

Report on Roma Informal Settlements in Bosnia and Herzegovina



Human Rights Department

I. Informal Roma Settlements in Bosnia and Herzegovina

An informal settlement is any human settlement where housing has been constructed without the requisite permits or legal title for use of the land. Though the exact number of Roma without secure tenure is unknown, it is believed to comprise a significant proportion of Roma citizens in BiH.¹ An earlier OSCE survey, in 2002, identified about one hundred informal Roma settlements, in over thirty municipalities, with a total population of approximately 22,000 persons.

Residents of informal settlements lack justiciable rights to access and use of the land and property they occupy and are therefore vulnerable to eviction. This vulnerability is sometimes amplified by a general inadequacy of housing, access to services, transportation, education and healthcare that result from the physical and legal marginalization of these settlements from their broader urban community.

In November 2003, the OSCE Mission to Bosnia and Herzegovina undertook a study of informal Roma settlements to gather information about their status and assess the possibility of regularizing them. Thirty-six informal settlements were surveyed to gather baseline data about their legal status and the households residing within them. The results of the survey were supplemented by a preliminary analysis of the legal framework regulating land and property in Bosnia and Herzegovina (BiH) and field observations.

This report presents a summary of the issues raised in the course of this research, and case studies of two initiatives to regularise informal Roma settlements: the Gorica settlement in Municipality Sarajevo Centar, which was regularised in 2001; and the Varda Roma settlement in Kakanj municipality, which is not yet regularised.

The goal of this report is to provide an initial overview of the issue of informal Roma settlements based on information gathered through field work, to identify areas which require further legal analysis in order to find durable solutions to the problem of securing tenure for Roma living in such settlements and to stress the need for local authorities, Roma communities and civil society to address the problem cooperatively.

II. Informal Roma Settlements Survey

The OSCE survey of informal Roma settlements consisted of three components: 1) a questionnaire administered to a sample of 36 informal Roma settlements across BiH that gathered information about both the settlements and the circumstances of households living in them – 845 households responded to the questionnaire; 2) an analysis of the legal framework regulating the status of informal settlements; 3) input from field observations.

III. Issues

The survey identified three inter-related issues that are relevant to regularising informal settlements: 1) the vulnerability of Roma living in informal settlements; 2) the process of regularizing buildings and land; and 3) the adequacy of housing on informal settlements.

¹ The OSCE High Commissioner on National Minorities and the Council of Europe estimate that between 30,000 and 60,000 Roma live in BiH.

1. Vulnerability of Roma Living in Informal Settlements

Roma living in informal settlements are particularly vulnerable to human rights violations because of their insecure tenure and their economic and social marginalization relative to other segments of society in Bosnia and Herzegovina. Any initiative to solve the problem of informal Roma settlements must take account of this vulnerability and guard against creating outcomes that compromise the access individual Roma or communities currently enjoy to the settlements they live on.

A comprehensive situational analysis, confidence-building between Roma communities and local authorities and participation by all relevant actors in tackling the challenges associated with regularisation are prerequisites to improving the situation of Roma living on informal settlements.

Insecurity of tenure

Tenure is an agreement between an individual or group and a private or public land owner on the use of land or residential property.² Security of tenure exists when a right to access and land use are underwritten by a known set of rules and this right is justiciable.³ The OSCE was provided with data on the ownership of the land the settlements were built on for 35 of the 36 settlements surveyed. As we will see in the following paragraph, this affects the way in which the settlement (or the buildings belonging to the settlement) can be regularised.

According to the information collected, twenty-three (64%) settlements are built on publicly-owned land. Nine of these had reportedly agreed a right of usage with local authorities. The remaining 14 (61%) of the settlements built on public land apparently have no legal right to use the property they occupy. These communities lack secure tenure and are particularly susceptible to evictions.

The other 12 of the 35 settlements are built on land that was reported to be privately owned. According to the inhabitants of these settlements, the Roma communities that live there had not agreed a right of usage with the land owner and therefore also lacked secure tenure.

