

At the heart of the return process: solving property issues in Bosnia and Herzegovina

by Catherine Phuong

The Dayton Peace Agreement, signed in November 1995, explicitly put property issues at the heart of the return process and the overall peace framework for Bosnia and Herzegovina.

Between 1992 and 1995, conflict displaced half of Bosnia and Herzegovina's population of 4.4 million. While a million people fled to other countries, principally to other republics of the former Yugoslavia, at least a further million were internally displaced. In Annex 7 of the Dayton Peace Agreement (DPA), Article I states that "all refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them their property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."¹

For the first time it was stated that not only should refugees be able to repatriate to their country of origin but also that IDPs should be able to return to their pre-war homes. Such an ambitious explicit commitment to ensure that each refugee or IDP is able to return to pre-war accommodation was made in the aftermath of ethnic cleansing which resulted in the creation of almost entirely homogenous territories in communities which had been ethnically mixed. An implicit objective of the DPA has been the reversal of ethnic cleansing via promotion of the return of populations forcibly displaced during the war.

In order to solve property issues, the parties to the DPA took the unprecedented step of creating a specialized institution: the Commission on Real Property Claims of Refugees and Displaced Persons (CRPC). The CRPC is not the only international institution to

be concerned with property issues, however; its work has been complemented by the active role of UNHCR, OSCE and especially OHR (Office of the High Representative in Bosnia and Herzegovina).

Some returns cannot take place without the current occupant being evicted. Eviction orders, however, are not being executed by those local authorities opposed to the return of minorities. Property issues have therefore become an extremely sensitive political issue. The emphasis which international organizations have put on achieving more minority returns² has had the result of diverting attention from discussions on relocation and compensation for loss of property.

The Commission on Real Property Claims of Refugees and Displaced Persons (CRPC)

The mandate of the CRPC is defined in article XI of Annex 7 of the DPA: "the Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since 1st April 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return." The CRPC deals only with property claims and not with personal property lost during the war.

Most of those who abandoned their homes between 1992 and 1996³ but did not go abroad ended up occupying flats or houses abandoned by members of

other ethnic groups. Those who now wish to return to their homes thus sometimes find their property is occupied by other displaced persons. Large numbers of people were either forced to sign documents transferring their property to municipal ownership or lost legal documents in the course of the war. It is the task of the CRPC to assist IDPs to reclaim their property by issuing certificates certifying the identity of legitimate property owners.

The CRPC has six national members and three international members appointed by the President of the European Court of Human Rights. The great majority of CRPC administrative staff are locally recruited. The CRPC started its activities in 1996 and by the end of 1999 had received 175,000 claims from IDPs in Bosnia and Herzegovina and from refugees resident abroad. In order to process claims from refugees the CRPC has opened offices in several other countries. Claimants are encouraged to first pursue local remedies before lodging a claim with the CRPC. For 'socially-owned' apartments (those once owned by companies and rented to employees) this is a mandatory requirement. The CRPC has issued almost 50,000 certificates confirming property rights, covering both private and socially-owned properties. CRPC decisions are final and cannot be contested.

The CRPC has been given wide-ranging powers in order to solve property claims. Its unrestricted access to all property records in Bosnia and Herzegovina has allowed it to gather impressive amounts of information including a complete cadastral⁴ record of properties in all municipalities. The CRPC also has the authority to declare invalid any property transfer which was made under duress.

However, in the overwhelming majority of cases, the mere possession of a CRPC

certificate has not enabled claimants to recover lost property. Lack of enforcement mechanisms has threatened to rob the CRPC of credibility. In response, the High Representative (charged by the UN with overseeing implementation of all civilian issues set out in the DPA) imposed in October 1999 a Law on Implementation of CRPC Decisions in the Federation. Such an overt external intervention in national property law marks a new departure in international conflict resolution.

The role of UNHCR, OSCE and OHR

The main role of the other international organizations concerned with property issues has involved monitoring the implementation of property legislation and, where necessary, intervening on behalf of claimants attempting to recover property.

UNHCR has played an active role in helping each entity in Bosnia and Herzegovina (the Muslim-Croat Federation and the Republika Srpska) to draft necessary legislation to harmonize return procedures throughout the country. During the war, changes to property law legitimized occupation of 'abandoned' property. Post-war affirmation of these regulations threatened to endorse the rights of the current occupant (invariably a member of the ethnic majority in the area) to the detriment of the restitution claim of the pre-war owner seeking to return. In 1998 pressure from UNHCR, OSCE and OHR led to new property

legislation, adopted in both entities, which suspends the application of these laws. Four new laws relating to housing, tenancy and abandoned property were adopted in the Federation and one in the Republika Srpska; some were subsequently amended by the High Representative. Instructions have been issued establishing procedures for the return of IDPs and repatriates. This new basic legal and administrative framework for processing applications for return is still in its infancy and progress in implementation has been painfully slow.

The broad powers given to the High Representative to ensure compliance with the DPA include the right to unilaterally dismiss officials who repeatedly obstruct the implementation of property laws in order to prevent minority returns. The High Representative has intervened to suspend provisions relating to property and housing matters deemed contrary to the spirit of the DPA and to solve property problems.⁵ Thus in April 1999 he over-ruled decisions taken during and after the war to permanently reallocate some flats which had the effect of preventing the return of the former occupant. In October 1999 he made a series of major amendments to property legislation.

