

ROMA BELONG



Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine

OCTOBER 2017

CHALLENGING DISCRIMINATION PROMOTING EQUALITY



European
Network on
Statelessness



errc
european roma rights centre



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[I COULD] GO TO HOSPITAL AND HELP MY CHILDREN
GET NATIONALITY...I [COULD] SEND MY CHILDREN
TO SCHOOL SO THEY CAN HAVE A BETTER LIFE.

**Romani woman,
Macedonia**

Executive Summary

This report synthesises the findings of the #RomaBelong project, which set out to explore the nexus between statelessness, discrimination and marginalisation of Romani people in European Union candidate and neighbourhood countries in the Western Balkans and Ukraine. It draws on data from interviews with Roma individuals and associations, state actors, NGOs, journalists and international agencies to identify and analyse the main factors contributing to the risk of statelessness and its impact on the daily lives of Romani people in the region. As a partnership between both international and national organisations, those focused on statelessness on the one hand, and Roma rights on the other, the project draws on different fields of expertise to make recommendations to national and regional stakeholders for concrete action to address the issues it uncovers.

Three underlying themes emerge to varying degrees from all the research countries: systemic discrimination and exclusion of Roma, barriers to accessing justice, and bureaucratic challenges presented by complex administrative systems and procedures. These themes point both to the prevalence of discrimination against Roma in the region, and to administrative challenges that constrain access to rights in more general terms, but which have a disproportionate impact on the most marginalised.

The scope and causes of Romani statelessness are also explored, exposing a fourth common challenge: a lack of reliable data on both statelessness and Roma populations. The invisibility this perpetuates has made it more difficult to plan an adequate response and easier to deny the seriousness of the issue. The report elicits how despite strong international treaty accession records, and reasonably strong domestic legal frameworks, norms and standards are not universally and equally applied to protect Roma from discrimination and statelessness in the research countries.

In identifying some of the key causes of Romani statelessness in the Western Balkans and Ukraine, the impact of displacement, conflict and state secession on the risk of statelessness is examined. For example, the report touches on how the legacy of conflict and family histories of displacement continue to impact disproportionately on Roma in the Western Balkans; and how the lack of documentation among former USSR citizens or challenges for those internally displaced by the current situation, perpetuate the risk of statelessness among Roma in Ukraine.

The second half of the report presents two key issues that emerged strongly from the research: barriers to accessing documentation, such as birth registration, identification and permanent residence (Section 5) and marginalisation, poverty and exclusion (Section 6). A consensus emerges that access to documentation is a significant challenge for Roma, but state interviewees tend towards stereotypical views, blaming Roma communities' lack of education, awareness or willingness, rather than problems with the system. Roma interviewees, on the other hand, clearly articulate frustrations with how a lack of documentation impacts

on their daily lives, citing bureaucracy, cost and discrimination, as barriers to resolving their documentation issues. The report also illustrates how this inability to access documentation has an intergenerational impact, perpetuating the risk of statelessness.

Underpinning many of the challenges facing Roma across the region is their marginalised position in society. Although the degree and impact of their exclusion may vary in different contexts, and different actors attribute different causes, the report explores how interviewees perceived and experienced exclusion as a factor exacerbating the risk of statelessness. The findings cover areas such as poverty and unemployment, literacy, gender equality, access to healthcare and housing, and treatment by the police.

Notwithstanding these challenges, progress towards reducing the risk of statelessness among Roma populations is also identified in examples of how legislative reform, simplification of procedures, community outreach and engagement, and cooperation between NGOs, international agencies and governments, have contributed to addressing the issue in specific areas. But, much work still needs to be done. As well as good practice, the findings also point to partial solutions, which have at times focused on top-down awareness raising rather than on making institutions and procedures more accessible, efficient and fair.

What emerges overall is an urgent need to fully address the discrimination and marginalisation at the heart of Romani documentation issues and the fulfilment of their right to nationality. These will not be fully eradicated without also addressing the structural problems that cause, entrench and perpetuate statelessness. To achieve this, stakeholders must develop a shared understanding of the problem and its solutions. This cannot be done without listening to Romani voices and ensuring that Roma communities are at the heart of shaping and implementing change.

1. Introduction

It is very possible that there are a certain number of persons who don't have documents but it is because they do not use their rights and because they are not registered in the civil registers in Bosnia-Herzegovina.

Government Official, Bosnia-Herzegovina

Officials need to learn what discrimination is, to free themselves of stereotypes and prejudices toward Roma, and institutions need to establish procedures to make access to the administrative services easier.

Journalist, Bosnia-Herzegovina

The above quotes go to the heart of the problem of discrimination, statelessness and marginalisation of Roma people in the Western Balkans and Ukraine (and elsewhere). The first quote exposes a deeply entrenched official attitude of shifting the burden onto oppressed communities. This in effect holds Rome responsible for their own inability to penetrate complicated state bureaucracies and access their rights. The second quote shows the existence of the opposite perspective held by a cross section of civil society, the media and even some government actors. This position acknowledges the importance of recognising and addressing direct and indirect discrimination faced by Roma and confronting prejudicial attitudes and stereotypes that prevent them from enjoying equality.

This report primarily focuses on the Western Balkans countries of Bosnia-Herzegovina, Macedonia, Montenegro and Serbia, with additional anecdotal information from Albania, Kosovo and Ukraine. It is complemented by more detailed country reports on Albania and Ukraine.¹ While the discrimination and marginalisation of Roma populations in these countries receives some attention, there is less awareness or information on statelessness among these communities, how it is caused and whether this has an additional, discriminatory impact on the rights of Roma. The report synthesises research carried out in 2016 and 2017 on discrimination and statelessness in these countries, and draws out the key issues which require further attention, awareness and ultimately, a concerted policy response and shift in attitude.

Any report which aims to synthesise research carried out across different countries has its limitations. It is both important but difficult to strike the right balance between drawing out and analysing general trends while flagging the differences and particularities of each country situation. The balance of this report is more weighted towards the former, as its purpose is to take a step back and look at this challenge from a regional perspective. It should therefore not be (solely) relied on to draw country-specific conclusions.²

1 All project outputs including these reports are available here: <http://www.errc.org/article/roma-belong-discrimination-statelessness-and-marginalisation-of-the-roma-people-in-the-western-balkans-and-ukraine/4594>.

2 As stated above, the Albania and Ukraine country reports fulfil this role for these two countries, and the bibliography to this report includes country-specific resources for the other countries covered.

It is important to acknowledge at the outset that some of the countries researched have made more progress than others in addressing the issues outlined in this report. Most significantly, as the opening quotes and the steps taken by some countries suggest, this is a solvable problem. The required change is more to do with engaging and shaping attitudes, implementing existing laws in a non-discriminatory manner and adopting creative administrative solutions to ease the burdens imposed by intransigent bureaucracies; and less to do with law reform or resource intensive interventions. Importantly, given that Roma are often at the periphery, steps taken to address the discrimination and barriers they face will inevitably improve the efficiency and fairness of entire systems, and be beneficial to all.