While 46% of Roma households living in these informal settlements claimed to have written or verbal agreements with the land owner to use the land, the legality of these agreements seems uncertain. These households may also be vulnerable to eviction or to losing access to their residence.

Economic and social marginalization

Roma need to advocate effectively for the regularisation of their settlements, however, because of social marginalization and poverty they lack ready access to political processes and legal remedies to advance their efforts.

2. Process of regularising buildings and occupied land

The legal issues relevant to informal Roma settlements are complex and require detailed analysis (see the recommendations given at the end of the report). This section does therefore not represent a formal legal opinion but seeks to provide an orientation to some of the key legal issues and point to areas needing further study.

² OSCE Mission in Kosovo. Working Regional Roundtable on Formalising Informal Settlements of Roma and Other Vulnerable Groups, 30-31 October 2003 Pristina. Final Conference Paper.

³ Ibid.

Public Land

When assessing settlements built on public land, a distinction must be drawn between land allocation and the legalisation of land and constructed buildings. The procedure for allocating public land is highly restrictive and does not favour retrospective allocation nor allocation to individuals, yet these are the conditions under which many Roma would likely seek to regularise their tenure. The legalisation of buildings and occupied public land does, however, allow for retrospective and individual consideration and would perhaps provide a better way forward towards regularizing tenure for many Roma.

Allocation of Public Land

Persons seeking the allocation of land from municipalities in BiH face a daunting challenge under the current legal framework. Under the Law on Construction Land, imposed by the Office of the High Representative in May 2003, all socially-owned property became publicly-owned property. The Law was introduced partly to prevent the post-facto validation of ethnic cleansing across BiH by local authorities favouring allocations of land to individuals of particular ethnic groups. Under the Law, land can only be allocated to physical persons for construction purposes through a public competition. The competent authority can consider criteria such as housing requirements, socio-economic status, the number of family members and income when considering applications - this, nevertheless, would not automatically guarantee that an individual Roma would win an allocation competition over other vulnerable individuals.

Legalisation of buildings and occupied land

Pursuing the legalisation of land and constructed buildings may be a more effective approach to securing tenure for Roma. Legalisation entails securing from municipal authorities a construction permit and a permit on use of housing units that are already built on the land.⁴ Regulations on legalisation as set out in the Law on Construction allow for the retrospective regularisation, by individual application, of constructed buildings provided they are consistent with the prevailing urban plan. Where such constructions contradict urban planning regulations, municipal councils can alter the urban plan to accommodate them.

Careful assessment of the status of the land occupied by informal settlements and close consultations with the Roma community and local authorities must be undertaken to determine what approach to take to regularising public land – allocation or legalisation - is more practical and feasible in a given situation.

Private Land

Twelve (33%) of the informal Roma settlements sampled by the OSCE allegedly reside on private property. Regularising settlements on private property presents different challenges requiring different solutions. One way forward is for the municipality or the residents of an informal settlement to purchase the land on behalf of the settlement; another alternative is to gain permission from the owner to reside on the property, through lawful rental or leasehold agreements. These options provide secure, justiciable tenure, but may be out of reach for many Roma because of the costs involved.

Under the Law on Property Relations, individual Roma or communities occupying private land may gain ownership over the land depending on whether they built in good faith and the owner of the land knew they were using it; the length of time they occupied the land; and the value of any buildings constructed on the land as well as of the land beneath the building.

⁴ Individuals seeking to legalise land and/or buildings must compensate the municipality for the cost of the property and any fees associated with the procedure.

Both in the FBiH and the RS it is possible to initiate court procedures under the Laws on Property Relations in cases where:

- A person has built a permanent structure and resided on the property for more than ten years with the knowledge of the owner;
- A person has been in possession of a building for ten years with conscientious and legal possession (meaning that they have occupied the land in good faith and can produce legal proof of ownership, such as a cadastre record);
- A person has resided on the land for twenty years with conscientious possession (meaning that they have occupied the property in good faith during this period).

