU Roma Face Like People in the World’s Poorer Countries*, EUR. UNION AGENCY FOR FUNDAMENTAL RTS. (June 04, 2018), <https://fra.europa.eu/en/press-release/2018/many-eu-roma-face-life-people-worlds-poorer-countries>.

69. *Anti-Gypsyism*, *supra* note 12, at 7, 49 (noting that Roma in Romania have access to water on a similar level to citizens in Bhutan, Ghana, and Nepal.); Léo Heller, *Thirsting for Justice: Europe’s Roma Denied Access to Clean Water and Sanitation*, EUR. ROMA RTS. CTR., (Mar. 22, 2017), <http://www.errc.org/news/thirsting-for-justice-roma-and-the-human-rights-to-water-and-sanitation>.

70. Heller, *supra* note 69.

surveyed by the FRA were living in a dwelling that lacked basic amenities including indoor kitchens, toilets, showers/baths, and electricity.⁷¹ If the list of amenities is limited to just indoor toilets, showers, or bathrooms, the percentage of Roma lacking amenities increases.⁷² This rate is much higher than that of the general population in Europe.⁷³ For example, 33% of Roma in Hungary do not have tap water in their homes, while 100% of non-Roma Hungarians have tap water.⁷⁴ While these rates vary greatly by country, Roma consistently have drastically less access to water and sanitation facilities than their non-Roma counterparts.⁷⁵

The water that Roma do have access to is seldom treated or protected. The water often comes from “self-made wells, springs, and natural streams [which] can be breeding grounds for pathogens.”⁷⁶ Self-made wells are often shallow and are easily contaminated by agricultural pesticides, feces, animal corpses, and high levels of natural arsenic, boron, fluoride, and manganese.⁷⁷ Many of the self-made wells are also situated next to rivers, which further contaminate the well water.⁷⁸ These self-made wells often run dry in the summer and freeze in the winter, leaving Roma without access to water.⁷⁹ Roma who do not have

71. COMM'R FOR HUMAN RTS., *supra* note 13, at 20 (“Many Roma continue to live in substandard conditions in most European countries, without heat, running water or sewerage.”); *MIDIS II*, *supra* note 10, at 9; *Anti-Gypsyism*, *supra* note 12, at 7, 14; Szilvasi, *supra* note 10, at 151; Sardelić, *supra* note 9, at 144 (noting that one-third of Roma live in squalid homes that lack tap water access); Davis et al., *supra* note 5, at 64 (“[O]ne in three Roma families lives in housing without tap water.”).

72. *MIDIS II*, *supra* note 10, at 33; *see also* Szilvasi, *supra* note 10, at 151–52 (showing that of the ninety-three Roma communities surveyed, 81% of neighborhoods were not connected to water mains, 68% lacked tap water and functioning sewage systems, and 28% had been disconnected from water services due to late water payments).

73. *MIDIS II*, *supra* note 10, at 33; *see also* Szilvasi, *supra* note 10, at 148 (noting that 12% of the population in the pan-European region lack access to clean drinking water, most of whom are Roma).

74. *MIDIS II*, *supra* note 10, at 33.

75. Szilvasi, *supra* note 10, at 151 (noting that 72% of Roma household in Romania are not piped to the public water supply compared with 60% in Moldova, 35% in Slovakia, and 30% in Albania); *see, e.g., Anti-Gypsyism*, *supra* note 12, at 42.

76. Szilvasi, *supra* note 10, at 152 (noting that 32% of surveyed Romani households rely on unprotected water sources).

77. *Id.*

78. *Id.*; *cf. MIDIS II*, *supra* note 10, at 34 (noting that many Roma surveyed complained about polluted water).

79. Szilvasi, *supra* note 10, at 152 (noting that two-thirds of Roma reported

wells must walk to find water. A study by the World Health Organization (“WHO”) found that when water requires walking one hundred to one thousand meters from the home or takes five to thirty minutes to collect, quantities of water collected are unlikely to exceed twenty liters per person daily.⁸⁰ This compromises hygiene and creates a high risk of public health problems due to sanitation issues.⁸¹ Even Roma with functioning wells face sanitation problems because only 12% of Romani households have functioning sewage systems.⁸² Romani households are forced to use pit latrines or to defecate in the open.⁸³ Sewage waste presents public health issues, environmental damage, and creates grounds for eviction.

In summation, Roma in the E.U. disproportionately lack access to water compared to non-Roma. This creates sanitation issues, health problems, grounds for eviction, and social problems including employment and education discrimination.

2. How Lack of Access to Water Affects Romani Women

According to the Special Rapporteur on Water, “women and men often have differentiated access, use, experiences and knowledge of water, sanitation and hygiene. Cultural, social, economic and biological differences . . . consistently lead to unequal opportunities for women in the enjoyment of the human rights to water and sanitation.”⁸⁴ Romani women are more affected by lack of access to water and sanitation than men in three key ways. First, Romani women are affected because of menstruation and childbirth.⁸⁵ Not only does this cause potential

wells running dry in the summer and freezing in the winter).

80. Guy Howard & Jamie Bartram, *Domestic Water Quantity, Service Level and Health*, WORLD HEALTH ORGANIZATION [WHO], at 22, WHO Doc. WHO/SDE/WSH/03.02 (2003), https://www.who.int/water_sanitation_health/diseases/WSH03.02.pdf.

81. *Id.*

82. Szilvasi, *supra* note 10, at 153 (citing to a survey conducted by the European Roma Rights Centre between 2014 and 2016).

83. *Id.*

84. Human Rights Council, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, ¶ 1, U.N. Doc. No. A/HRC/33/49 (July 27, 2016) [hereinafter Special Rapporteur on Water 2016] (noting that women’s unique water and sanitation needs affect other human rights including health, adequate housing, education, and food).

85. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to Slovenia, ¶ 36, U.N. Doc. A/HRC/18/33/Add.2 (July 4, 2011) [hereinafter Special Rapporteur on Water 2011]; Heller, *supra* note 69,

health issues, but also it causes the Romani women shame “about the conditions in which they [have] to practice their menstrual hygiene.”⁸⁶ Furthermore, it promotes negative stereotypes (i.e. that Roma are dirty and unfit mothers).⁸⁷

Secondly, women are disproportionately responsible for their families’ water-related needs.⁸⁸ This is especially true in patriarchal societies in which women function as care-givers.⁸⁹ Collecting water is not only laborious work, but also it is dangerous.⁹⁰ Women often must walk on unprotected terrain that includes obstacles such as fences, walls, highways, private land with aggressive owners, and stray dogs or other animals.⁹¹ 40% of Roma stated that they faced obstacles on their paths to collect water.⁹² Furthermore, Romani women often must confront hostile or reluctant authorities as they collect water.⁹³ When authorities or citizens realize Roma are collecting water from sites, they frequently cut off water supplies or Roma access to the water due to their hostility towards Roma.⁹⁴ The threat of encountering an aggressive land owner or stray animal not only puts women at real risk of physical violence, but also creates psychosocial stress.⁹⁵ This is a prime example of how external discrimination denying the community water combined with internal discrimination relegating Romani women to caretaker roles compound one another.⁹⁶ Both the external and internal discrimination create a human rights violation which can be cast aside as “culture” by the ECtHR.⁹⁷

Lastly, after Romani women have collected the water, they

at 19.