1.1. About Roma

Roma are one of Europe's oldest, largest and most disadvantaged ethnic minorities. In fact, the term 'Roma' usually encompasses a wide diversity of groups with '*complex and multi-layered*' identities.³ Some, but not all Roma speak Romanes or other languages specific to Romani communities. There are also people who do not identify as Roma at all – such as Ashkali and Egyptians – who are nonetheless the targets of antigypsyism.⁴ For the purpose of this report, we use the term 'Roma' to encompass all groups in the region who are subject to antigypsyism, in line with the Council of Europe definition.⁵

Roma came to Europe many centuries ago in the Middle Ages from what is now India.⁶ The Council of Europe estimates there to be around 10 to 12 million Roma in Europe.⁷ The majority of Roma have a nationality, but the number of stateless Roma in Europe is largely unknown, as disaggregated data on the Romani population is lacking, particularly in non-EU countries.⁸

Roma are widely regarded as one of Europe's most marginalised communities. They experience discrimination and rights deprivations in various forms, including police brutality, school segregation and denial of the right to work.⁹ Data collected by countries participating in the Decade of Roma Inclusion (2005-2015) demonstrated that Roma continue to live on the margins of

3 Council of Europe, *Factsheets on Roma Culture*. Available at: <http://romafacts.uni-graz.at/index.php/culture.1>.

4 Alliance against Antigypsyism, *Antigypsyism: a reference paper*, June 2017. Available at: <http://antigypsyism.eu/wp-content/uploads/2017/07/Antigypsyism-reference-paper-16.06.2017.pdf>.

5 Council of Europe, Roma and Travellers. Available at <http://www.coe.int/en/web/portal/roma>.

6 Council of Europe, *Factsheets on Roma History: General Introduction*, available at: <http://romafacts.uni-graz.at/index.php/history/general-introduction/general-introduction>.

7 Council of Europe, *Descriptive Glossary of Terms relating to Roma Issues*, p 6, May 2012. Available at: <https://rm.coe.int/1680088eab>.

8 Data is particularly scarce in countries that did not participate in the Decade of Roma Inclusion (2005-2015), in particular for the purpose of this report, Kosovo. See: <http://www.rcc.int/romaintegration2020/pages/3/roma-in-the-region>.

9 European Roma Rights Centre, *Written Comments for Consideration by the European Commission concerning Roma Inclusion in the Western Balkans Progress Reports 2016*, July 2016. Available at: <http://www.errc.org/cms/upload/file/ec-submission-on-roma-inclusion-in-the-western-balkans-july-2016.pdf>.

societies in Europe, with poverty, inequality, discrimination, substandard housing and high rates of unemployment widespread.¹⁰ In comparison to the local non-Roma population the situation of Roma can be considerably worse in all areas of life, from education to employment, housing, and health.¹¹ Some countries have also seen a rise in anti-Roma hate speech and hate crime in recent years, reflecting the prevalence of societal racism and discrimination.¹²

In recent years, the European Roma Rights Centre's monitoring of the situation of Roma in the region has found a number of grave human rights violations, which vary in nature from country to country, but often remain underreported, hindering an accurate evaluation of the situation on the ground.¹³ Despite some improvement in limited areas such as education and birth registration, considerable shortcomings have been identified in measures to address the situation of Roma in EU accession countries, including a lack of tangible impact and poor design, monitoring and implementation of such measures.¹⁴ The Regional Cooperation Council, which focuses on South East Europe, has noted that the situation of most Roma communities in the region "*remains a matter of serious concern*".¹⁵

1.2. About the project and methodology

The #RomaBelong project is an initiative of the European Roma Rights Centre (ERRC), Institute on Statelessness and Inclusion (ISI) and European Network on Statelessness (ENS) in collaboration with partner organisations in Albania (Tirana Legal Aid Society), Bosnia-Herzegovina (Vaša prava BiH Association), Kosovo (Centre for Legal Aid and Regional Development), Macedonia (Macedonian Young Lawyers Association), Montenegro (Mladi Romi), Serbia (Praxis) and Ukraine (Desyate Kvitnya). It aims to better understand and address Roma statelessness in European Union candidate and neighbourhood countries. In particular, it aims to contribute to:

1. Strengthening understanding of Roma statelessness in the research countries; its causes and the obstacles that stand in the way of solutions;

¹⁰ Decade of Roma Inclusion Secretariat Foundation, *Roma Inclusion Index 2015*, September 2015. Available at: <http://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>.

¹¹ *Ibid.*

¹² European Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Report on the implementation of the EU Framework for National Roma Integration Strategies 2015 COM(2015) 299*, 17 June 2015, p. 9. Available at: http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf.

¹³ European Roma Rights Centre, *Written Comments for Consideration by the European Commission concerning Roma Inclusion in the Western Balkans Progress Reports 2016*, July 2016. Available at: <http://www.errc.org/cms/upload/file/ec-submission-on-roma-inclusion-in-the-western-balkans-july-2016.pdf>.

¹⁴ European Commission, *Thematic Evaluation on IPA Support to Roma Communities: Final Report June 2015*, June 2015. Available at: http://publications.europa.eu/resource/cellar/d2cc11f8-e10a-11e5-8a50-01aa75e-d71a1.0001.03/DOC_1.

¹⁵ See: <http://www.rcc.int/romaintegration2020/pages/1/overview>.

2. Strengthening the understanding, attitudes and capacity of Roma rights NGOs and activists to effectively mobilise to end Roma statelessness; and
3. Strengthening international, regional - European Union (EU) and Council of Europe (CoE) - and national responses to Roma statelessness.

The project was set up in June 2016 as a 20-month project, with research activities carried out in Year One and advocacy and awareness-raising activities in Year Two. Advocacy and awareness-raising activities have further been extended into 2018. Research activities consisted of literature reviews, stakeholder mapping and qualitative semi-structured interviews with key stakeholders, including international agencies, national human rights institutions, NGOs, Roma rights groups, government officials, media, academics and Roma individuals. To achieve a harmonised approach across research sites, a workshop was held in Belgrade in 2016, attended by all project partners, to finalise the methodology and research tools. 15-20 interviews were carried out by project partners in each of the research countries, including 3-5 interviews with Roma individuals affected by statelessness in each country.¹⁶

Additional research was carried out in Albania and Ukraine, resulting in country-specific reports being drafted for these two countries. The key findings of the two country reports, combined with the research findings from the other participating countries, form the evidence base for this synthesis report, drafted by the Institute on Statelessness and Inclusion, European Network on Statelessness and the European Roma Rights Centre. All three reports were reviewed and received input from all project partners. The synthesis report was also reviewed by an expert Reference Group, consisting of members selected for their cross-cutting expertise and knowledge of the issues.

It is important to acknowledge at the outset some of the limitations of the research. The project considers the situation of different groups of people, encompassed here under the term 'Roma', who are diverse, and between whom the dividing lines are not always clear. The identification of statelessness is also very complex and the characteristics or circumstances that may put someone at risk of statelessness are difficult to generalise. In particular, the research includes those who have been denied documentation, who are at very least at risk of statelessness, but who may not necessarily be stateless.¹⁷ The intention of this research was not to reach finite conclusions, but to shine a light on some of these complex issues, and begin to better understand the contributing factors.

16 Due to unforeseen circumstances, research interviews were not carried out in Kosovo, so data from Kosovo is limited to a literature review.

17 For a discussion on the notion of 'risk of statelessness', see European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, 2017, p 22. Available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf.

2. Underlying Themes

While the main issues that this report looks at relate to access to documentation and civil status of Roma, and the marginalisation, poverty and exclusion they face, which will be explored in Sections Five and Six; the research unearthed three centrally relevant underlying themes, which cause, exacerbate and perpetuate these issues. The first is that of discrimination, and how this relates to statelessness and the mutually reinforcing cycle between these two phenomena. The second is the barriers to access to justice that Roma face, which undermine their capacity to challenge their lack of documentation and statelessness, as well as the marginalisation and poverty they face. The third is the intransigent and weighty bureaucracy, with its rigid rules and prejudicial attitudes, which transforms the exercise of basic rights into complex, burdensome and long drawn out interactions with the state.

These three themes run through this report and are relevant to many of the discussions contained within. They are mutually reinforcing and are often difficult to distinguish or separate out. For example, Roma may have challenges accessing justice both because of the discrimination they face and due to bureaucratic inefficiencies. Below, we provide a brief overview of each of these three themes.