Developments in the town of Mostar have provided an interesting example of partnership between international

organizations and local authorities to solve property disputes. Cases of double and even multiple occupancy resulted from families who continued to occupy abandoned housing units while still retaining ownership of their own property. The large number of cases of double occupancy offers the possibility of carrying out evictions which, at least in theory, should not be problematic. Evictees have alternative accommodation to go to and are in illegal occupation of somebody else's property. In Mostar a double occupancy commission has been created which brings together local housing officials and international staff from UNHCR and OHR. A 'hotline' for the reporting of double occupancy cases has proven rather successful. Once reported, cases are then investigated by the commission. Such a structure has allowed local and expatriate stakeholders to work together. As of February 2000, 72 cases of double occupancy have been identified and seven evictions have taken place.

The resolution of property issues to allow for minority returns

International organizations operating in Bosnia and Herzegovina have attached special importance to resolution of property disputes in order to facilitate minority returns and lay the basis for recreating a multi-ethnic society. It follows that if the ultimate objectives of international intervention in Bosnia and Herzegovina are non-consolidation of the ethnic partition of the country and establishment of a lasting peace, then every effort should be made to encourage minority returns.

Often the main obstacle to resolution of property disputes, and thus to minority returns, lies in non-implementation of eviction orders. As success of the whole return process hinges on securing agreement on property issues, national and local politicians wishing to prevent minority returns have refused to carry out eviction orders. Local politicians are frequently



unwilling to support the removal of their loyal displaced supporters; for many such leaders, obstruction of minority returns has become an important means of bolstering their local power base.

It is not uncommon for claimants filling in a voluntary return application form to be asked to pay an unauthorized fee or requested to submit additional documentation. Local authorities do not carry out evictions, on the pretext that no alternative accommodation is available

for the current occupants. Often the local police force does not attend evictions or only offers limited support. While

all actors agree that resolution of property issues is essential to enforcing the rule of law, what is at stake in each municipality is maintenance of systems of political control which have been painfully gained or defended during the years of war.

The result is that the massive level of international involvement in Bosnia and Herzegovina has only brought about 120,000 minority returns since 1996. More than 800,000 persons are still displaced within the country. Among these 800,000 are some who have returned from abroad, mostly from Germany and Austria, but who have been unable to return to their former place of residence and have thus become IDPs.

Operational international agencies, looking at property issues as part of their overall strategy to recreate a multi-ethnic country, have emphasized minority returns. Relocation and compensation for loss of property have not been overtly promoted lest they be seen as contrary to the strategy to reverse the consequences of ethnic cleansing. Despite the fact that the DPA envisages the possibility of compensation for loss of property, funds have not been made available by donor countries.

For those displaced persons who do not wish to return but instead prefer relocation to a majority area, securing international assistance has not been easy. One can readily understand why some displaced persons do not wish to

return to a hostile environment where they fear not only for their safety but also for their economic survival. More efforts are needed to create conditions for safe and sustainable return.

Conclusion

The problems encountered in post-war Bosnia and Herzegovina illustrate the centrality of property issues in a return process in an ethnically divided society. Property issues are not merely perceived

in terms of legal niceties. For those who seek to consolidate ethnic partition, as for those who seek to challenge it, what is at stake when property

is discussed is a change in the ethnic mix of communities. It is this which explains the acute sensitivity of property issues.

Determined efforts have been made in Bosnia and Herzegovina to resolve property disputes against a background of war and ethnic division. The number of minority returns has been less than anticipated. The same problems, and the same dilemmas, will recur in Kosovo should displaced Serbs one day decide to try to return to homes now occupied by Kosovans.

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- 1 A full text of the DPA is available at www.ohr.int/gfa/gfa-hom.htm.
- 2 'Minority return' describes the return of displaced people to areas where they would now belong to the minority group. They can be differentiated from the less problematic 'majority returns', most of which have, in any case, already taken place.
- 3 Movements of population continued to occur throughout 1996. For instance, the great majority of Bosnian Serbs who were living in Sarajevo left the city following the DPA-authorized transfer of territory to the Muslim-Croat Federation in March 1996.
- 4 Legal term defined as "showing the extent, value and ownership of land".
- 5 For more information on property legislation and the activities of OHR in this area, see www.ohr.int/property.htm.

For more information on IDPs in Bosnia and Herzegovina, go to the Global IDP Project database and click on 'List of sources used' at the following URL:
<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Bosnia+and+Herzegovina>

Demining of agricultural land in Bosnia & Herzegovina

An average of 50 people per month are killed or injured by landmines in Bosnia and Herzegovina. Former wartime confrontation lines, which continue to contain the highest concentration of landmines and unexploded ordnance, correspond to some of the most productive agricultural areas of the country. As many residents of these former confrontation zones were forced to flee during wartime, these areas are now among the highest priority locations for refugee and IDP return. The presence, or suspected presence, of landmines in these areas reduces agricultural production possibilities and contributes to continued reliance on imported agricultural products.

An FAO-directed mission to assist the Government in selection of priority locations for demining of agricultural land was conducted during the spring and summer months of 1998. The objectives of this project were to:

- establish priority areas for agricultural demining
- identify land allocated to returnee populations
- review with the Bosnian Ministry of Agriculture and the Mine Action Centre in Sarajevo the location of highly productive agricultural land which is, or is thought to be, mined
- formulate activities within an overall demining strategy aimed at requesting the international donor community to provide funding or assistance in kind
- draw up a work plan specifying costs and manpower requirements



This report is extracted from a 16pp report entitled Selection of Priority Locations for Demining of Agricultural Land in Bosnia and Herzegovina, written by J Scott Pilkington. To obtain the full report, contact the RSC Library (rsdoc@qeh.ox.ac.uk) or email the author on scott.pilkington@rheinmain.af.mil