86. Special Rapporteur on Water 2011, *supra* note 85, at ¶ 36.

87. *Id.*; U.N. Women, *The Rights of Roma Women in Ukraine*, at 29 (2018), https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/country/ukraine/roma_eng_final-compressed.pdf?la=en&vs=3401.

88. Heller, *supra* note 69, at 7; *e.g.*, Szilvasi, *supra* note 10, at 153; *see* Special Rapporteur on Water 2016, *supra* note 84, at ¶ 2.

89. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 15; *see generally* Ravnbøl, *supra* note 6, at 23 (explaining the nature of gendered roles in a patriarchal society).

90. *See* Szilvasi, *supra* note 10, at 153.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 28.

96. Brooks, *supra* note 45.

97. *Id.*

must use the untreated water for cooking and cleaning.⁹⁸ Their domestic roles put Romani women in the greatest physical contact with contaminated water and human waste. This increases Romani women's risk of infection and disease.⁹⁹ Internal discrimination thus increases the negative effects of water rights violations caused by external discrimination.

The Special Rapporteur on Water has observed intersectional discrimination related to women's access to water and other human rights.¹⁰⁰ The Special Rapporteur noted that when gender-based inequalities are coupled with other forms of discrimination and disadvantages, the inequalities are exacerbated.¹⁰¹ This is especially true of certain minorities including indigenous peoples as well as ethnic and religious groups.¹⁰² Compounded gender stereotypes, in particular, can have a disproportionately negative impact on the right to water and sanitation.¹⁰³ Poverty, ethnicity, and gender exacerbate the discrimination felt by Romani women.¹⁰⁴ Fear and social pressure can keep women who face multiple forms of discrimination from claiming their legal right to water and sanitation.¹⁰⁵ In the case of Romani women, fear and social pressure come from both within and outside the community,¹⁰⁶ which makes it even more unlikely that Romani women will claim their legal right to water and sanitation.

3. The Right to Water and Legal Venues for Violations

Romani women's right to water has been violated in the E.U., but what is the right to water and what forms of legal redress can Romani women seek? In 2010, the United Nations ("U.N.") General Assembly recognized water and sanitation as a human right "essential for the full enjoyment of life and all human rights."¹⁰⁷ The legal roots of the right to water lay in

98. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 2; Szilvasi, *supra* note 10, at 153; Heller, *supra* note 69, at 32.

99. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 32; Ravnbøl, *supra* note 6, at 23.

100. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 12.

101. *Id.*

102. *Id.*

103. *Id.* at ¶ 19.

104. *See id.*

105. *Id.*

106. SOSA, *supra* note 36, at 179; Ravnbøl, *supra* note 6, at 4.

107. G.A. Res. 64/292, ¶ 1 (July 28, 2010).

international human rights law. The Universal Declaration of Human Rights (“UDHR”),¹⁰⁸ the International Covenant on Civil and Political Rights (“ICCPR”),¹⁰⁹ the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”),¹¹⁰ the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),¹¹¹ and the International Convention on the Elimination of All Form of Racial Discrimination (“ICERD”)¹¹² laid the basic framework for the right to water. These treaties show how water is linked with multiple dimensions of personhood (namely race, gender, and socio-economic status).¹¹³ All of these treaties provide a basis for the right to water under the umbrellas of dignity of person, equality, and the right to life.¹¹⁴ The ICESCR links the right to water to the right to an adequate standard of living.¹¹⁵ The right to an adequate standard of housing has been read broadly to ensure security, peace, dignity of person, and mental and

108. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 1, 3, 25(1) (Dec. 10, 1948) [hereinafter UDHR].

109. International Covenant on Civil and Political Rights, art. 2(1), *opened for signature* Dec. 16, 1966, S. Treaty Doc. No. 95-19, 999 U.N.T.S. 171 [hereinafter ICCPR].

110. International Covenant on Economic, Social and Cultural Rights, Art. 11(1), *opened for signature* Dec. 16, 1966, S. Treaty Doc. No. 95-19, 993 U.N.T.S. 3 [hereinafter ICESCR].

111. Convention on the Elimination of All Forms of Discrimination Against Women, art. 14(2)(h), *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

112. International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD].

113. In the context of the E.U., the European Charter on Fundamental Rights and the European Social Charter provides additional protections to the right to water. Charter of Fundamental Rights of the European Union art. 1, 2(1), 7, 21, 23, 33(1), 34–35, 2012/C 326/02 (protecting human dignity, the right to life, non-discrimination in practice and before the law, human health, and economic rights including social and housing assistance); *see generally* European Social Charter, *opened for signature* May 3, 1996, ETS 163.

114. UDHR, *supra* note 108, pmbl., arts. 1, 3 (1948) (“Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life . . .”); ICCPR, *supra* note 109, pmbl., art. 6, ICESCR, *supra* note 110, pmbl.; ICERD, *supra* note 112, pmbl.

115. ICESCR, *supra* note 110, art. 11(1); *accord* UDHR, *supra* note 108, art. 25(1)–(2) (noting that the rights of women and children are especially protected as relates to standard of living); *see also* MIDIS II, *supra* note 10, at 31 (noting that “secure housing with basic infrastructure is a core aspect of social inclusion . . .”).

physical well-being.¹¹⁶ The right includes both the general condition of dwellings and the presence of sanitary facilities (i.e. baths, showers, indoor flushing-toilets, etc.).¹¹⁷

The General Assembly called upon states to provide financial resources, capacity-building, and technology to ensure that safe, clean, accessible, and affordable drinking water and sanitation were available to all individuals, regardless of ethnicity, income-level, gender, nationality, etc.¹¹⁸ This call to action led to an outpouring of resolutions and recommendations on the right to water.¹¹⁹ Resolutions, recommendations, and the underlying human rights treaties all placed the onus on states to ensure that the right to water and sanitation was realized. This included developing tools and mechanisms, ensuring transparency, creating water and sanitation assessments, implementing a regulatory framework, and ensuring effective remedies for violations of the right to water.¹²⁰ The Human Rights Council specifically called upon states to “pay particular attention to persons belonging to vulnerable and marginalized groups, including by respecting the principles of non-

116. ICESCR, *supra* note 110, art. 12 (stating that mental and physical well-being are linked to living conditions); COMM'R FOR HUMAN RIGHTS, *supra* note 13, at 137 (“the right to housing should not be interpreted in a narrow or restrictive sense . . . Rather, it should be seen as the right to live somewhere in security, peace and dignity.”) (quoting U.N. Committee on Economic, Cultural and Social Rights, General Comment No. 4, Right to Adequate Housing, Article 11 of the Covenant).