2.1. Statelessness and discrimination – a mutually reinforcing cycle

*One can neither tell the story of statelessness, nor seek to finish it for good, without addressing the inequality and discrimination faced by its protagonists... statelessness cannot be eradicated unless discriminatory societal attitudes which view some people as less worthy of inclusion than others are comprehensively tackled.*¹⁸

A stateless person has no nationality – she is someone who is “*not considered as a national by any state under the operation of its law*”.¹⁹ While there are many widely recognised causes of statelessness including gender or race discriminatory nationality laws, state succession, the lack of documentation, poor administrative procedures, conflicts in laws and the inheritance of statelessness; a closer look at each of them reveals that discrimination often has a clear or more hidden role to play.²⁰ In relation to state succession for example, “*it is vulnerable minorities who are associated with either the successor or parent state who are deprived of nationality, exposing the discriminatory motivations and arbitrary nature for such exclusion*”.²¹

18 De Chickera A and Whiteman J, *Addressing statelessness through the rights to equality and non-discrimination*, in van Waas L and Khanna M (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016, p. 100.

19 United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

20 *Ibid*; Institute on Statelessness and Inclusion, *The World's Stateless*, Wolf Legal Publishers, December 2014, pp. 23–27. Available at: <http://www.institutesi.org/worldsstateless.pdf>.

21 Institute on Statelessness and Inclusion, *The World's Stateless*, Wolf Legal Publishers, December 2014, p. 24.

The nexus between administrative practices, documentation and discrimination has been explored by De Chickera and Whiteman, who note that “*bad administrative practices often enable discrimination and prejudice to be determinative of whether or not a person will be recognised as a citizen*”, particularly where officials have discretion in decision making.²² They emphasise that it is often vulnerable groups who are excluded, and once made stateless, their statelessness becomes a justification for their continued exclusion. There is also a subtler form of discrimination that arises from socio-economically disadvantaged groups who live in rural areas, facing difficulties accessing centralised administrative offices and therefore being disproportionately affected by lack of documentation.²³

This is pertinent in the context of Romani statelessness in the Western Balkans, where the main causes of statelessness can be identified as state succession after the collapse of the former Yugoslavia, forced displacement as a result of the conflicts, the lack of civil documentation (due to the non-registration of births and the destruction of civil registries in conflict times) and the inheritance of statelessness. While the role of discrimination in relation to any of these causes may not be obvious, closer scrutiny reveals that Roma are disproportionately impacted by these causes because their belonging is more likely to be questioned by authorities. In addition to causing statelessness, discrimination can continue to undermine the enjoyment of rights of stateless persons. In the case of Roma, a minority that already suffers discrimination and exclusion, it can be difficult to identify how discrimination based on their statelessness adds to this overall experience. However, as this report elaborates, there is often a direct link between the lack of documentation and statelessness on the one hand, and barriers to accessing basic rights including healthcare, education, the right to work and move freely on the other. Addressing the statelessness of Roma will not resolve all the problems they face, but it will eradicate one of the primary arguments made to justify their exclusion: that they ‘*are not from here*’.

As will be explored in this report, there are significant challenges in all research countries relating to statistical data on Roma, stateless populations and on Romani statelessness. Significantly varying estimates exist, making it difficult to understand the scope of the problem and to address it through policy planning and response. One of the reasons for these large discrepancies is that many individuals choose not to declare themselves as Roma or as stateless, as they fear negative consequences such as being detained, receiving deportation orders or difficulties with finding a job. Others do not know they are stateless. Roma in Bosnia-Herzegovina for example, are therefore likely to declare themselves as members of the “Constituent Peoples” (i.e. Serbs, Croats and Bosniaks).²⁴ This is an example of how discrimination (and perceptions of discrimination) can further exacerbate the problem, by making it more invisible.

22 De Chickera A and Whiteman J, *Addressing statelessness through the rights to equality and non-discrimination*, in van Waas L and Khanna M (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016, pp 104-105.

23 It should be emphasised that lack of documentation is not the same as statelessness. Many citizens lack documentation. However, lack of documentation can lead to statelessness due to inability to prove eligibility for citizenship.

24 De Verneuil M, *Romani Migration Resulting in Statelessness: the Case of Bosnia and Herzegovina*, Roma Rights: Journal of the European Roma Rights Centre 1/2014, pp. 27-33. Available at: <http://www.errc.org/roma-rights-journal/roma-rights-1-2014-going-nowhere-western-balkan-roma-and-eu-visa-liberalisation/4325/4>.

2.2. Barriers to accessing justice

In the face of denial of rights, access to justice is of crucial importance. It enables rights bearers to challenge the denial of their rights through the courts and other legal processes. Positive outcomes enhance the enjoyment of human rights of the individual. Perhaps as importantly, it helps strengthen the system, making it fairer and more equally accessible to all over time. However, when the rights being denied are ‘enabling rights’²⁵ such as nationality, registration, identity and documentation, these denials often exacerbate the barriers to accessing justice. For example, without any documentation, it is more difficult to establish who you are, and that you do have standing before the relevant legal procedure. Bureaucracies that do not make reasonable accommodation²⁶ for those who lack documentation or status to access legal procedures to contest their very exclusion, will end up perpetuating, and not reducing injustice and exclusion.

The inability to access justice is not only relevant to questions around registration, documentation, legal status and nationality. It also relates to the consequent marginalisation, exclusion and poverty endured by Roma. Roma who were not able to access justice to rectify their lack of documentation or recognition of nationality, may also face challenges accessing justice to exercise their rights to education, a reasonable standard of living and access to healthcare. For example, in Albania, despite there being state provision for free legal aid in law, it remains largely inaccessible for many Roma because they cannot provide the documentation required to prove residence or income and therefore establish their eligibility to receive the state funded provision. The very lack of documentation that a Roma individual in this case is seeking to challenge thus prevents them from accessing justice. Therefore, as with discrimination, barriers to accessing justice also perpetuate statelessness while exacerbating its negative impacts.

While in large part, the barriers to accessing justice faced by Roma relate to the inaccessibility of justice institutions and their mechanisms, due to for example, the lack of documentation and discriminatory attitudes; there are other contributing factors. A key issue that emerged out of the interviews for this project was the perception by many non-Roma interviewees that Roma lacked awareness of the importance of documentation; the implication being that the onus is on individuals to resolve their documentation problems and Roma have little desire to do so. However, although levels of awareness varied, the data from Roma interviewees tended to contradict this perception, with most interviewees clearly articulating the impact lack of documentation has on their lives and their frustration with attempts to resolve their situation.

25 Enabling rights are rights, the enjoyment of which also facilitates the enjoyment of other rights. For example, those who enjoy the right to education are better equipped to assert their right to free speech, political participation or a livelihood. Similarly, those who have a nationality are better placed to enjoy their other rights.

26 ‘Reasonable Accommodation’ means “the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others.” See The Equal Rights Trust, *Declaration of Principles on Equality*, 2008. Available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf>, Principle 13.

What the interviews do illustrate is the lack of faith that some Roma have in state institutions. If repeated experiences with such institutions are negative, and if they do not visibly result in benefits to the quality of life, there can be very little reason for people to attempt to access justice. Indeed, interviewees seldom spoke of challenges related to access to justice, as there is a tendency to take for granted that administrative decisions cannot be challenged (or if they are, it will not result in a positive outcome). As one undocumented Roma woman in Macedonia said: *'I have not had much contact with the legal system and the authorities'*. And so, as in this woman's case, the support of NGOs becomes critical to accessing justice.

