

Udo Janz

MINORITIES IN THE CONTEXT OF FORCED DISPLACEMENT IN THE SEE REGION

Overview of refugees and displaced persons in the region:

BOSNIA AND HERZEGOVINA		FR YUGOSLAVIA	
Federation		Serbia and Montenegro	
DPs	205,000	BiH	142,900
Refugees from FRY	7,960	Croatia	244,500
RS		Slovenia	650
DPs	203,000	fROM	150
Refugees from FRY	940	IDPs (Kosovo)	231,100
Refugees from Croatia	23,300	Kosovo	
Brcko		fROM	10,850
DPs	22,000	IDPs (Southern Serbia)	10,000
Total DPs in BiH	430,000	Minority IDPs	22,500
Total Refugees in BiH	32,200	Total FRY	662,650
CROATIA		fYR of MACEDONIA	
BiH	10,170	FRY (Kosovo)	4,500
FRY	930	BiH	50
IDPs	18,567	IDPs	21,200
Total Croatia	29,667	Total fROM	25,750

I. Definition of "Minorities" within the Balkan context

The UN Special Rapporteur for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, F. Capotori, offered a formulation of a definition of minorities in 1979: a minority must be a "non-dominant" group; its members must possess "ethnic, religious or linguistic characteristics differing from those of the rest of the population", and they must also show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language".

Within the region of the former SFRY, and particularly after the armed conflict of the 1990s, the definition of minorities has a slightly different connotation: in this context, minorities are non-dominant groups that may, nevertheless, be a numerical majority in the country.

Within BiH, the term "minority" is e.g. used to describe groups of persons who are in a numerical minority situation in a particular location or municipality, regardless of their status elsewhere in BiH.

If, for example, a member of one of the three constituent peoples of BiH (Bosniak, Serb and Croat) returns to his/her place of origin, this is generally referred to as minority returns as s/he is returning to a place where the majority are of a different background. This particular definition of minorities applies also to other countries in the Balkan region.

UNHCR is mandated under Annex 7 of the GFAP to ensure the safe and secure return to their homes of all those who have been displaced during the war, and such is engaged on a daily basis in facilitating "minority returns".

As a matter of fact, according to the results of a 2000 re-registration of all IDPs in BiH, a total of 518,000 persons applied for 'displaced' status within Bosnia and Herzegovina. At the end of December 2001, the number of displaced persons in BiH still in need of a durable solution was approximately 438,500.

Some 209,300 BiH refugees are thought to remain abroad, and are still considered in need of a durable solution (more than 75% are located in former Yugoslav Republics and some 25% in other host countries, mainly member states of the European Union). Of the approx. 387,200 refugees who have returned to BiH from abroad since 1996, more than 107,300 have returned to conditions of internal displacement instead of to their pre-conflict homes.

The year 2001 witnessed a high number of 'minority' returns (refugees and displaced persons): 92,061 persons in total of whom 46,848 in the

Federation, 40,253 in Republika Srpska (RS), and 4,960 in Brcko District. In particular, there was a marked increase in spontaneous returns to rural areas, especially to the RS. This was due to a combination of factors, including an improved security environment, greater involvement of authorities in the Federation in supporting returns to the RS, and more effective implementation of the property laws.

The Property Law Implementation Plan (PLIP) resulted from collaborative relationships between UNHCR, the Office of the High Representative (OHR), the Organisation for Security and Cooperation in Europe (OSCE), the United Nations Mission in Bosnia and Herzegovina (UNMIBH), and the Commission for Real Property Claims (CRPC). Its objective is to ensure that all outstanding claims registered by refugees and displaced persons to repossess their properties are resolved. By the end of March 2002, out of 141,229 households that filed a claim in the Federation, 72,379 have repossessed their property, and of 107,516 claims in the RS, 41,245 have been resolved. In total, 116,881 of 255,612 households or 46% had repossessed their property.

As pre-war homes are repossessed and returns to these homes take place, it is becoming increasingly apparent that many conditions necessary for *sustaining* such returns have not been met. While property is being repossessed, powerful deterrents to return often remain in place. These include the deliberate withholding of employment opportunities to 'minority' returnees (employment discrimination), the often-noted 'ethnic bias' in school systems, the continuing prevention of the realisation of returnees' pension rights, the denial of access to health care in places of return, and the manner in which publicly-owned utility companies in many areas continue to deny minorities or returnees access to services such as electricity, telephone and gas.