117. *MIDIS II*, *supra* note 10, at 33. It should be noted that the European Social Charter provides even more explicit protections regarding the right to water and sanitation. The Charter states that parties must provide adequate housing to citizens, especially the vulnerable (i.e. low-income, unemployed, single parents, young persons, and persons with disabilities). European Social Charter, art. 31; COMM'R FOR HUMAN RIGHTS, *supra* note 13, at 137. The Charter also states that housing must be safe from a sanitary and health perspective, meaning that dwellings must have access to water, waste disposal, and sanitation facilities. European Social Charter, art. 31; *see also Recommendation No.R. (2001)14 of the Committee of Ministers to Member States on the European Charter on Water Resources*, ¶ 5, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680504d85 (Oct. 17, 2001) (holding that the right to water is inextricably linked with the right to an adequate standard of living).

118. G.A. Res. 64/292, *supra* note 107, ¶ 2.

119. *E.g.*, Human Rights Council Res. 15/9, U.N. Doc. A/HRC/RES/15/9, at 2–3 (Oct. 6, 2010) (“Affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”).

120. *Id.* at 6, 8.

discrimination and gender equality.”¹²¹ Both the Millennium Development Goals¹²² and the 2030 Sustainable Development Goals (“Agenda 2030”)¹²³ emphasize equitable access to water at the local level.¹²⁴ Within Europe, the European Citizenship Initiative: Right to Water, a European Union mechanism aimed at increasing direct democracy by allowing citizens to participate directly in the development of E.U. policies,¹²⁵ petitioned the European Commission to ensure E.U. laws protected water as a human right.¹²⁶ It insisted that all inhabitants have access to water and sanitation, that water is not subjected to internal market rules, and that the E.U. increase efforts to achieve universal access to water and sanitation.¹²⁷

Under international human rights treaties, violations of the right to water incorporate racial, ethnic, gender, or socio-economic discrimination affecting an individual’s access to water or sanitation.¹²⁸ Individuals whose right to water is violated may

121. *Id.* at 8(c); see also Jootaek Lee & Maraya Best, *Attempting to Define the Human Right to Water with an Annotated Bibliography & Recommendations for Practitioners*, 30 GEO. INT’L ENVTL. L. REV. 75, 94 (2017) (noting that the resolution emphasized the link between discrimination and lack of access to water and identified the rights to health, life, human dignity, and adequate standard of living as sources of the right to water).

122. Millennium Development Goals, Target 7.C, <https://www.un.org/millenniumgoals/environ.shtml> (last visited Sept. 21, 2019) (striving to halve the proportion of the population without sustainable access to safe drinking water and basic sanitation by 2015).

123. G.A. Res. 70/1, ¶ 6 (Oct. 21, 2015).

124. *Id.* ¶ 6.b (Oct. 21, 2015); see also *Recommendation No.R. (2001)14 of the Committee of Ministers to Member States on the European Charter on Water Resources*, ¶¶ 2, 5, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680504d85 (Oct. 17, 2001) (holding that water is indispensable to all forms of life and must be equitably and reasonably used in the public interest).

125. *FAQ*, EUR. UNION, https://europa.eu/citizens-initiative/faq_en, (last visited Jan. 12, 2020).

126. *About the Campaign*, RIGHT2WATER, <https://www.right2water.eu/about> (last visited Sept. 21, 2019).

127. *Id.*; Szilvasi, *supra* note 10, at 150.

128. See, e.g., UDHR, *supra* note 108, at art. 2; ICCPR, *supra* note 109, arts. 2(1), 27; ICESCR, *supra* note 110, at art. 2(2); CEDAW, *supra* note 111, art. 1 (“discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”); ICERD, *supra* note 112, art. 1 (defining discrimination as “distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or

seek recourse through their state and local government or under the ICCPR,¹²⁹ ICESCR,¹³⁰ CEDAW,¹³¹ and ICERD.¹³² In the European context, individuals may also bring a claim before the ECtHR or the European Court of Justice (“ECJ”).¹³³

Despite these paths to redress, Romani women are unable to secure remedies that recognize the triple discrimination they experience (ethnic, gender, and socio-economic) and these remedies do not consider the internal and external discrimination that Romani women face. This is because the discrimination that Romani women face related to the right to water does not fit into one box; the women face multiple types of discrimination that compound upon one another. What follows is an examination of how using different treaty body procedures could help Romani women gain legal recognition of multiple discrimination affecting their right to water. Use of these treaty bodies could then open doors before the ECJ, ECtHR, and state courts.

II. ANALYSIS

A. PROBLEMS WITH THE CURRENT APPROACH TO ROMA WATER RIGHTS

While the right to remedy is guaranteed by international and regional human rights treaties, Romani women have not brought a multiple discrimination case for violations of the right to water. Roma’s right to water complaints have largely been collective complaints representing the entire Roma community

impairing the recognition, enjoyment or exercise . . . of human rights and fundamental freedoms . . .”) (signed by all E.U. member states); G.A. Res. 70/1, *supra* note 123, ¶¶ 5.1, 10.3 (calling on states to take action against gender and economic discrimination related to the right to water); Heller, *supra* note 69.

129. ICCPR, *supra* note 109, art. 2(3).

130. G.A. Res. 63/117, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 1 (Mar. 5, 2009).

131. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 2131 U.N.T.S. 83, art. 1 (Oct. 6, 1999) (entered into force Dec. 22, 2000).

132. ICERD, *supra* note 112, art. 14.

133. *Recommendation No.R. (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources*, ¶¶ 5, 13–15, 18 available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680504d85 (Oct. 17, 2001) (ensuring the right to appeal for violations of the right to water).

as opposed to only Romani women.¹³⁴ There have been few Romani-women specific complaints brought before international treaty bodies.¹³⁵ These complaints have had mixed results.¹³⁶ This section shall examine what has worked and what has been problematic in current approaches addressing Romani women's right to water.

1. Collective Complaints on Roma's Right to Water

The majority of complaints brought regarding Roma water rights have been collective. Collective complaints are used for human rights violations which are felt communally¹³⁷ and are one of the few international remedies for violations of economic, social, and cultural rights.¹³⁸ Collective human rights still "retain their character as direct human rights,"¹³⁹ and most may either be brought as a collective complaint on behalf of the entire community or as an individual complaint.¹⁴⁰ One of the merits of collective complaints is that there is power in numbers. Showing that a harm is violating the human rights of an entire community is more persuasive than if the harm only violates the rights of one individual.¹⁴¹ However, because the complaint represents the harm felt by the entire community, complaints

134. See, e.g., *European Roma Rights Centre v. Portugal*, Complaint No. 61/2010, European Comm. of Social Rights [ECSR] (June 30, 2011), <https://hudoc.esc.coe.int/eng/#!/%22tabview%22:%22document%22,%22ESCDIdentifier%22:%22cc-61-2010-dmerits-en%22>; *Hudorovič v. Slovenia*, App. No. 24816/14, Eur. Ct. H.R. (2010), <http://hudoc.echr.coe.int/eng?i=001-154290>.