A further barrier is the overwhelming poverty Roma face. In Serbia, for example, the lack of disposable income to pay expensive fees for naturalisation (birth registration procedures are free of charge), or to pay the fees for obtaining an ID card, or legal assistance, is a prohibitive barrier for many Roma. The only solution for them is to rely on legal assistance provided by NGOs.

2.3. Bureaucratic challenges

15 years ago...an NGO helped me submit my documents and pay the fees. I am still waiting. They told me that I was missing some documents, and I brought them...I went to the Ministry of Interior...they told me that I should wait for a letter at my home address. I have not received this letter yet. A while ago the police came to my house to check I lived there...and told me that soon...I will be granted Macedonian citizenship.

Romani woman, Macedonia

Bureaucracy and institutional barriers also serve to exclude Roma from registering births, accessing documentation and other rights. Bureaucracy refers to excessively complicated administrative procedures, and institutional barriers to the policies, procedures, or situations that systematically disadvantage certain groups of people. Through the maintenance of overly strict, complicated, lengthy and inflexible civil registration procedures, bureaucracy plays a role in creating statelessness problems or putting Roma at risk of statelessness. While strict administrative procedures may affect the whole population, Roma are disproportionately affected, and thus indirectly discriminated against, due to their marginalisation. For example, the requirement in certain cases to provide registry officials with proof of paternity in the form of a DNA test is prohibitive for Roma who are unable to pay the fees or costs associated with travel to undertake the test or attend judicial processes due to their extreme marginalisation.

Government officials often claimed in interviews that Roma are treated as equal before the law, in the same way as non-Roma. In this way, they tended to deny any form of discrimination, using phrases such as *'all citizens are equal'* or *'ethnicity is not a relevant factor'*. However, Roma interviewees expressed fear of the authorities in some instances and frustration at the bureaucratic hurdles they faced in attempting to navigate unclear procedures. One civil registry official in Bosnia-Herzegovina hinted at these challenges, recognising the need *'not to be a slave to bureaucratic empty phrases'*.

While in some contexts, the lack of discretion afforded to officials or the failure of officials to utilise their discretion to provide documentation to those who – through no fault of their own – cannot meet the requirements of the procedure, is part of the problem. In others, the concern is the wide discretion that officials have, which enables them to directly discriminate against Roma.

Corruption also appears to be a problem, further undermining the efficiency and fairness of bureaucratic processes. One Roma interviewee in Ukraine for example, explained that she had lost all of her documents when she fled violence in her home town of Petrovka. When she later applied to be re-issued with her lost documents, the official she was dealing with demanded a bribe of 5,000 Hryvnias (approximately 170 Euro).

However, evidence did emerge that bureaucratic hurdles and access to justice can be overcome through a concerted effort. For example, in Serbia in 2010 the main barriers to accessing civil registration were the lack of an adequate legal framework and bureaucratic challenges. After many years of NGO awareness raising, advocacy and engagement with the state, The Law on Amendments to the Law on Non-Contentious Procedure²⁷ was passed in 2012. This law allows for those who are not registered in the birth registries and who cannot provide the required evidence of their birth, to submit a motion to the courts to determine their date and place of birth. This was a significant step forward towards a solution of the problem of legally invisible persons in Serbia, and was accompanied by training of public officers, awareness-raising campaigns, and other efforts. While acknowledging these notable improvements in recent years, it is important to recognise that work is still to be done to amend by-laws preventing undocumented parents from registering the birth of their children.²⁸

The links between bureaucracy, institutional barriers and marginalisation uncovered in the research interviews are explored in more detail in Sections 5 & 6.

²⁷ The Law on Amendments to the Law on Non-Contentious Procedure, the Official Gazette of RS, 85/2012.

²⁸ Praxis, *Analysis of the late birth registration procedures*, 2015, p.22. Available at: https://www.praxis.org.rs/images/praxis_downloads/OSCE_-_Final_Report.pdf.

3. Scope and Causes of Statelessness of Roma

3.1. Scope of Roma statelessness in the Western Balkans and Ukraine

ROMA STATISTICS

The size of the Romani population living in the research countries is mostly uncertain and disputed. Based on official statistics derived from census data, the percentage of Roma living in these countries ranges from 0.1% to 2.7%. In all research countries, the official census data is considerably - and in some cases dramatically - lower than the estimates reported by other sources.

Table 1. Official census data²⁹ on Roma in the region and Council of Europe (CoE) average estimates³⁰

Country	Year	Romani population	% of total population	Average estimate
Bosnia-Herzegovina	2013	12,583	0.4%	76,000
Montenegro	2011	8,305	1.3%	20,000
Serbia	2011	147,604	2.1%	600,000
Macedonia	2002	53,879	2.7%	197,000
Kosovo	2001	35,784	2.1%	37,500
Albania	2011	11,668	0.4%	115,000
Ukraine	2001	47,600	0.1%	260,000

The lack of comprehensive, accurate data on Roma in the research countries poses a problem. As discussed above, the hidden nature of the population points to historic patterns of discrimination and perceptions thereof, which undermine the confidence of Roma to self-identify. The low numbers presented in official government statistics could also point to a de-amplification of the scope of the population, which in turn has development and other resource allocation implications.

29 Bosnia-Herzegovina (www.popis.gov.ba/popis2013/knjige.php?id=2); Montenegro (www.monstat.org/eng/page.php?id=393&pageid=57); Serbia (<http://popis2011.stat.rs/?lang=en>); Macedonia (www.stat.gov.mk/PrikaziPoslednaPublikacija_en.aspx?id=54); Kosovo (<http://ask.rks-gov.net/en/kosovo-agency-of-statistics>); Albania (www.instat.gov.al/en/census/census-2011/census-data.aspx); Ukraine (<http://2001.ukrcensus.gov.ua/eng/>).

30 The average estimates were calculated by the Council of Europe based on unofficial sources (mainly claims by Roma civil society or leaders) as minimum and maximum estimates from which the median is derived. Available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680088ea9>.

Even in countries where there is relatively good information available regarding the Romani population, such as Serbia, Kosovo and Macedonia³¹, comprehensive data regarding the lack of identity documents and other statelessness related issues among Roma remains extremely scarce.

STATELESSNESS STATISTICS

If statistical data on Roma is incomplete and problematic, the statistical data on statelessness is even more so. Inevitably, the statistical information on *stateless Roma* – being the convergence of two statistically hidden and under-reported groups – is extremely thin. The nexus between lack of documentation and poor statistical representation is an important one to make, and a further pointer to the structural discrimination faced by these populations.

Fear of identifying themselves as stateless and/or Roma and frequent migration by Roma communities in the region poses further challenges to the collection of comprehensive data on the lack of identity documents and/or nationality. Additionally, although national legislation in most³² of the research countries does enshrine a definition of statelessness, in some cases these definitions fall short of international standards.³³ While statelessness in the region mainly results from registration related problems – and therefore relates to the exercise of the right to nationality (and proof of nationality) – it is also important to note that only Kosovo has a Statelessness Determination Procedure established in law.³⁴ This means that, while the main challenge is recognition of nationality, there are few legal provisions for the formal recognition of statelessness under the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) in the region, and consequently little incentive to accurately record and monitor statelessness in official statistics.

Surveys have been carried out in several countries to seek to determine the scope of the risk of statelessness among Roma populations in the region, but the findings from these should always be considered in context and with careful consideration of their methodology and comparability.

In Serbia, a UNHCR survey in 2015 found that at least 2,700 (3.9%) Roma who live in Roma settlements were at risk of statelessness.³⁵ A UNHCR survey of 13,770 Roma residing in

31 Data from the 2002 census in Macedonia, for example, is disaggregated by ethnicity, place of residence, sub-ethnic group, and language.