II. UNHCR's general concerns and mandate regarding minorities

UNHCR believes that much of the efforts of the prospect of creating peace, stability and prosperity in the SEE region will depend on the

success of efforts to find durable solutions for the minorities that have been displaced during the brutal wars in and around BiH and during the more recent Kosovo crisis. For UNHCR, these durable solutions consist preferably in the repatriation to the country of origin, local integration, and/or in exceptionally warranted cases resettlement to a third country.

The first two solutions require a comprehensive legal framework in the relevant countries that would allow for the protection of the rights, interests and identities of the minorities. Adoption of legislation is, in itself, insufficient. Integrating diversity also requires dialogue and participation and a number of countries in the region have established forums where the relevant parties can share their interests and concerns and work towards finding common ground to reconcile possible conflicting positions.

III. The legal status of national minorities in BiH, Croatia and FRY

BiH: The draft law concerning the protection of national minorities has not been adopted yet (adoption is expected in the coming weeks). The draft law is broadly inspired by the Framework Convention on the Protection of National Minorities and provides an extensive list of guarantees of minority rights, mainly based on the current body of international standards, in most cases going beyond the established minimum.

FRY: The Law on Protection of the Rights and Freedoms of National Minorities has been adopted in February 2002. The law constitutes a positive endeavour to ensure comprehensive protection of national minorities in FRY. The law is designed to provide a stronger legislative framework for the protection of persons belonging to national minorities in the FRY which is one of Europe's most ethnically diverse states. To ensure effective participation in decision-making on issues related to specificities of national minorities in Government and public administration, the law introduces the Federal Council for National Minorities and the National Councils of National Minorities (elected by persons belonging to national councils with the purpose of exercising rights of self-government).

CROATIA: A draft Constitutional Law on Minorities has been in the process of being finalised since May 2000. The latest draft was recently rejected by the Government and the expert group consisting of representatives of minorities, legal experts and representatives of the Ministries of Justice and Foreign Affairs was replaced by a Working Group not including any representatives of minorities.

IV. UNHCR in BiH

The following case studies will outline what kind of obstacles, regardless of the non-existence of a legal framework, UNHCR is faced with while trying to carry out its mandate regarding national minorities and to provide durable solutions. The case studies will focus on the three main minority groups currently present in BiH: the Croatian Serbs, the Roma refugees from Kosovo and Serbia, and the BiH Roma that are displaced within the country.

Croatian Serbs

Approximately 25,000 Croatian Serbs residing in the Republika Srpska participated in the re-registration in the autumn of 2000.

75 % of the heads of households stated that they possessed BiH citizenship which, however, requires verification. Although no proof of citizenship was requested at the re-registration, a number of these individuals will have BiH citizenship because they were born there. Others might have opted for BiH citizenship simply in order to get a travel document without the corresponding full citizenship.

Strictly speaking, these 75 % would not qualify as refugees any longer if their BiH citizenship was confirmed, as they would hold the citizenship of the country in which they reside. It would be the responsibility of the RS and BiH authorities to protect its citizens, and the RS authorities in general have made no distinction between DPs and Croatian Serb refugees. However, most of these individuals still have property rights in

Croatia, which many would wish to utilize either in order to return to their place of former habitual residence, or to have a safer foundation in the RS than what the authorities can currently provide.

However, part of the 75 % holding BiH citizenship may have their only effective link with Croatia, and under European legislation may be entitled to Croatian citizenship, since many of them were born there or have lived most of their lives in Croatia.

A small number have expressed a wish to return to Croatia at the re-registration. However, there appears to be a greater desire to return if return could happen in safety, education was easily available, and property could be reposessed.

Conditions in Croatia

The results of the 2001 census of the population in Croatia have not been published yet.

If the Croatian Serbs constitute more than 8 % of the population they will also have the right to have a proportional representation in the Parliament.

