

Displaced Kosovo Roma and property rights

Jose-Maria Arraiza and Linda Öhman

The lack of secure property rights heightens the risk of statelessness for displaced Kosovo Roma in Montenegro.

Kosovo's declaration of independence on 17 February 2008 raised the question of statelessness for displaced persons originating from Kosovo. A large number of Roma, Ashkali and Egyptians displaced from Kosovo are presumed not to be registered as residents in Montenegro.¹ Lack of personal documents, property records and registered land titles exacerbates the problem and increases the probability that they will remain stateless. According to Amnesty International, 4,300 are living in Montenegro in a "legal limbo".² In August 2008, UNHCR published a statement suggesting that some 46% of displaced Kosovo

Roma living around the Montenegrin capital, Podgorica, can neither prove legal residence in Kosovo nor meet the necessary requirements to obtain Montenegrin citizenship and thus may be stateless.

Prior to Kosovo's armed conflict, many Roma families lived in *mahalas* (neighbourhoods) in housing that had been handed down to them for generations. The legal entitlements to these dwellings were never clear, for a number of reasons including unregistered inheritance, illegal construction (which Yugoslav municipal authorities ignored) or, quite simply, lack of a formal address.

Right to be protected

An individual displaced from an informal settlement across the border from a newly created state has certain rights under international law to protect their citizenship. As well as the right to a nationality and the prohibition against the deprivation of nationality of individuals, particularly as a result of discriminatory practices, the Council of Europe Convention on Nationality³ of 1997 also considers the problematic issue of state succession. In cases where a new state is created, the decision on the granting or retention of nationality should, according to the Convention, take into account a) a 'genuine and effective' link with the state, b) their habitual residence, c) their wishes and d) their place of origin.

Landlessness and/or inability to present cadastral records, certified contracts, registered inheritance certificates and other property-related documents, plus the fundamental problem of missing personal civil registry documents, increase the likelihood that displaced people will be stateless.

The Constitution of Kosovo and its Law on Citizenship sets out the requirements to become a citizen; all persons who were citizens of the Federal Republic of Yugoslavia on 1 January 1998 and were at that time habitually resident in Kosovo can be registered as citizens.

However, Roma displaced across borders will in some cases have a hard time proving this. Moreover, those who left Kosovo before then will have to seek naturalisation, which requires five years' residence in Kosovo. An exception to the five-year rule is possible if the individual is able to demonstrate that he or she is a part or direct descendant of the 'Kosovo Diaspora', broadly defined as the group that has maintained 'close family and economic links in Kosovo'. Without land titles and civil registration documents this will be more difficult.

Montenegro's Citizenship Law also requires five years of residence for people from one of the constituent Republics of the former Yugoslavia

before they can apply for citizenship. As in Kosovo, many displaced Kosovo Roma have neither personal civil registration documents nor proof of habitual residence.

Both problems could be addressed through appropriate action by the public authorities of both Kosovo and Montenegro to a) regularise the housing and property situation of the displaced Roma and b) ensure and promote their access to civil registration.

Housing and property rights

It would be easier to prove habitual residence if adequate property rights protection were actually in place. Decades of informal settlement formation and the impact of armed conflict have created a nightmarish property situation, which drives human rights organisations, legal aid offices and well-intentioned international agencies to despair. In Kosovo, the now defunct Housing and Property Directorate and

subsequently the Kosovo Property Agency (the mechanisms entrusted with resolving claims over property resulting from the conflict) were designed to evict illegal occupants from residences and to confirm the title of occupied land. They were not designed, however, to provide better solutions, such as compensation or housing reconstruction, for those



UNHCR/Dz. Demic



UNHCR/C. Cazirro

Displaced Roma from Kosovo in Konic 1 camp, in the suburbs of Podgorica, Montenegro.

cases in which unregistered informal settlements were destroyed and their inhabitants displaced.

So while all displaced persons have, in accordance with international principles,⁴ the right to return home and to recover their possessions or to be compensated for them, the displaced Roma have not been able to exercise these rights without proper documentation or registered property title. The displaced are at the mercy of the political expediency of local governments. In the majority

of cases, this means no return at all, even less compensation and another turn of the screw of segregation.