32 In Serbia, the *Law on Aliens* (No. 97/08) mentions stateless persons, but there is no definition in national law.

33 Law on Foreigners, Official Gazette of the Republic of Macedonia, No. 35/06; Law on Movement and Stay of Aliens, Official Gazette of Bosnia and Herzegovina, No.36/08; Law on Foreigners, Official Gazette of Montenegro, No. 82/08; Law on Civil Status, Republic of Kosovo, Law No.04/L –003; Law on Foreigners, Official Gazette of Albania, No.108/2013; Law of Ukraine On the Legal Status of Foreigners and Stateless Persons, No. 3773-VI of 22 September 2011.

34 Republic of Kosovo, *Administrative Instruction (MLA) No.05/2015 for the procedure and criteria of determining the status of the stateless person, the manner of acquisition of the citizenship by the stateless person and the person with refugee status*. Available at: www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_%28MPB%29_NR_05-2015_PER_PROCEDUREN_DHE_KRITERET_E_PERCAKTIMIT_TE_STATUSIT_TE_PERSONIT_PA_SHTETESI,MENYRA_E_FITIMIT_TE_SHTETISE_PER_PERSONIN_PA_SHTETESI_DHE_PERSONIN_ME_STATUS_TE_REFUGJATI.pdf.

35 UNCHR, *Persons at risk of Statelessness in Serbia: Progress Report 2010 – 2015*, 2016, Belgrade, p.6. Available at: <http://www.refworld.org/docid/57bd436b4.html>.

STATELESSNESS, DISCRIMINATION AND MARGINALISATION OF ROMA IN THE WESTERN BALKANS AND UKRAINE

Macedonia between 2008 and 2011, identified 6,514 individuals facing documentation problems, including 775 people who had never been registered in the birth registry books.³⁶ More recently, the Macedonian Young Lawyers Association estimated there to be 664 persons at risk of statelessness in the country, with approximately 70% of these being Roma.³⁷

A UNHCR and UNICEF survey of 7,166 Roma conducted in Montenegro in 2008 found that 2,767 of those surveyed lacked personal documentation.³⁸ The children of refugees were disproportionately impacted on by lack of birth registration with 70% being unregistered, compared to 30% of children whose parents were local to Montenegro.³⁹ Data from 2013 additionally demonstrates a discrepancy in birth registration rates, with those living in Roma settlements having a 5% lower rate of registration than the wider Montenegrin population.⁴⁰

In Albania, 7,443 persons self-identified as being stateless in the 2011 national census, but this data is not disaggregated by ethnicity and no other data on Romani statelessness in the country exists.⁴¹ In Ukraine, the last census carried out 2001 reported 82,600 stateless persons and 40,400 who did not specify their citizenship.⁴² The State Migration Service reported 5,733 stateless persons with residence permits in 2015. The estimates for the total Romani population in Ukraine also vary dramatically (see Table 1), but the Ombudsman and NGOs have estimated that around 10% of Roma are undocumented.⁴³

Collecting reliable data on the number of stateless people residing in a country poses significant difficulties. Although statelessness may be mapped to a greater extent in Europe than other regions of the world, there are still many issues with the accuracy of data, with lack of disaggregated data or other characteristics just one of many challenges.⁴⁴

36 Commissioner for Human Rights of the Council of Europe, *Report following his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012*, April 2013, p.28. Available at: <https://rm.coe.int/16806db8a1>.

37 Macedonian Young Lawyers Association (2015), *Regional Research on Statelessness: Macedonia, Serbia, Kosovo, Montenegro, Bosnia and Herzegovina, Croatia*, p.8.

38 UNHCR and UNICEF, *Civil Registration and the Prevention of Statelessness: a Survey of Roma, Ashkaelia and Egyptians in Montenegro*, 2009, pg. 14. Available at: https://www.unicef.org/montenegro/Booklet_Civil_registration_of_RAE_2009_ENG.pdf.

39 *Ibid*, p.14.

40 UNICEF & MONSTAT, *Montenegro and Montenegro Roma Settlements Multiple Indicator Cluster Survey: Monitoring the situation of women and children*, 2013. Available at: <https://app.box.com/s/zq4l86xhf53ck6gp2rftbr3cj3jazgdj>.

41 See: <http://www.instat.gov.al/al/census/census-2011/t%C3%AB-dh%C3%ABnat-e-census-2011.aspx>.

42 State Statistic Committee of Ukraine (2004), *First All-National Population Census: historical, methodological, social, economic, ethnic aspects*, Institute for Demography and Social Studies of the NAS of Ukraine, p.109. Available at: http://2001.ukrcensus.gov.ua/d/mono_eng.pdf.

43 Office of the Ombudsman of Ukraine, *The Conditions of the Implementation of the Roma State Policy*, 2015, p.10. Available at: http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf (in Ukrainian).

44 Institute on Statelessness and Inclusion, *The World's Stateless*, Wolf Legal Publishers, December 2014, p.9. Available at: <http://www.institutesi.org/worldsstateless.pdf>.

In June 2017, UNHCR published its annual Global Trends report setting out the number of people recorded as falling under its statelessness mandate at the end of 2016.⁴⁵ According to these figures, in Albania there are 4,921 stateless persons, in Bosnia-Herzegovina there are a reported 49 persons, 600 in Macedonia, 3,237 in Montenegro, 2,373 in Serbia and Kosovo, and 35,363 persons reported in Ukraine.

However, it should be noted that in some cases, local NGOs regard these figures as an under-representation of the problem. As recognised by UNHCR itself, the data reported is generally provided by governments, based on their own definitions and methods of data collection, and some countries may include persons with undetermined nationality in their reported statelessness figures.⁴⁶ In Macedonia, data on the number of stateless persons in the country collected by the Macedonian Young Lawyers Association is similar to the figure reported by UNHCR. The figure reported by UNHCR for Bosnia-Herzegovina is based on the known number of persons *at risk of statelessness* identified through the joint project with Vaša Prava.

Such complexities, merely serve to illustrate further one of the key challenges to addressing Roma statelessness in the region: namely the lack of reliable data on the scope and extent of the problem.

3.2. Causes of Roma statelessness in the Western Balkans and Ukraine

THE WESTERN BALKANS – SUCCESSOR STATES OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

When Roma came with other internally displaced persons in 1999, I believe more than 80% of them were without any document.

Government Official, Montenegro

I was born in Germany, but I do not see myself as German. My mother was born here...and my father was born in Kosovo... my life is here, I see myself as Montenegrin.

Romani woman, Montenegro

Statelessness in the Western Balkans is often linked almost exclusively to Roma. There are several causes for this, including the historical context and specifically the impact and aftermath of conflict and displacement in the 1990s, as well as barriers to civil registration, and bureaucratic hurdles.

The disintegration of the Socialist Federal Republic of Yugoslavia, changing citizenship laws and large-scale displacement in the 1990s left many people in the Western Balkans at risk of statelessness. Romani communities have been, and still are, disproportionately impacted, and

⁴⁵ UNHCR, *Global Trends: Forced Displacement in 2016*, 2017, pp.60-64. Available at: <http://www.unhcr.org/5943e8a34>.