135. See Ravnbøl, *supra* note 6, at 16.

136. *Id.*

137. Yoram Dinstein, *Collective Human Rights of Peoples and Minorities*, 25(1) INT'L & COMP. L. Q. 102, 102–03 (1976).

138. David Harris, *Collective Complaints Under the European Social Charter: Encouraging Progress?*, in INTERNATIONAL LAW AND POWER: PERSPECTIVES ON LEGAL ORDER AND JUSTICE 3 (K.H. Kaikobad & M. Bohlander eds., 2009).

139. Dinstein, *supra* note 137, at 103.

140. Harris, *supra* note 138, at 20 (noting that many of the complaints brought under the European Social Charter's 1995 Additional Protocol to the Charter could be brought as individual complaints in different venues. The European Social Charter only provides for collective complaints, not individual complaints. Those wishing to bring an individual complaint would need to use a different legal claim).

141. *What are Individual and Collective Human Rights?*, CTR. FOR HEALTH, HUM. RTS. AND DEV., <https://www.cehurd.org/wp-content/uploads/downloads/2014/09/right-to-health-pamphlet-6.pdf> ("Groups usually have a stronger impact than individuals.").

may concern only a general situation.¹⁴² A particular harm to a particular individual may not form part of the complaint.¹⁴³ One of the more popular collective complaint mechanisms that Roma use is under the European Social Charter.¹⁴⁴ The European Social Charter guarantees the protection of social rights to improve the standards of living and social-well being of citizens in member states.¹⁴⁵ However, to bring a claim under the European Social Charter, Roma must first convince an “international non-governmental organisation which [has] consultative status with the Council of Europe and [has] been put on a list established for this purpose by the Governmental Committee” to bring the claim for them.¹⁴⁶

The European Roma Rights Centre has brought several claims before the European Committee of Social Rights (“ECSR”) on behalf of Roma communities regarding their right to water. For example, the ECSR held that, under the European Social Charter, Portugal had to ensure Roma communities in Portugal have access to water under Article 31 §1 on the right to housing in conjunction with Article E on non-discrimination.¹⁴⁷ The Committee held that Portugal had violated the community’s right to housing because of the lack of water and sanitation as well as the intentional destruction of water fountains by the government in some Roma camps.¹⁴⁸ Importantly, the holding recognized that while Roma culture affected the types of housing most appropriate for Romani families,¹⁴⁹ culture was not an excuse for inadequate housing.¹⁵⁰ Portugal needed to find adequate housing (with access to water and sanitation) that was culturally appropriate for Roma, thereby addressing the

142. Harris, *supra* note 138, at 4–5.

143. *Id.*

144. See, e.g., European Roma Rights Centre v. Portugal, Complaint No. 61/2010, European Comm. of Social Rights [ECSR] (June 30, 2011), <https://hudoc.esc.coe.int/eng/#tabview%22:%22document%22,%22ESCDcIdentifier%22:%22cc-61-2010-dmerits-en%22>}.

145. European Social Charter, pmbl.

146. Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, art. 1, *opened for signature* Nov. 9, 1995, 1 E.T.S. No. 158.

147. European Roma Rights Centre v. Portugal, Complaint No. 61/2010, European Comm. of Social Rights [ECSR], ¶ 53 (June 30, 2011), <https://hudoc.esc.coe.int/eng/#tabview%22:%22document%22,%22ESCDcIdentifier%22:%22cc-61-2010-dmerits-en%22>}.

148. *Id.* at ¶¶ 31–40, 48, 53.

149. *Id.* at ¶¶ 49–53 (discussing the need for communal spaces).

150. *Id.*

potential for culturalization.¹⁵¹

While this outcome appears positive, the specific needs and rights of Romani women were completely ignored.¹⁵² The complaint does not mention women once.¹⁵³ Complaints brought before the ECSR which do mention women focus almost entirely on women's reproductive health rights (i.e. gynecological visits, the availability of pregnancy and abortion clinics, etc.) or domestic violence rights.¹⁵⁴ When Roma women's groups have submitted claims regarding violations of their right to adequate housing, multiple discrimination has not been addressed.¹⁵⁵

151. Compare *id.*, with *Hudorovič v. Slovenia*, App. No. 24816/14, Eur. Ct. H.R. (2015), <http://hudoc.echr.coe.int/eng?i=001-154290>. See Davis et al., *supra* note 5; *Naidenova v. Bulgaria* (discussed in Jootaek Lee & Maraya Best, *Attempting to Define the Human Right to Water with an Annotated Bibliography & Recommendations for Practitioners*, 30 GEO. INT'L ENVTL. L. REV. 75, 110–11 (2017)). *Naidenova* is an urban Roma community case where water access was cut off by the government; see also Szilvasi, *supra* note 10, at 160–61. In *Hudorovic*, a Roma community in Slovenia was forced to collect water from either a stream polluted by sewage and waste from a nearby animal slaughterhouse or a nearby cemetery with unsanitary water. The Slovenian ombudsman launched an investigation in 2011, found a human rights violation, and the government agreed to install a pipe near the community. The process came to a halt when non-Roma Slovenians refused to let the government run pipes under their property. The government sided with the non-Roma Slovenians, and the Roma community still lacks access to water.

152. See *European Roma Rights Centre v. Portugal*, Complaint No. 61/2010, European Comm. of Social Rights [ECSR] (June 30, 2011), <https://hudoc.esc.coe.int/eng/##tabview%22:%22document%22,%22ESCDcIdentifier%22:%22cc-61-2010-dmerits-en%22>} (showing women-specific concerns were not addressed at all in the decision made by the court).

153. *Id.*

154. See, e.g., *European Roma Rights Centre v. Portugal*, Complaint No. 61/2010; *Conclusions Slovak Republic*, App. No. 249/2011, Eur. H.R. Rep. European Social Charter (2011) <https://hudoc.esc.coe.int/eng/##tabview%22:%22document%22,%22ESCDcIdentifier%22:%222011/def/SVK/16/EN%22>}; *Confederazione Generale Italiana del Lavoro v. Italy*, App. No. 91/2013, Eur. H.R. Rep. European Social Charter (2016) <https://hudoc.esc.coe.int/eng/##tabview%22:%22document%22,%22ESCDcIdentifier%22:%22cc-91-2013-dadmissandmerits-en%22>}; *Conclusions Serbia*, App. No. 264/2013, Eur. H.R. Rep. European Social Charter (2013) <https://hudoc.esc.coe.int/eng/##tabview%22:%22document%22,%22ESCDcIdentifier%22:%222013/def/SRB/13/1/EN%22>}.

155. *Conclusions France*, App. No. 250/2011, Eur. H.R. Rep. European Social Charter (2011) <https://hudoc.esc.coe.int/eng/##tabview%22:%22document%22,%22ESCDcIdentifier%22:%222011/def/FRA/31/1/EN%22>}.