Over 67% of households interviewed by the OSCE reported that they have resided in their settlement for more than ten years, and 74% have reportedly maintained their presence continuously during this period. Notwithstanding the permanency of their residence, the other criteria needed to assert adverse possession (such as conscientious or legal possession) are difficult to establish legally, making adverse possession a more challenging path to securing tenure.

Under the Laws on Expropriation, Roma may also seek the expropriation of the private property they reside on through the Municipal Assembly, on the basis of public interest, and then request that it be reallocated under public competition. However, as discussed above, the reallocation process can not assure that the land would then be allocated to the Roma currently residing on it.

3. Adequacy of Housing in Informal Roma Settlements

The regularisation of informal settlements should not merely involve the legalisation of housing and other property: regularisation should also incorporate programmes to ensure the adequacy of housing in all the dimensions outlined below. The adequacy of housing on settlements seeking regularisation should also be carefully assessed and deficiencies addressed systematically, by all parties involved.

Adequacy is measured against a set of criteria that includes security of tenure, accessibility, affordability, the availability of services, habitability, location and cultural adequacy.⁵

Residents of informal settlements, by definition, lack security of tenure. Individuals and households should be protected against arbitrary forced eviction, harassment and other threats, through the provision of legal, secure tenure.

Accessibility is closely related to the issue of security of tenure. To ensure adequate housing, laws and policy should take account of the special situation of Roma as an economically and socially disadvantaged minority. Access to secure tenure should be guaranteed on a non-discriminatory basis and should be affordable.

The individual and household costs associated with regularising housing in informal settlements should be affordable and not compromise other basic needs.

In BiH, the availability of services such as water, electricity, telephone and sanitation in informal settlements is usually minimal given that prevailing laws require houses to be

⁵ The right to adequate housing (Art.11 (1)): 13/12/91. ICESCR General comment 4.

registered legally in order to qualify for such services. Municipalities do sometimes take measures to provide these services to some houses, but these are very ad hoc efforts.

Minimal standards of habitability are not the norm in informal settlements. Most houses do not provide adequate shelter, sufficient space for occupants or a healthy living environment.

Adequate housing also takes account of location. In relation to informal settlements this means that, whether located in urban or rural areas, they should allow access to economic opportunities, schools, healthcare services, child care and other facilities. Environmental concerns are also relevant. Residents of informal settlements should be protected from environmental hazards and pollution.

The way housing is constructed, the building materials used and the state policies supporting these should guarantee the cultural adequacy of housing in formal settlements. In the context of informal settlements, this implies the provision, *inter alia*, of modern facilities and consideration to the composition of Roma households and modes of livelihood pursued by Roma.

IV. Case Study: the Gorica Settlement

The Gorica Roma settlement, located on a hillside in Municipality Sarajevo Centar, occupied a parcel of land owned partly by a state-owned enterprise and partly by the Municipality. In 2000, the community applied to the Municipality to have their tenure to the land they had resided on for decades recognised. A regularisation process was initiated and ownership was transferred to the Roma residents in 2002.

Gorica highlights a number of factors that contribute to a successful regularisation process, including engagement of the Roma community and local officials, the role of civil society and the incorporation of principles such as adequate housing. The circumstances that led to its eventual regularisation are also noteworthy as they demonstrate the vulnerability of people living in informal Roma settlements.

Background

In September 1985, the Sarajevo Institute for Urban Construction (IUC) applied to Municipality Centar to expropriate houses in the Gorica settlement to build a park. At this time, approximately 60 households resided in the settlement. The IUC held a meeting of local communities and asserted, over the objections of Gorica residents, that there was local support for the park. The IUC pressed ahead with its plan and by 1986 had expropriated 30% of the houses in the settlement.

In 1987, the Municipality ordered compensation for some expropriated residents that had a right to usage and had constructed their homes before 1968. Sometime after this, for unrelated reasons, the plan to build a park was shelved and the remaining residents of Gorica continued to live there without further problems.