⁴⁶ UNHCR, *Global Trends: Forced Displacement in 2016*, 2017, pp.48. Available at: <http://www.unhcr.org/5943e8a34>.

often fall outside the reach of procedures designed to help such people. As minority citizens of the former Yugoslav republics, the conflicts had a huge impact on Romani communities, provoking the forced displacement of hundreds of thousands, as well as significant changes in the determination of citizenship in the newly formed republics, and the loss or destruction of civil registers during the Kosovan conflict in 1999. Many Roma were also victims of war crimes.⁴⁷ For the displaced, and particularly the already marginalised Roma, the situation was further aggravated by the destruction or disappearance of registers in territories affected by the war. The creation of new citizenship laws and procedures in a post-conflict context of mass displacement, followed by later declarations of independence by Montenegro in 2006 and Kosovo in 2008, added additional barriers and layers of complexity to matters of citizenship and documentation. While many could reconstruct their personal histories and records in the aftermath, others – and particularly the most marginalised, including many Roma – were left behind in a legal limbo, deprived of valid personal records and documentation.⁴⁸

The avoidance of statelessness was a key concern of the parties to the peace process, the Council of Europe and UNHCR at the time. An expert meeting on citizenship legislation led to the adoption by the Council of Europe of a set of Principles aiming to safeguard rights in this context.⁴⁹ Although not all the safeguards enshrined in the Principles were adopted by the new states, the continuity of citizenship of the republics of the former Yugoslavia was maintained, meaning that large-scale statelessness within the region was avoided. However, the way this principle was applied by some successor states resulted in difficulties for those who were either not living in the successor state of their citizenship, or were not able to provide proof of citizenship due to the destruction or disappearance of registers. In many cases, successor states also privileged a dominant ethnic group, applying nationality policies in a discriminatory way.⁵⁰ Marginalised minorities, particularly Roma, were often excluded either through direct discrimination, or due to low rates of civil registration.

The legacy of this historical context continues to impact Roma in the region. Displacement has played a role in the family histories of many Roma in the Western Balkans, making the nexus between displacement and documentation an important one to consider. The present-day documentation issues faced by many Roma in the region stem not only from generations of social exclusion and discrimination, but also, in many cases, from patterns and the consequences of forced displacement and migration in the 1990s.

47 Zeidler K, *Prosecuting War Crimes against Roma in the Yugoslav Wars: The Case of Skocic (Zvornik V) at the Serbian War Crimes Tribunal*, Roma Rights 1/2017: Roma and Conflict: Understanding the Impact of War and Political Violence, 2017. Available at: <http://www.errc.org/roma-rights-journal/roma-rights-1-2017-roma-and-conflict-understanding-the-impact-of-war-and-political-violence/4577/5>.

48 UNHCR, *Report on Statelessness in South Eastern Europe*, 2011, pp. 4-5. Available at: <http://www.refworld.org/docid/514d715f2.html>.

49 UNHCR, *Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia*, European Series 3:1, 1997. Available here: <http://www.unhcr.org/46e660582.pdf>.

50 Krasniqi G, *Country Report on Citizenship Law: Kosovo*, EUDO Citizenship Observatory, European University Institute, 2015. Available at: http://cadmus.eui.eu/bitstream/handle/1814/34477/EUDO_CIT_2015_03-Kosovo.pdf;sequence=1.

One of the main causes of (risk of) statelessness in the region was and continues to be the lack of birth registration, or lack of proof thereof. Birth registration is the primary requirement for being entered in citizenship registries. Parents who are undocumented are commonly barred from registering their children's births, thereby perpetuating and passing on the risk of statelessness from generation to generation. Another common problem is the requirement to register permanent residence to obtain ID documents and register births. Complex and difficult to access bureaucratic processes are another common issue in the region, undermining the efficacy and reach of registration procedures and thus increasing the risk of statelessness.

THE WESTERN BALKANS - ALBANIA

A [non-Roma] friend of my husband managed to register his daughter. Like my parents, he had lived in Germany with no documents. Despite this, he managed to register his daughter. What can I say, my husband doesn't know anyone; they see us as Roma and say – come on they do not understand.

Romani woman, Albania

Some of the causes of statelessness in Albania are similar to those in other Western Balkan countries. The most common cause of (risk of) statelessness among Roma, as members of an impoverished and marginalised community, relates to their access to civil registration, and birth registration in particular. In many instances, Roma lack the required documentation to fulfil legal requirements not only for birth registration, but also the registration of deaths, marriages, residence, divorce, child custody, and more. Applications for registration are routinely rejected, heightening the risk of statelessness among these communities.

Many Roma from Albania migrate to neighbouring Greece to find work, and often live undocumented existences there. Many of those who have children cannot register their births in Greece, making it difficult for them to register their children when they return to Albania. Roma in Albania also often live in isolated areas away from urban centres, and in particular health services. A lack of specialised doctors in regional hospitals and other factors contribute to rural women giving birth at home, and therefore not benefitting from birth registration at hospitals. In cases of family breakdown, this isolation can be magnified, particularly for women, making it even more difficult to register life events or secure documentation. Finally, a general lack of information about the birth registration process affects many Romani communities, with the authorities failing to facilitate access to procedures for registration.

While many of these problems affect everyone, not just Roma, discriminatory attitudes lead to Roma being disproportionately impacted. There have been a few efforts to address this situation, including a 2014 campaign by the Directorate of Civil Status, in collaboration with civil society organisations, to identify unregistered persons (with priority given to children) in 11 regions of the country and assist with their registration. Through this campaign, around 300 unregistered Roma children were identified, of which, approximately half were registered. Furthermore, through an agreement between the Ministry of Foreign Affairs and the NGO, Tirana Legal Aid Society, hundreds of Roma children born in Greece have received consular support to be registered.

However, statelessness remains a largely neglected and poorly understood issue in Albania, with no state institution having a direct mandate to deal with the problem.

UKRAINE

While most Roma in Ukraine have citizenship, many are at risk of statelessness as they are unable to prove their right to nationality under Ukrainian law. State succession in the aftermath of the dissolution of the USSR in 1991, when people living in the former Soviet Republics faced a sudden change in nationality, continues to be a major cause of statelessness among both Roma and non-Roma populations. Although more than 25 years have passed, many people in Ukraine still hold a former USSR passport or birth certificate as their only form of identification. The complicated procedure for them to acquire Ukrainian citizenship, lack of outreach campaigns or simplified procedures, marginalisation, lack of awareness, and living in rural areas, all contribute to the problem. For the children of those with out-dated documents, the situation is even worse, as they are denied birth certificates due to their parents' lack of documentation.

The refusal to recognise documents issued by the authorities in the neighbouring separatist region of Transnistria is also relevant. Transnistria is not recognised as a state by the international community, including Ukraine, meaning those who migrate to Ukraine with Transnistrian documentation are undocumented in the territory of Ukraine. This is often the case of persons – including Roma – born within the territory of Transnistria in the early 1990s who moved to Ukraine. The ongoing Russian occupation of Crimea and the armed conflict in the Eastern regions of Ukraine, in particular the Luhansk and Donetsk regions, with a rise of the self-proclaimed Luhansk People's Republic and Donetsk People's Republic, and resulting displacement can also cause (risk of) statelessness. In response to the displacement crisis, the Ukrainian Parliament took legal steps to provide for the registration of internally displaced persons (IDPs). However, registration is possible only for those who have official documentation. Undocumented IDPs, including Roma, are thus at risk of statelessness.

The lack of birth registration is also a significant challenge in Ukraine. Unless at least one parent has an official document, it is not possible to register the birth of a child. In practice, undocumented parents who intend to register the birth of a child will first have to establish their own citizenship or at least provide documentary proof of the legality of their stay in Ukraine. The additional requirement to produce a medical certificate confirming the child's birth, as well as the penalty fee for late registration, also impact on the many Roma who give birth outside of hospitals, due to their socio-economic situation (see Section 6 on access to healthcare).

Many of these causes of statelessness are perpetuated over generations because current legislation overlooks undocumented persons. Every provision regulating civil registration procedures requires proof of legal stay in Ukraine. Thus, stateless persons or those at risk of statelessness, without documentation, cannot apply to any state authority to regularise their situation. For Roma, the situation is even more precarious, as they not only suffer from lacunas in the legal framework but also from the discriminatory implementation of its provisions.