An example of victimisation

The *mahala* of Rudesh/Rudeš, an impoverished 'informal settlement' in the outskirts of Istog/Istok, was destroyed in 1999 and all the inhabitants displaced to neighbouring



'Riverside' settlement in Berane, Montenegro, one of many formal and informal settlements set up around Montenegro to house ethnic Serbs and members of the Roma, Ashkalia and Egyptian minorities who fled their homes in neighbouring Kosovo in 1999 and 2000.

recognisable attitude towards Roma communities which considers them to be second-class citizens. The right of displaced Serbs or Albanians to return to their place of origin is not often questioned. The case shows the weakness of international principles when confronted with the stark realities of ethno-politics and a clear tendency to segregate the Roma.

In the meantime, the victims of arbitrary displacement remain in their camps with neither secure property rights nor clear future opportunities in either Kosovo or Montenegro.

Recommendations

Efforts to resolve the Kosovo Roma's lack of secure property rights have to date shown limited results, compounding an already pressing cause for concern: a stateless population, unable to return and unable to access basic economic, social and cultural rights. Lack of property documentation not only blocks their right to return and prevents them from enjoying their own possessions but can also make it more difficult to prove habitual residence and thus further stops them from exercising their right of citizenship in one of the Balkan's newly created states.

Putting an end to potential statelessness requires swift intervention on the part of the governmental authorities but international organisations and civil society leaders must also play a role.

- Strategies and action plans must heed the particular situation of the displaced Roma who cannot prove land entitlement and implement non-discriminatory land allocation or regularisation, spatial planning and housing schemes preferably in their place of origin.
- Civil registration programmes need to be accompanied by

awareness-raising programmes to ensure that displaced Roma know how to register their property.

- Legal counselling centres must be accessible to the displaced Roma communities. Procedures must be simplified and assistance provided in navigating bureaucratic and lengthy administrative processes.
- The international community must continue to work with the national judiciary to ensure greater transparency and accountability, especially in cases involving vulnerable Roma.
- Roma leaders must be engaged in reaching out to the displaced. If made aware of the implications of statelessness they are likely to be more proactive in seeking to resolve their situation.
- National laws and practices should be revised to avoid direct or indirect discrimination against displaced Roma communities in matters relating to obtaining citizenship.
- National and international institutions should protect the rights to return home and to housing and property restitution of Roma individuals, free of adverse discrimination.

Jose-Maria Arraiza (carraiza@yahoo.es) was an adviser on housing and property rights for the OSCE (www.osce.org). Linda Öhman (lindaohman@gmail.com) worked in Kosovo on human rights and is now with the OSCE/ODIHR.

The views in this article are personal and do not represent an official position of the OSCE.

1. This article refers to Roma, Ashkali and Egyptian communities under the single title of Roma.

2. <http://www.amnesty.org/en/library/asset/EUR66/001/2008/en/29999c36-6e1e-11dd-8e5e-43ea85d15a69/eur660012008eng.html>.

3. <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>.

4. For example the Pinheiro Principles, see <http://www.fmreview.org/FMRpdfs/FMR25/FMR2530.pdf>

5. Informal settlements are, as put by the 2004 Stability Pact Vienna Declaration on Informal Settlements, "human settlements, which for a variety of reasons do not meet requirements for legal recognition (and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations) ...".

6. Only six families out of the 70 displaced in Montenegro have agreed to their relocation to an isolated farming area in Srbobran/Srbobranë (Istog/Istok).

Montenegro.⁵ Attempts by the municipal authorities to regularise the land situation in the village in order to allow return and reconstruction to take place were blocked, ironically by actions of the UN administration which was concerned about the reaction of a nearby Serb Orthodox monastery to the return of its former Roma neighbours. Part of the former village was used in the interim as a muslim cemetery by the Municipality which then offered the displaced Roma the opportunity to settle in an isolated area nearby, where no neighbours would complain about having Roma families living in close proximity.⁶ This reflects a sadly