Croatian citizens working abroad will be counted as part of the Croatian population, while refugees abroad will not. Considering the number of Croatian Serbs in FRY and BiH who will not be included, the census is likely to show a much lower figure than what may in fact be the reality.

The citizenship legislation in Croatia favours 'ethnic' Croats, requiring a minimum length of stay and involving much higher financial costs for Croatian Serbs who used to be former habitual residents, should they wish to acquire Croatian citizenship. A number of individuals face difficulties in getting the pre-1991 stay recognised due to lack of records.

The current Law on Areas of Special State Concern, which covers areas from where most Croatian Serbs fled, favours temporary users over

rightful owners. Even if an individual repossesses his property through court proceedings, there is no enforcement of the decision in case of it being occupied by someone else, and temporary housing has to be identified for the occupant, not the owner of the property.

Roma, Ashkaelia and Egyptians (RAE) from Kosovo

BiH is currently officially hosting approx. 1,000 Roma from Kosovo in refugee reception centres (it is not known how many are living outside of camps, estimation around 8,000)

Repatriation to the country of origin is at this stage not recommended for the following reasons:

While there have been some recent improvements in their overall situation, RAE communities continue to face serious protection problems in Kosovo. General interethnic tension and intolerance are compounded by particular discrimination against the RAE by almost all other ethnic groups in Kosovo, exacerbating the degree of hardship they face. Those who have been in exile and who are not familiar with the reality in the various communities where RAE reside are particularly affected.

The physical security of RAE communities remains volatile. While some communities have attained a degree of stability where violent attacks are rare, others continue to face regular violence and intimidation. However, even in areas where inter-ethnic relations appear to have improved, experience has demonstrated that the risk of attack remains, particularly from perpetrators coming from other areas.

Like all minorities, RAE communities live in enclaves or concentrated groups, and their freedom of movement is generally restricted, although this can vary according to geographic location. As RAE communities have historically relied on freedom of movement to earn a livelihood, this situation is particularly oppressive for them. The resulting restrictions on their ability to exercise basic social and economic rights also aggravates their already impoverished situation. Most RAE

communities are hosting a substantial number of IDPs, which adds to the difficulty of their living conditions.

While there has been some return of RAE groups, this remains at a very low level. Despite comprehensive and cautious planning for return, incidents such as the stoning of returnee homes continue to take place. Moreover, the few spontaneous and facilitated voluntary returns that have occurred do not necessarily reflect a substantial improvement in the situation for the RAE communities in general. Most of these returns took place at specific locations only after a protracted planning and preparatory process to ensure their security and sustainability. General conclusions regarding the situation of the RAE communities should not be drawn from these returns, or from individual exceptions to the general protection situation of these communities, which remain highly precarious.

BiH Roma displaced within BiH

It is difficult to assess the size of the current population of BiH Roma. The last official figure dates from the 1991 census, which registered around 7,000 Roma, but the actual number is much higher. (It is estimated that there were around 70,000-100,000 Roma in BiH before the war).

UNHCR is involved in activities on behalf of Roma originally from BiH, be they displaced persons, returnees, or refugees in asylum countries. These activities have generally been concentrating on the return and integration of Roma in their places of origin. In this respect, UNHCR has particularly been focusing on the resolution of the property status of the Roma. In the course of this work, UNHCR has found that the lack of property registration and of sufficient documentation proving ownership of pre-war housing is having a particularly acute effect on the possibilities of Roma to return.

V. Concluding remarks

Unless all countries in the region adopt effective minority legislation, the problem of forced displacement in the region will not be overcome. The stability of the region will thus require a concerted effort on the part of all concerned, be that in government or by the international community, including the Stability Pact, the United Nations agencies, including UNHCR, OSCE, and the region specific institutions, such as OHR in BiH.

The tendency in the region as much as elsewhere in the world, compounded by the vicious effects of the wars over the past decade, to sweep the issue under the carpet is untenable and has only exacerbated the problems for minorities in the region.

No one single authority seems sufficiently equipped to make tangible progress in this arena, which is the reason why the emphasis must be on a more holistic approach to which each and every agency and government can contribute on the basis of commonly accepted universal principles for the protection of minorities without which the integration of the region into larger Europe will remain but an illusion.

Udo Janz
UNHCR Sarajevo