4. International and regional obligations and frameworks

4.1. Relevant international and regional standards

All of the research countries have a strong record of accession and ratification of the core international treaties relevant to statelessness and human rights, which include: the Convention Relating to the Status of Stateless Persons, Convention on the Reduction of Statelessness, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Discrimination Against Women. With the exception of Macedonia, which has not yet acceded to the Convention on the Reduction of Statelessness, all the research countries are party to all of these treaties.⁵¹

The obligations of research countries under these treaties extend to the issues covered under this report, including minority rights, statelessness, documentation and birth registration. For example, Article 7 of the Convention on the Rights of the Child obligates states to register every child immediately after birth, and to ensure that no child is left stateless. Similarly, Article 5(d)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination prohibits race and ethnic discrimination in relation to the right to nationality. Consequently, these treaty bodies are relevant mechanisms in ensuring that the research countries uphold their obligations. The Committee on the Rights of the Child for example, has made relevant recommendations to countries under review.⁵² Furthermore, many of these countries have received relevant recommendations from other states under the Universal Periodic Review.⁵³

Given the impact of state succession on Roma statelessness in the region, the 2016 Human Rights Council Resolution on Human Rights and Arbitrary Deprivation of Nationality is also of relevance to the research countries. According to paragraph 6 of the Resolution, the Human Rights Council:

*Encourages States to grant their nationality to persons who had habitual residence in their territory before it was affected by the succession of States, especially if those persons would otherwise become stateless.*⁵⁴

51 For a more detailed overview of the international legal framework related to statelessness, see Institute on Statelessness and Inclusion, *World's Stateless*, Wolf Legal Publishers, December 2014, pp. 19-22. Available at: <http://www.institutesi.org/worldsstateless.pdf>.

52 Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Serbia* CRC/C/SRB/CO/2-3, 7 March 2017, para.31. Available at: <http://www.refworld.org/docid/58e76fc14.html>.

53 See for example recommendation made to Ukraine by Portugal under the 2nd cycle (14th session) to «ratify the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness», A/HRC/22/7/Add.1. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/uaindex.aspx> (Matrix of Recommendations).

54 UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: resolution / adopted by the Human Rights Council*, 15 July 2016, A/HRC/RES/32/5, available at: <http://www.refworld.org/docid/57e3dc204.html>.

In addition to the UN Conventions, states also have obligations under regional treaties.⁵⁵ All of the research countries are party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and all but Serbia are party to the European Convention on Nationality. However, only Montenegro is party to the European Convention on the Avoidance of Statelessness in relation to State Succession (although Ukraine has signed but not ratified the treaty).

4.2. Addressing Roma rights through European regional frameworks

Concerns about Roma rights were largely absent from political discussions surrounding the enlargement of the European Union until the early 2000s, when its place gradually became more prominent. After enlargement, the EU became more actively involved in raising awareness about the challenges faced by Roma and preventing antigypsyism.⁵⁶ With the publication of European Council conclusions in December 2007⁵⁷, Roma rights and inclusion became pivotal to the EU agenda. In 2008, the European Parliament adopted a resolution recognising, ‘*the lack of progress in combating racial discrimination against the Roma and in defending their rights to education, employment, health and housing*’ in both candidate and member states, urging the European Commission to implement the Council conclusions and develop a European framework for Roma inclusion.⁵⁸ In 2011, the European Commission did indeed adopt an EU Framework for National Roma Integration Strategies up to 2020, inviting member states to present their strategies for Roma inclusion to the Commission.⁵⁹

EU ENLARGEMENT IN THE WESTERN BALKANS AND ROMA RIGHTS

Article 49 of the Treaty on the European Union states that any European country may apply for membership if it respects the democratic values of the EU and is committed to promoting them.⁶⁰

55 For a more detailed analysis of international and regional human rights treaty obligations related to statelessness, see Institute on Statelessness and Inclusion, *The World's Stateless*, Wolf Legal Publishers, December 2014. Available at: <http://www.institutesi.org/worldsstateless.pdf>; and European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners*, 2015. Available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf.

56 Vermeersch P, *Between Europeanisation and discrimination: the Roma as a special focus of EU policy in Romani mobilities in Europe: Multidisciplinary perspectives* International Conference, 14-15 January 2010, University of Oxford. Available at: <https://romanimobilities.files.wordpress.com/2010/01/conference-proceedings1.pdf>.

57 Council of the European Union, Brussels European Council 14 December 2007, *Presidency Conclusions*, Brussels, 14 February 2008 16616/1/07 REV 1, 2008. Available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/97669.pdf.

58 European Parliament, *A European strategy on the Roma*, PE 401.031 European Parliament resolution of 31 January 2008 on a European strategy on the Roma, 2008. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0035+0+DOC+XML+V0//EN>.

59 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2011), An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 173 final, 5 April 2011. Available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011DC0173>.

60 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01, Article 49. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>.

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The candidate country must meet key accession criteria, including stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. New members are admitted to the EU only when they can prove they are fully able to comply with all standards and rules and have the consent of the EU institutions, EU member states, and their citizens.

Every year, the European Commission adopts its 'Enlargement package' - a set of documents explaining its policy on EU enlargement, setting out its assessment of the situation in each candidate country and potential candidate and its guidelines on reform priorities.⁶¹ Roma rights regularly feature in this process. For example, in its 2016 Albania Report⁶², the Commission emphasised that living conditions of Roma must be improved, and raised concern that they continue to face discrimination, particularly in access to education, employment, housing, health and civil registration. Similar concerns were raised in relation to the situation of Roma in Bosnia-Herzegovina⁶³, Macedonia⁶⁴ and Serbia.⁶⁵

Since 2011, the Commission has also organised the so-called 'Roma seminars', bringing together key stakeholders to put in place concrete measures and ensure adequate implementation, follow-up and monitoring of national Roma strategies and related action plans.⁶⁶

A key challenge for the Western Balkans in this process of accession has been addressing antigypsyism, as highlighted by the European Commission in 2016:

*The difficult situation of Roma remains broadly unchanged and Roma, particularly in the Western Balkans, continue to be the victims of discrimination and social exclusion. The policy framework for Roma integration is in place in all enlargement countries, but governments need to enhance their efforts to implement the existing commitments and allocate the necessary resources at central and local level.*⁶⁷

COUNCIL OF EUROPE

The research countries are within the Council of Europe and are parties to the European Convention on Human Rights, the Framework Convention for the Protection of National

61 For more information see: https://ec.europa.eu/neighbourhood-enlargement/countries/package_en.

62 The Albania report is available here: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf.

63 The Bosnia-Herzegovina report is available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf.

64 The Macedonia report is available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf.

65 The Serbia report is available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf.

66 For an example of a Conclusion adopted following one of these seminars, see Conclusion of the Roma Seminar 2016. Available at: https://eeas.europa.eu/sites/eeas/files/albania-eu_seminar_conclusions_en.pdf.

67 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy*, Brussels 9.11.2016 COM(2016) 715 final. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_strategy_paper_en.pdf.