After the war, in 1996, families that had been displaced returned to Gorica and reconstructed houses. A small number of families received reconstruction assistance from international humanitarian organizations, but 30 households still required reconstruction aid. An association of Gorica residents applied to Municipality Centar for return and reconstruction assistance under existing programmes, but no action was taken by the municipality for two years, because of concern over the fact that prospective beneficiaries lacked secure, legal tenure to the property. In the meantime disputes related to ownership arose between IUC, the

state enterprise which owned part of the land the settlement resided on, the Roma community and the municipality. During these long delays donor commitments to rebuild the devastated homes in Gorica, provided correct permits were granted, were withdrawn.

Towards a Solution

These events galvanized the Gorica community and in 2000 they undertook a campaign to settle their housing situation once and for all. The association of Gorica residents mobilized several international organizations, including the OSCE, OHR and UNHCR, as well as donor organisations such as World Vision. The association pressed its case with all competent municipal departments through letters, meetings and eventually public protests. These activities attracted the support of the mayor of Municipality Centar.

The municipality, in consultation with the Gorica community and other relevant actors, diagnosed several issues that needed to be resolved in order to move the regularisation process forward and begin reconstruction.

A key issue was settling the dispute over who owned the land. The municipality negotiated the purchase of the state enterprise's parcel of land and determined that it would be necessary to amend the urban plan regulating the Gorica area in order to facilitate the allocation of the municipally-owned land to the residents of the settlement.

In April 2001, the municipality drafted a proposal to amend the urban plan to implement the regularisation process, organized public consultations on the issue and presented it to the Municipal Council for consideration.

The second key issue was addressing the adequacy of the housing in Gorica settlement. The association of Gorica residents gained support from international donors to reconstruct the houses in Gorica. This was conditioned, however, upon securing from the municipality the ownership of the land for the Gorica residents and gaining assurances that adequate utility and sanitation services would be provided to the community. The municipality was also concerned with the issue of adequacy and sought assurances from the donors that if the land was allocated to the Gorica residents, adequate houses would be provided.

Discussions on these issues ran on for some months until all the parties were satisfied that these commitments would be honoured.

The Regularisation of Gorica

Under the legal framework that applied prior to May 2003, it was possible for municipalities to allocate land to natural persons through a decision taken by the Municipal Council and subsequently approved by the Office of the High Representative.

In July 2001, the Municipal Council amended the urban plan and allocated land to the Gorica residents, with the requisite approval by the High Representative. Reconstruction in Gorica commenced in the spring of 2002 under the auspices of World Vision.

The Lessons of Gorica

Gorica highlights several lessons that are relevant to other prospective regularisation processes:

- Roma communities must provide the impetus for regularisation. The early and sustained engagement of the Gorica Roma community in the effort to resolve their insecure housing situation was an essential factor in achieving the regularisation of their settlement. Gorica

benefited from good local leadership that promoted solidarity among residents and represented their interests in an open and effective way;

- Partnerships are instrumental in overcoming the legal, political and financial challenges involved in regularisations. The Roma community of Gorica cultivated good working relationships with local government, civil society and international organizations;
- Regularisations require inventive solutions. The land which the Gorica settlement occupies was owned partly by the municipality and partly by a state enterprise, its regularisation required the purchase of private property as well as the allocation of municipal land;
- The adequacy of housing on informal settlements must be taken into consideration in the regularisation process. In Gorica, the Roma community, the municipality, donors and the international organizations involved gave priority to the issue of adequate housing;
- Regularisations require long term commitment. It took fifteen years from the first expropriations to the final step to fully secure the tenure of the residents of Gorica.

V. Case Study: the Varda Settlement

The Varda settlement (pop. 605) in Municipality Kakanj is comprised of 139 households residing in 117 houses. The settlement was built without construction permits on a site that was declared a 'green area' by the municipality in 1984, after the establishment of the community on the site. After its visits to the settlement in the course of the IRS survey, OSCE was requested by the local Roma community to support their effort in acquiring secure tenure over the land they occupy. In September 2003, the OSCE initiated an assessment of the feasibility of regularising the settlement.

The Varda Assessment Process

The process of assessing the issues relevant to Varda as an informal settlement and how it might be regularised are still at an early stage. Activities on the part of Roma, local authorities and the international community have focused on information gathering and testing the willingness of Roma and local authorities to take on the challenge of regularising the settlement.