2. Romani Women and Multiple Discrimination Claims: Courts and Committee Bodies

Expanding complaints to include non-water rights issues, Romani women have not been successful in bringing multiple discrimination claims before courts¹⁵⁶ or treaty bodies.¹⁵⁷ For example, in one of the CEDAW Committee's earliest decisions under the Optional Protocol, the Committee failed to consider multiple discrimination in a Romani woman's complaint.¹⁵⁸ In *A.S. v. Hungary*, a Romani woman brought a claim against the state after she was sterilized without her full and informed consent.¹⁵⁹ A.S. stressed that she was a vulnerable person because she was a woman in a marginalized group that faced both internal and external discrimination.¹⁶⁰ Externally, her ethnic status made her more susceptible to sterilization¹⁶¹ and having her children removed from her¹⁶² while internally she faced discrimination, shame, and humiliation for being sterilized.¹⁶³

The Committee's decision was ground-breaking regarding systemic discrimination against Romani women in Hungary and Central Europe. The decision underscored the state's obligation to eliminate discrimination and provide accessible and understandable reproductive information.¹⁶⁴ However, the decision did not address the intersectional forms of oppression A.S. faced. In particular, the Committee failed to acknowledge how A.S.'s membership in the Roma minority affected the violation to her health rights or how her membership in the

156. See, e.g., Ravnø, *supra* note 6, at 16; Gughinski, *supra* note 35.

157. See, e.g., Comm. on the Elimination of all Forms of Discrimination Against Women, *A.S. v. Hungary*, Comm. No. 4//2004, U.N. Doc. CEDAW/C/36/D/4/2004 (Aug. 29, 2006).

158. Ivona Truscan & Joanna Bourke-Martignoni, *International Human Rights Law and Intersectional Discrimination*, 16 EQUAL RTS. REV. 103, 111 (2016).

159. *A.S. v. Hungary*, Comm. No. 4//2004, *supra* note 157. The claim was brought for violations of articles 10(h) (right to health information), 12 (right to non-discrimination), and 16(1)(e) (right to freely decide the number and spacing of children) of CEDAW.

160. Truscan et al., *supra* note 158, at 111.

161. See Albert et al., *supra* note 31.

162. Truscan et al., *supra* note 158, at 111.

163. *A.S. v. Hungary*, Comm. No. 4//2004, *supra* note 157, at ¶ 2.4 ("Having children is said to be a central element of the value system of Roma families.").

164. Truscan et al., *supra* note 158, at 111.

Roma minority altered the discrimination she faced.¹⁶⁵ The closest the Committee came to discussing A.S.'s intersectional forms of discrimination was under its analysis of Article 12.¹⁶⁶ The Committee held that "special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups."¹⁶⁷ Vulnerable and disadvantaged groups could be read to include ethnic minorities, women, and impoverished communities. However, this brief statement fails to recognize how ethnic, gender, and socio-economic discrimination build upon one another. Instead, these different nodes of discrimination fall under one umbrella term: vulnerable and disadvantaged.¹⁶⁸ Thus, both courts and treaty bodies have failed to address how Romani women face multiple forms of discrimination, including internal and external discrimination.

B. MULTIPLE DISCRIMINATION SUCCESS STORIES FOR ROMANI WOMEN

1. Spanish Domestic Violence Law

Spain addressed multiple discrimination against Romani women in the domestic violence context.¹⁶⁹ While there were many resources available to Romani women who were victims of intimate partner violence ("IPV"), the women did not access the resources because they were not in Romani women's neighborhoods.¹⁷⁰ Romani women felt that travelling to cities where most of the resources were located was like traveling to another world, "a foreign place, where [Roma] do not belong."¹⁷¹

165. *Id.* at 112 ("The Committee apparently assumed that the author suffered the violation in the same way as a non-Roma woman, failing to recognize that, from a gender perspective, the experience of non-minority women does not encompass the experience of all women.").

166. Truscan et al., *supra* note 158, at 111.

167. A.S. v. Hungary, Comm. No. 4//2004, *supra* note 157, at ¶ 11.5.

168. *See also* V.S. v. Slovakia, Comm. No. 56/2014, U.N. Doc. CERD/C/88/D/56/2014 (Jan. 6, 2016), ¶¶ 2.2, 7.4–10 (holding that the petitioner only suffered racial discrimination and failing to recognize multiple discrimination. V.S. applied for a teaching position and was told by the school head that "instead of looking for a job, she should have children like the other women of Roma origin. He allegedly added that, as a Roma woman, she would never get a job even if she tried to improve her qualification by further studies.").

169. *See* SOSA, *supra* note 36, at 173.

170. *Id.* at 197.

171. *Id.* at 198.

This othering was caused by Romani women's ethnicity and socio-economic status.¹⁷² One IPV service worker stated that Romani women and the services being offered were on two different planes which were "not connected to each other."¹⁷³ As a result, the services were not truly accessible to Romani women.¹⁷⁴ Women's gender was placing them at an increased risk of domestic violence, their ethnic identity as Roma was causing literal and figurative marginalization, and their poverty was causing increased stigmatization. External discriminatory factors included proximity to transportation and resources as well as Roma-related stigma.¹⁷⁵ Internal discriminatory factors included patriarchal structures tolerating domestic violence and silencing victims.¹⁷⁶

To address the multiple forms of discrimination impacting how Romani women experienced domestic violence, Spain adopted comprehensive legislation and policies on IPV.¹⁷⁷ This legislation provided detailed definitions of gender and ethnicity that recognized multiple discrimination.¹⁷⁸ Spain reconstructed "gender" to include more far-reaching elements such as reproductive and care-giving roles which had formerly been part of ethnic identity as opposed to gender.¹⁷⁹ This counteracted culturalization.¹⁸⁰ Instead of relegating gender and reproductive roles to "culture," the legislative definition of gender brought internal discrimination under a legal umbrella.¹⁸¹ Women whose ethnic groups had patriarchal values were protected by the law instead of excluded from it.¹⁸² The definition of "ethnicity" was also reconstructed to include socio-economic class as well as territorial unity.¹⁸³ By including territorial unity as a component of ethnicity, the particular social position of Romani women could be accounted for regarding othering and access to IPV resources.¹⁸⁴ Spain's legislation thus accounted for multiple

172. *Id.*

173. *Id.*

174. *Id.*

175. *See id.*

176. *See id.* at 200.

177. *Id.* at 176.

178. *Id.* at 202.

179. *Id.*

180. *See* ROLANSEN AGUSTÍN, *supra* note 7, at 152.

181. SOSA, *supra* note 36, at 202.

182. *Id.*

183. *Id.*

184. *See id.*

discrimination and counteracted culturalization.

