

Property rights and reconstruction in the Bosnian return process

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Sidelining a rights-based approach in the area of property restitution and reconstruction in Bosnia and Herzegovina resulted in an unequal impact on rural versus urban displaced populations.

Annex 7 of the Dayton Peace Agreement represented a breakthrough in the history of conflict settlement. It stated for the first time that displaced persons should be able not just to repatriate to their country of origin but to return to their actual pre-war homes. The rationale for this was the perceived moral imperative to reverse the 'ethnic cleansing' that had occurred during the war (and that the international community had been unable to stop), and the success of Annex 7 was clearly viewed as directly related to 'minority returns' – that is, the return of those among the displaced who now found their ethnicity to be in the numerical minority in their areas of origin. Nonetheless, this aim presented

a clear tension with the human rights language in which it was anchored, which emphasised the individual's right to choose their destination (i.e. whether to return or not), and their right to property restitution or compensation (Article I.1 and 4 of Annex 7).

Many properties had been destroyed during the war. Access to many other properties, mostly in urban areas, was impeded because they had been occupied by other displaced persons of a different ethnicity, and restitution was fiercely opposed by all sides. In response, in 1999 the international community conceived and implemented the Property Law Implementation Plan (PLIP¹), overseen by the

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Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). With restitution of the 200,000 occupied housing units increasing from 21% in the first year to 92% in the fourth,² PLIP constitutes one of the biggest successes of the implementation of Annex 7 and restitution of rights.

However, it is frequently overlooked that reconstruction was an even more critical issue than property restitution. UNHCR estimated the number of housing units that were partially or completely destroyed to be 459,000 (more than double the number of repossession claims filed by CRPC). 60% of the housing stock was partially destroyed and 18% was completely destroyed, not only during the fighting but also after the signing of Dayton by those trying to prevent people from returning.

By 2008 only approximately half of these units (some 260,000 houses) had been rebuilt, mainly because of a lack of funding.³ The stark contrast between the robust and decisive role of the international community in the implementation of property rights and its much more deficient role in the reconstruction process had to do mostly with the costs of the latter. It is significant that while PLIP was obviously anchored in the language of rights, reconstruction assistance was largely specified as humanitarian assistance.

Rural versus urban

PLIP is considered a success not only in terms of rights restitution but also because it facilitated a breakthrough in the minority returns process by the year 2000 when properties were finally made available to their owners. It is less frequently emphasised, however, that this involved evicting the people occupying these properties, a large proportion of whom were people of rural origin for whom the main housing problem upon return was reconstruction, not repossession.

The tension between the rights-based approach implied in the Dayton Peace



Refugees return from Kuplensko camp in Croatia to Velika Kladuša in BiH, December 1995.

Agreement and the moral (and political) imperative of reversing ethnic cleansing becomes clearer when considering the position in which (mostly) rural returnees were put. In many cases, following implementation of PLIP, families were evicted **before** their houses were reconstructed, because of the shortage of reconstruction funds. Whereas in the initial years after the end of the war there were plenty of funds available, donor fatigue and a serious reconstruction funding gap were evident by 1999, and in 2002 the funding gap between demand for reconstruction and available funds amounted to €600 million.

People holding IDP status and under a certain income threshold were entitled to temporary alternative accommodation. But with time, they risked losing their IDP status (and access to alternative accommodation) if they did not commit themselves to reconstruction. And once reconstruction assistance was granted, the right to alternative accommodation was lost. In short, PLIP effectively pushed people, mostly of rural origin, to return.

This is not to say that there were not genuine cases of voluntary return among rural returnees; on the contrary, many of these returns had been greatly longed for. Some of the local people I interviewed, however, characterised the process of return in three main stages. First came

the 'pioneers' – or "the crazy ones" – who returned spontaneously, without any external support or backup. Then there was a wave of returns once reconstruction assistance started being available. Those returning after that point were, in their own words, mostly "people who were left with no other choice".⁴

Wealthier households who did not (as yet) wish to return were able to rent or buy property where they lived now. But this was not the case for poorer families for whom the only available assistance, besides the support they received as registered IDPs, was reconstruction assistance. Since a condition for receiving reconstruction assistance was being present in the area of return, many did opt to return even if they had to live in tents, partially reconstructed houses or improvised shacks. This situation lasted for months and even years in some cases.

Sidelining the right to choose

There is no doubt that the international community faced a fundamental dilemma regarding minority returns in BiH but, in pursuit of the goal of reversing ethnic cleansing, people's right to choose was, to a large extent, sidelined. This requires a profound re-thinking within the international community, particularly so considering the relatively poor results achieved in terms of reversing ethnic cleansing. A policy which took into account individual motivations and constraints, and adjusted its time-frame accordingly, might have been more effective in enabling return, as well as more in line with the recognition of people's right to choose enshrined in Annex 7.

Minority returns have in fact taken place largely to rural areas, with towns registering much lower numbers. But the reasons for this asymmetry also have to do with security considerations, given the larger ethnic segregation in the countryside, as well as with economic factors, since agriculture and cattle-breeding provide a means of subsistence in an environment of widespread discrimination and a depressed economy. In addition, repossessed houses in urban areas were in demand by members

of the majority ethnic group that had been displaced mostly to towns and cities. This made it possible for urban dwellers to sell these properties or to exchange them. This option was not available in rural areas where the only benefit that displaced people could derive from their reconstructed properties was actually making use of them.

The international community went to great lengths to provide the necessary security conditions, as well as the harmonisation of health-care systems and pension funds and the reconstruction of infrastructure to provide the basic conditions for return. But the main issue was – and remains – the lack of employment opportunities and widespread discrimination in accessing the very limited opportunities that do exist. In this regard the international community also failed to meet the promise made in Article I of Annex 7 about the right to restitution of, or compensation for, any property of which individuals were deprived during the conflict. In practice, properties other than houses – such as business premises and usurped land – did not receive similar attention in the repossession or compensation process. All of this undoubtedly inhibited people from returning, and contributed to the fragile nature of the minority return process overall.

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1. <http://tinyurl.com/OSCE-PLIP>
2. Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) *End of Mandate Report (1996-2003)* (includes recommendations for future post-conflict property commissions) <http://tinyurl.com/CRPC-end-of-mandate-2003>
3. See Mooney E (2008) 'Securing Durable Solutions for Displaced Persons in Georgia: The Experience in Bosnia and Herzegovina' <http://tinyurl.com/Mooney-BiH-2008>; International Crisis Group (2000) 'Bosnia's Refugee Logjam Breaks: Is the International Community Ready?' *Europe Report N°95* www.tinyurl.com/ICG-Bosnia-May2000; Global IDP Project (2003) *Protecting internally displaced people in the OSCE area. A neglected commitment* <http://tinyurl.com/NRC-IDPs-OSCE-2003>
4. Serrano I (2011) *Return after violence: rationality and emotions in the aftermath of violent conflict*. Instituto Juan March de Estudios e Investigaciones, Centro de Estudios Avanzados en Ciencias Sociales, Universidad Autónoma de Madrid. <http://tinyurl.com/SerranoI-thesis>