Representatives of the Kakanj-based Roma associations have stated the importance to their community of securing their tenure to Varda. The community has expressed particular concerns with the adequacy of their housing, their living conditions and the vulnerability they feel with respect to encroachments on the settlement by nearby development. The community has undertaken constructive fact-finding activities that have helped to establish the nature of the legal and political issues relevant to regularising the settlement.

Municipal authorities are aware of the situation of Roma living in Varda but have taken no steps towards remedying it. They have stated concerns relating to the safety of the site, claiming that the ground it is built on is unsafe, but have not provided any evidence justifying this concern nor have they undertaken the geodetic investigations necessary to verify the situation. A second reason for not addressing the issue, according to the municipal authorities, is a lack of financial resources to regularise the settlement and undertake the improvements necessary to bring it to a minimum standard of adequacy. Again, however, the authorities have not provided any financial data that would support their assertions.

The municipality has repeatedly proposed moving the settlement entirely. This drastic measure appears to be proposed solely on the basis of the municipality's untested assertions about the safety of the land and has raised the anxiety of the Varda community considerably.

The Roma community and municipal authorities have not yet been able to establish a constructive dialogue about a long term solution for the Varda settlement. Local authorities have not demonstrated a willingness to accept the community as an equal partner in discussions on this issue; and the Roma community has on its side not shown trust towards the authorities. Those meetings that have taken place on this issue have broken down.

Separately, the community and the municipality have expressed flexibility and openness to tackling certain key issues. The Roma, for example, have stated that if a genuine environmental risk exists in Varda, they would be open to addressing it in an appropriate way. And the municipality has conceded that conflicts with the urban plan can be resolved within the existing legal framework.

Despite these hopeful indications, the process of establishing a common understanding between the Roma and Kakanj authorities about the issues facing the community and how to regularise the situation have not progressed substantially since Autumn 2003. Local officials, including the Zenica-Doboj Minister for Social Affairs, have failed to deliver on commitments to establish the facts relating to the environmental situation of the settlement. They have not given outward indications that they contemplate seriously taking the necessary steps to regularise the settlement.

The Lessons of the Varda Process

Varda highlights several lessons that are relevant to other prospective regularisation processes:

- It is important to establish the legal competencies of local authorities with respect to resolving the issue of informal settlements. In Kakanj it has been difficult to establish clearly the responsibilities of municipal and cantonal actors with respect to the settlement. Once these obligations are established, the competent authorities must be held accountable for them;
- Time and resources must be invested in confidence building between Roma and local officials. Constructive dialogue will not be possible until both parties agree what it is that needs to be discussed and approach each other with respect and good faith.

Recommendations

To municipal, cantonal, entity and state authorities:

- Authorities in BiH have a legal obligation to ensure adequate housing for people in accordance with article 11 of the International Covenant on Economic, Social and Cultural Rights and other international human rights standards that Bosnia and Herzegovina has ratified;
- In seeking to remedy the situation of Roma living in informal settlements, authorities in BiH should consult closely with Roma communities and involve them in the development of solutions that protect their rights and interests;

- The legislative framework affecting the legalisation of illegal buildings should be reviewed with a view to resolving issues of illegal construction and informal settlements in BiH generally. Such a review should involve Roma and take full consideration of the human rights of Roma living in informal settlements. Any proposed solution should protect and promote the right of Roma to adequate housing.

To civil society and international donors:

- Given the complex legal issues involved in regularising informal settlements, further expert analysis is required to fully establish the legal remedies available to Roma wishing to regularise such settlements. The aim of such research should be the development of a toolkit to assist Roma communities and civil society in pursuing the regularisation of informal settlements;
- International donors and civil society should assist the efforts of Roma communities to actively engage local authorities in the decision-making processes that affect them. Emphasis should be placed on building the capacity of Roma to advocate effectively in order to promote legal and political solutions to issues related to regularising informal settlements and on providing other kinds of training identified by Roma to support their efforts to secure adequate housing generally.