2. CEDAW Committee Consideration of Multiple Discrimination in Country Reports

In recent years, an increasing number of human rights treaty bodies have begun to mention multiple forms of discrimination in their work.¹⁸⁵ These bodies recognize the need to embrace different axes of discrimination that affect human rights.¹⁸⁶ For example, the Committee on the Elimination of All Forms of Racial Discrimination (“CERD”) has recognized that “[t]here are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men.”¹⁸⁷ The CEDAW Committee is an excellent example of a treaty body which recognizes multiple discrimination. While the CEDAW Committee formerly viewed “women” as a “unitary category with comparisons being made against a male comparator,” the Committee began to consider intersectional discrimination in the 1990s.¹⁸⁸ While the Committee has yet to recognize Romani women’s multiple discrimination in communications under the Optional Protocol, the Committee has recognized multiple discrimination against Romani women in its concluding observations on state reports.¹⁸⁹

For example, the Committee reviewed Spain’s compliance with CEDAW in 2004 (before Spain passed its IPV legislation discussed in Section B(1)).¹⁹⁰ In particular, the Committee noted the intersectional discrimination that Romani women and girls faced.¹⁹¹ Romani women’s discrimination in Spain centered on

185. Truscan et al., *supra* note 158, at 110.

186. *Id.*

187. Comm. on the Elimination of All Forms of Racial Discrimination, General Recommendation No. 27, Discrimination Against Roma, U.N. Doc. A/55/18, annex V (Aug. 16, 2000).

188. Truscan et al., *supra* note 158, at 110.

189. *But see* J.D. v. Czechia, Comm. No. 102/2016, U.N. Doc. CEDAW/C/73/D/102/2016 (July 16, 2019), ¶¶ 3.6, 5.17, 8.3 (noting that while the complaint was dismissed due to the victims’ failure to exhaust all domestic remedies, multiple discrimination was a factor in the case).

190. Comm. on the Elimination of All Forms of Discrimination Against Women, Rep. of the Thirty-First Session, U.N. Doc. A/59/38 (July 23, 2004).

191. Cristal Mihalache, *Discrimination Against Romani Women in Spain*, EUR. ROMA RTS. CTR. (Dec. 15, 2004), <http://www.errc.org/roma-rights-journal/discrimination-against-romani-women-in-spain>.

ethnicity and gender and violated CEDAW articles 2, 4, 5, 7, 10, 11, 12, and 16.¹⁹² The Committee stated that “Roma[ni] women remain in a vulnerable and marginalized situation, especially with regard to education, employment, housing, and health,” and that Spain needed to take steps to promote and protect Romani women’s rights regarding these issues.¹⁹³ This included recognizing both internal and external discrimination. For example, there are internal and external discriminatory factors at play regarding Romani girl retention rates in the education system.¹⁹⁴ In response to these factors, the Committee called on the state to intensify efforts to increase access to education and retention while simultaneously conducting research and, based on its findings, creating incentives for Roma parents to encourage their daughters to go to school.¹⁹⁵ This shows that the Committee has recognized internal and external discrimination factors in its recommendations to states and is actively working against culturalization.

In a more recent example, the CEDAW Committee recommended Ukraine “adopt and implement temporary special measures, including quotas, as part of a comprehensive strategy aimed at the achievement of substantive gender equality in areas where women are underrepresented or disadvantaged, [or] suffering from multiple forms of discrimination, such as Roma[ni] women.”¹⁹⁶ Similar to how Spanish legislation on IPV realized that Romani women were unable to realistically access domestic violence resources because of intersectional discrimination (both internal and external), the Committee

192. *Id.*

193. Comm. on the Elimination of All Forms of Discrimination Against Women, *supra* note 190, ¶¶ 344–45.

194. On external factors, see *Horvath v. Hungary*, 2013 ECHR 0129; *Horvath and Kiss v. Hungary*, EUR. ROMA RTS. CTR. (Jan. 29, 2013), <http://www.errc.org/cikk.php?cikk=4200>; Ravnbøl, *supra* note 6, at 7. Note, this is not unique to Romani women. Roma children in general are still being placed in schools for mentally disabled children. There has been some improvement since the landmark *Horvath* case, but the discrimination still continues. On internal factors, see Analysis of FRA Roma Survey Results by Gender, *supra* note 40, at 1; Ravnbøl, *supra* note 6, at 19, 29 (discussing patriarchal traditions of early marriages, virginity cults, and the silencing of sexuality and domestic violence).

195. Comm. on the Elimination of all Forms of Discrimination Against Women, *supra* note 190, at ¶ 347.

196. Comm. on the Elimination of all Forms of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women*, ¶ 23, U.N. Doc. CEDAW/C/UKR/CO/7 (Feb. 5, 2010) [hereinafter CEDAW Comm., *Concluding Observations*].

recognized that Ukrainian legislation aimed at gender equality would not provide an effective remedy for Romani women because they would not file claims due to their lack of knowledge and internal pressures.¹⁹⁷ The Committee further discussed how Romani women are doubly exposed to stereotype discrimination.¹⁹⁸ This includes external stereotypes (both the proverbial “dirty gypsy”¹⁹⁹ and the sexualized gypsy seductress)²⁰⁰ and internal stereotypes (care-takers and mothers).²⁰¹ The CEDAW Committee has thus accounted for Romani women’s internal and external discrimination as well as gender, ethnic, and socio-economic discrimination regarding state obligations under CEDAW in the concluding observations of some state reports.

C. APPLYING SUCCESSFUL RECOGNITION AND APPLICATION
OF MULTIPLE DISCRIMINATION IN THE CONTEXT OF
ROMANI WOMEN’S RIGHT TO WATER

Multiple discrimination has been increasingly recognized by treaty bodies, including CERD, the CEDAW Committee, the Committee on Economic, Social and Cultural Rights (“CESCR”), and the Human Rights Council (“HRC”),²⁰² as well as by states in their national legislation.²⁰³ Because of the unique situation of the Roma community within Europe (i.e. culturalization and stigmatization resulting in states’ denial of certain constitutionally and statutorily protected rights to Roma), Romani women should target treaty bodies first to develop a body of jurisprudence. Because states have obligations under the treaties they sign, they will have to adopt legislation recognizing the intersectional discrimination that Romani women face. If

197. *Id.* at ¶ 22; *see also id.* at ¶¶ 28–29 (discussing Romani women); U.N. WOMEN, *supra* note 87, at 9.

198. CEDAW Comm., *Concluding Observations*, *supra* note 196, at ¶¶ 24–25.

199. U.N. WOMEN, *supra* note 87, at 29 (“Roma in Ukraine are often stereotyped as criminals . . . Roma women are often accused of fraud, theft and kidnapping of children”).

200. JELENA JOVANOCIĆ, ROMANI WOMEN’S IDENTITIES REAL AND IMAGINED 18 (2014), <https://publications.ceu.edu/sites/default/files/publications/master-thesis-jovanovic-romani-women-identities-2014.pdf> (noting that Romani women are stereotyped as “whores,” “exotic,” “untouchable,” and “forbidden”).

201. Ravnbøl, *supra* note 6, at 23.

202. *E.g., id.* at 17.

203. *See, e.g.,* SOSA, *supra* note 36, at 202 (discussing the recognition of multiple discrimination against Romani women in Spanish IPV legislation).

treaty bodies consistently recognize intersectional discrimination, the ECtHR and ECJ will be forced to address intersectional discrimination claims in both preliminary references as well as appeals from parties whose states fail to recognize intersectional discrimination. Because these supranational bodies will be able to issue binding opinions, states will not only need to recognize multiple discrimination claims, but also will be forced to alter their legislation to address systemic multiple discrimination against Romani women regarding their right to water.

1. Treaty Bodies

Because very few courts or states within the E.U. have recognized multiple discrimination in complaints brought by Romani women, Romani women should bring claims in regard to violations of their right to water before CERD, the CEDAW Committee, CESCR, and the HRC. CEDAW, CERD, and CESCR are likely to consider multiple discrimination in Romani women's claims based on comments the committees have issued as well as jurisprudence that involves other minorities.²⁰⁴ These committees should build on their observations of multiple discrimination with detailed analysis on the specific impact of discrimination on the basis of gender, ethnic group, and socioeconomic status.²⁰⁵

A more substantive analysis of multiple discrimination in treaty jurisprudence is important for two main reasons. Firstly, by analyzing multiple discrimination in greater depth, the treaty bodies will increase transparency regarding multiple discrimination claims. This will help future petitioners and states alike. Petitioners will know how to craft their argument

204. *See, e.g.,* Kell v. Canada, Comm. No. 19/2008, U.N. Doc. CEDAW/C/51/D/19/2008, ¶ 10.2 (Apr. 26, 2012) (“The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. State parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”); *see also* J.D., *supra* note 189, ¶¶ 3.6, 5.17, 8.3 (noting the effects of intersectional discrimination on Romani women in a forced sterilization case. The Committee ultimately held that the communication was inadmissible due to the victims' failure to exhaust all domestic remedies, but it paid particular attention to how the situation of Romani women in Czech society affected the types of discrimination experienced).

205. *See* Truscan et al., *supra* note 158, at 122.

so the full extent of their harm can be addressed, and states will be able to analyze how treaty bodies came to their decisions and apply the treaty jurisprudence appropriately. Secondly, it will allow treaty bodies to cross-reference each other's jurisprudence. Human rights are not closed compartments; they spill over into multiple areas. CEDAW is not the only relevant treaty regarding women's rights,²⁰⁶ and ICERD is not the only relevant treaty related to racial issues.²⁰⁷ This is particularly clear regarding the right to water, which draws upon the ICCPR, ICESCR, CEDAW, and ICERD. For the sake of judicial consistency on human rights violations, treaty bodies should be able to cross-reference one another on similar claims.

In the context of Romani women's right to water, treaty bodies should provide detailed analysis on their triple discrimination as women, ethnic minorities, and impoverished people.²⁰⁸ The treaty bodies also should recognize the internal and external discriminatory factors that affect Romani women's right to water.²⁰⁹ Because the women are poor, they are more likely to A) have their water shut off if their home is connected to water or B) live in a house that has no access to water.²¹⁰ Because they are Roma, they face external discrimination from the community. This often results in government inaction to connect Roma settlements to water mains.²¹¹ It also results in physical and verbal violence against women as they are collecting water from springs and streams.²¹² Because they are women, lack of access to clean water and sanitation facilities affects their hygiene related to menstruation and pregnancy.²¹³ Internal discrimination relegates women to the role of caretakers who collect water and use it for cooking and cleaning.²¹⁴ Their caretaker role increases their exposure to

206. CEDAW, *supra* note 111, at 1; *accord* ICCPR, *supra* note 109S, arts. 3, 23; ICESCR, *supra* note 110, arts. 3, 7(a)(i).

207. ICERD, *supra* note 112, at 2; *accord* ICCPR, *supra* 109, arts. 2(1), 24(1), 26; ICESCR, *supra* 110, art. 2.

208. *See generally* Ravnbøl, *supra* note 6, at 3.

209. *See generally id.* at 3; SOSA, *supra* note 36, at 179.

210. *Anti-Gypsyism*, *supra* note 12, at 14, 42–43; Davis et al., *supra* note 5, at 45.

211. Hudorovič v. Slovenia, App. No. 24816/14, Eur. Ct. H.R., <http://hudoc.echr.coe.int/eng?i=001-154290>.

212. Szilvasi, *supra* note 10, at 152.

213. Special Rapporteur on Water 2011, *supra* note 85, at ¶ 36; Heller, *supra* note 69, at 19.

214. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 2; Ravnbøl, *supra* note 6, at 23.

contaminated water.²¹⁵ Thus, treaty bodies must show how the violation of Romani women's right to water is multi-faceted and that there is no quick-fix solution to this issue.

2. Supra-national European Courts

The judicial systems in the E.U. (at the state, ECJ, and ECtHR levels) must recognize multiple discrimination to be compliant with international human rights norms. This should start at the supranational level with the ECJ and ECtHR. The ECJ ostensibly recognizes "multiple discrimination in its recitals" and under EU anti-discrimination law,²¹⁶ but the lack of any related jurisprudence suggests that the ECJ fails to consider multiple discrimination claims in reality.²¹⁷ For this reason, states cannot currently appeal to the ECJ to issue preliminary references regarding intersectional discrimination. Thus, there is no effective appeal mechanism within the E.U. regarding intersectional discrimination. The ECtHR is no better.²¹⁸ European courts are thus "missing the relevance of insidious forms of racialized gender and gendered race discrimination."²¹⁹

The ECJ and ECtHR must recognize multiple discrimination claims and issue jurisprudence on it. Because of European states' obligations under human rights treaties, European courts must recognize treaty body jurisprudence and comments. As discussed above, treaty bodies are issuing comments on the importance of intersectional discrimination regarding Romani women's rights. If Romani women began

215. Special Rapporteur on Water 2016, *supra* note 84, at ¶¶ 2, 32; Szilvasi, *supra* note 10, at 152; Ravnbøl, *supra* note 6, at 23; Heller, *supra* note 69, at 7.

216. Schiek, *supra* note 28, at 90.

217. *Id.* at 90–96.

218. *Id.* at 96–97; Siobhan Curran, *Intersectionality and Human Rights Law: An Examination of the Coercive Sterilisations of Romani Women*, 16 EQUAL RTS. R. 132, 142–43, 152 (2016) (noting the lack of discussion on intersectional discrimination by the ECtHR and the failure of the court to examine Article 14 discrimination claims from an intersectional perspective); Ruth Rubio-Marín, *Anti-Discrimination Exceptionalism: Racist Violence before the ECtHR and the Holocaust Prism*, 26(4) EUR. J. INT'L L. 881 (2015) (discussing the "Holocaust Prism" through which the ECtHR interprets racism. The authors suggest that the Holocaust shaped the manner in which European courts including the ECtHR interpret racism and racial discrimination. This has affected Romani women's ability to bring intersectional discrimination claims based on issues such as forced sterilization.).

219. Schiek, *supra* note 28, at 97.

filing claims before treaty bodies as suggested above, this would be persuasive precedent before the ECJ and ECtHR. Future claims could thus be brought before the ECJ and ECtHR by Romani women, specifically regarding the multiple discrimination they face, with greater chances of success.

These claims would be able to recognize multiple discriminatory factors in play. First, Romani women experience different harms than Romani men, as discussed elsewhere in this note.²²⁰ The remedy for Romani women should thus be different. Second, Romani women do not have the same access to justice as Romani men.²²¹ Because of internal discrimination, Romani women have been relegated to the role of caretakers and often lack higher education.²²² This makes them less likely to be aware of, and have access to, legal remedies.²²³ Furthermore, their relegation to the role of caretakers and the patriarchal society in which they live make it more likely that a man would file a claim for them.²²⁴ In other words, the Roma community as a whole would file a claim as opposed to only women (i.e. what is currently happening when Roma file claims about water rights violations). Third, most states have not accounted for this phenomenon.²²⁵ Most states expect that Romani women will access resources and legal recourse in the same manner as other women or as Romani men.²²⁶ Romani women are often unable to exhaust domestic remedies because they have no way of knowing a remedy exists because the remedy is on a “different plane.”²²⁷

By issuing rulings on Romani women’s right to water and recognizing the multiple discrimination they face, the ECJ and ECtHR would force states to address multiple discrimination by issuing binding opinions. While treaty body opinions are highly persuasive and many states acknowledge them, they are not binding in the same way that ECJ and ECtHR jurisprudence is for E.U. states.²²⁸ The binding nature of this jurisprudence

220. See, e.g., Special Rapporteur on Water 2016, *supra* note 84, at ¶¶ 2, 32, 36; Szilvasi, *supra* note 10, at 153; Heller, *supra* note 69, at 7.

221. See, e.g., Sosa, *supra* note 36, at 202.

222. Ravnøel, *supra* note 6, at 23, 24.

223. See Sosa, *supra* note 36, at 198.

224. See Lynne Henderson, *Law’s Patriarchy*, 25 L. & SOC’Y REV. 411, 439 (1991).

225. Szilvasi, *supra* note 10, at 150–54.

226. See Sosa, *supra* note 36, at 197–98.

227. *Id.* at 198.

228. See *Human Rights Treaty Bodies*, OFFICE OF THE HIGH COMM’R FOR HUMAN RTS. (last visited April 11, 2019), <https://www2.ohchr.org/>

would not only force states to award pecuniary damages and connect Roma communities to water, but it would also force states to consider the intersectional discrimination that Romani women face in state legislation.

3. State Courts and Legislation

The Special Rapporteur on Water has stated that “[g]ender equality and non-discrimination must be integrated in laws and policies and positive measures must be imposed to proactively remedy injustices.”²²⁹ Legislation must compensate for multiple discrimination including both direct and indirect discrimination,²³⁰ include policies and special measures to tackle gender inequalities, and implement accountability and monitoring frameworks to ensure that progress is made.²³¹ Policy work should also try to develop measures that encourage men to share responsibilities with women.²³² This includes men taking on care-giving responsibilities and women gaining greater access to civil and political participation. Committee bodies have recommended that states enact these changes,²³³ yet many E.U. states continue to disregard the multiple forms of discrimination that Romani women face. This must change.

State parties have obligations under the treaties they sign. As intersectional discrimination becomes increasingly recognized by treaty bodies, states will have an obligation to recognize it and alter their legislation and policy practices accordingly. Spain has already begun to do this.²³⁴ Following the recommendations of treaty bodies in their concluding observations, states must make several changes. First, they must research Roma communities and Romani women’s access to resources. Legislators will not know which policies are perpetuating intersectional discrimination if they do not research whether Romani women can realistically utilize resources. Access here includes geographic access, external othering that discourages access, and internal discrimination that silences Romani women. Second, legislators must

english/bodies/treaty/glossary.htm.

229. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 6.

230. *Id.* at ¶ 10.

231. *Id.* at ¶ 6.

232. *Id.* at ¶ 16.

233. *See, e.g.*, CEDAW Comm., *Concluding Observations*, *supra* note 196.

234. SOSA, *supra* note 36, at 202.

implement quotas,²³⁵ alter statutory definitions,²³⁶ and make other necessary changes to include Romani women. Third, active steps must be taken to combat internal and external discrimination while still respecting Roma culture, including increased education and integration.

Regarding Romani women's right to water, states must first acknowledge the multiple forms of discrimination at play: gender, ethnic, and socio-economic discrimination combined with internal and external discrimination. While the obvious remedy to water right issues is to pipe water to the community, this does not solve all of the human rights violations that Romani women experience related to the right to water. States should take steps to ensure women have access to sanitation facilities for their menstrual and pregnancy hygiene needs. States must ensure that women no longer face verbal and physical violence from neighbors, regardless of whether they are collecting water or merely walking through the neighborhood. States should also incentivize female education. Furthermore, states must find ways to respect Roma culture, especially as it regards the family unit, while increasing female autonomy and public life participation. Because of internal and external discrimination, Romani women have been relegated to the private sphere and lack access to public forums including those that discuss municipal policies on water regulation and Roma settlements. Because Romani women's right to water and an adequate standard of living are so intertwined with intersectional discrimination, Romani women must be able to realistically participate in forums and votes concerning these issues.

E.U. countries also must begin monitoring inequalities in access to water, sanitation, and hygiene, especially regarding gender issues.²³⁷ Examples of current monitoring mechanisms that are used elsewhere are the World Health Organization-United Nations' Children's Fund Joint Monitoring Programme Task Force and the 17 Sustainable Development Goals.²³⁸ These monitoring mechanisms would ensure that women are no longer experiencing certain harms and that state policies are working efficiently.

235. CEDAW Comm., *Concluding Observations*, *supra* note 196, at ¶ 23.

236. *SOSA*, *supra* note 36, at 202.

237. Special Rapporteur on Water 2016, *supra* note 84, at ¶ 68.

238. *Id.* at ¶ 67

III. CONCLUSION

This note discussed the intersectional discrimination Romani women face regarding access to water and the lack of an appropriate remedy for it. Romani women bear the brunt of this human rights violation as the primary collectors of water and caregivers in the community. They are discriminated against internally and externally, and face discrimination regarding their ethnicity, gender, and socioeconomic status. Despite the fact that Romani women are so affected by lack of water and sanitation, intersectional discrimination is not being addressed by courts or treaty bodies. Instead, collective claims representing entire Roma communities are being brought before national and supranational courts, and Romani women's human rights violations are falling prey to culturalization. Without recognizing the full spectrum of discrimination that Romani women face regarding water rights, the issue cannot be resolved.

This note has argued that internal and external discrimination as well as multiple forms of discrimination must be addressed starting with treaty bodies. While the CEDAW Committee has yet to recognize multiple discrimination in a claim brought by Romani women, its recent comments to states suggest that a new multiple discrimination claim would be more successful. Furthermore, the CEDAW Committee's comments successfully forced Spain to grapple with the problems presented by internal and external discrimination as well as intersectional discrimination faced by Romani women regarding Spain's national IPV law. This suggests that treaty body recommendations have the power to change national and supranational legislation and jurisprudence. Treaty bodies can help Romani women's theoretical human rights become legal realities by forcing states to create accessible resources and practical solutions to human rights violations.