Minorities, and the European Social Charter (although Kosovo's status, and so its place in the Council of Europe, remains unresolved).⁶⁸

All of the research countries are subject to scrutiny by the European Commission against Racism and Intolerance (ECRI), which monitors racism, xenophobia, antisemitism, intolerance and discrimination. In its monitoring activities, ECRI closely examines the situation of Roma. For example, in its 2016 report on Bosnia-Herzegovina, it stressed that “*an overarching problem is the fact that many Roma still lack identity documents and birth certificates*”.⁶⁹ In its 2017 report on Montenegro, ECRI recommended “*amending the Law on Free Legal Aid to enable Roma at risk of statelessness to benefit from it during the late birth registration procedure*”.⁷⁰

The Council of Europe has also adopted a Thematic Action Plan on the Inclusion of Roma and Travellers⁷¹, and in 2011 established an Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM).⁷²

The situation of Roma in the Balkans has also been raised by the Commissioner for Human Rights of the Council of Europe, whose 2012 report on the Human Rights of Roma and Travellers in Europe noted:

*...many factors contribute to hindering Roma access to documents and effective citizenship, including armed conflicts and forced migration, extreme poverty and marginalisation and, above all, the lack of genuine interest on the part of authorities to tackle and resolve the issues. These difficulties are amplified when Roma find themselves in a situation of forced displacement. Moreover, certain consequences of state succession, such as restrictive citizenship laws, have created additional obstacles that disproportionately affect Roma. As a result, many Roma in Europe are stateless: they are not considered as nationals by any state and are frequently denied basic social rights and freedom of movement. The problem exists in many countries in Europe, but it is particularly acute in the western Balkans.*⁷³

68 The extent of adhesion varies from the 51 (of its 98) paragraphs accepted by Bosnia-Herzegovina to the 88 accepted by Serbia. None of the countries has accepted the system of collective complaints.

69 European Commission against Racism and Intolerance (2016), *ECRI Report on Bosnia and Herzegovina* (fifth monitoring cycle), Adopted on 6 December 2016 CRI(2017)2, para.69. Available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bosnia_Herzegovina/BIH-CbC-V-2017-002-ENG.pdf.

70 European Commission against Racism and Intolerance (2012) *ECRI Report on Montenegro* (fifth monitoring cycle), Adopted on 20 June 2017, CRI(2017)37, para 62. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Montenegro/MNE-CbC-V-2017-037-ENG.pdf>.

71 Council of Europe Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019). Available at: <https://rm.coe.int/16806cb0a6>.

72 For further information about CAHROM's mandate see: <http://www.coe.int/en/web/portal/cahrom>.

73 Commissioner for Human Rights of the Council of Europe, *Human rights of Roma and Travellers in Europe*, 2012, p.24. Available at: https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_Cou-vHumanRightsOfRoma_WEB.pdf.

THE ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE

The OSCE also plays an important role with its Office for Democratic Institutions and Human Rights (ODIHR) which is specifically tasked to promote social inclusion and human rights protection of Roma.⁷⁴ In 2003, the OSCE adopted an Action Plan on the situation of Roma and Sinti, committing participating states ‘to be proactive in ensuring that Roma and Sinti people... have all necessary documents, including birth certificates, identity documents and health insurance certificates’ and ‘to work in partnership with Roma and Sinti civil society organizations...in resolving problems related to the lack of basic documents’.⁷⁵ Under the Action Plan, particular attention was given to Roma in crisis and post-crisis situations, raising awareness about their vulnerability and their difficulties in accessing birth certificates and identity documents, in particular in South-Eastern Europe and Ukraine. Between 2012 and 2014, the ODIHR implemented the Best Practices for Roma Integration (BPRI) project for the Western Balkans, aiming to contribute to the integration of Roma by facilitating the exchange of good practices and lessons learned in the fields of anti-discrimination, housing, participation in public life and local policy-making and regional co-operation.⁷⁶

The High Commissioner on National Minorities (HCNM) of the OSCE focuses on disputes involving national minorities that have an international character and that have the propensity to cause inter-state tension. The HCNM provides early warning if, as a result of these disputes, imminent threats to peace and security between countries are perceived and engages in activities to de-escalate tensions. The HCNM’s approach of ‘quiet diplomacy’ is grounded in human rights law. The High Commissioner’s office is potentially available to any minority group within the 57 participating states of the OSCE whose situation falls within the HCNM’s mandate. The High Commissioner published reports specifically related to the situation of Roma in the OSCE area in 2000⁷⁷, and 2008.⁷⁸

OTHER RELEVANT INITIATIVES

Several other EU and non-EU projects in the Western Balkans also aim to promote the social inclusion of Roma communities. The *Decade of Roma Inclusion 2005-2015* was one of the most important attempts to reduce the socio-economic gap between Roma and non-Roma in the 12 signatory States, which included all of the Western Balkans with the exception of Kosovo. The Decade prioritised the areas of education, employment, health and housing, mainstreaming non-discrimination, poverty reduction and gender equality.⁷⁹

74 For further information about ODIHR’s mandate on Roma and Sinti Issues see: <http://www.osce.org/odihr/154691>.

75 OSCE, *Decision No. 3/03: Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (MC.DEC/3/03)*, 2003, p.12. Available at: <http://www.osce.org/odihr/17554>.

76 For more information about the project and its activities, please visit: <http://bpri-odihr.org/about-the-project.html>.

77 HCNM, *Report on the situation of Roma and Sinti in the OSCE Area*, 2000. Available at: <http://www.osce.org/hcnm/32350?download=true>.

78 HCNM, *Recent Migration of Roma in Europe*, 2008. Available at: <http://www.osce.org/hcnm/78034?download=true>.

79 For further information see: <http://www.rcc.int/romaintegration2020/pages/4/roma-decade-and-the-eu>.

The Decade of Roma Inclusion came to an end in 2015 and its goals are carried on by the Roma Integration 2020 initiative, implemented by the Regional Cooperation Council. Roma 2020 beneficiaries are Albania, Bosnia-Herzegovina, Macedonia, Kosovo, Montenegro, Serbia, and Turkey. For each beneficiary, a five-year strategy and action plan is put in place as well as a monitoring system providing for progress reports and monitoring reports.⁸⁰

For the last two decades, UNHCR has advocated on behalf of persons at risk of statelessness in Southeast Europe, mainly Roma, in partnership with civil society organisations and Roma mediators who reach out to, and provide legal assistance to persons affected. Joint advocacy has led to amendments to laws and regulations governing civil registration and nationality, and legal aid has reached thousands of individuals who were able to confirm their identity and nationality. These efforts are often in collaboration with other international and regional actors. One such joint initiative of the OSCE HCNM, UNHCR and the European Commission, was the Regional Conference on the Provision of Civil Documentation and Registration in South Eastern Europe in 2011, which resulted in a set of recommendations referred to as the ‘Zagreb Declaration’.⁸¹ The Declaration encourages increased regional cooperation as an essential factor for achieving solutions. UNHCR actively supports such cooperation between national authorities in the region. Furthermore, civil society organisations long engaged in providing legal aid to persons at risk of statelessness in Southeast Europe formalised their collaboration in 2012 through the establishment of the Western Balkans Legal Aid Network (WeBLAN), facilitating their cross-border efforts towards resolving cases of statelessness and those of persons at risk of statelessness.⁸²

⁸⁰ For further information see: <http://www.rcc.int/romaintegration2020/home>.

⁸¹ For further information see: <http://www.osce.org/hcnm/85249>.

⁸² More information about the Network is available at: https://www.facebook.com/pg/WeBLAN-1386219721685570/about/?ref=page_internal; see also: <http://www.statelessness.eu/blog/addressing-statelessness-western-balkans-%E2%80%93-ens-and-weblan-joint-workshop>.

5. Documentation and Civil Status

In Sections 5 and 6, we present a synthesis of the findings across all the research sites on the two central themes: Documentation and Civil Status, and Marginalisation, Poverty and Exclusion.

One of the key issues relating to the risk of statelessness among Roma populations highlighted by all interviewees (state, non-state, and Roma), is access to civil status and identity documentation. Many interviewees representing state authorities or international agencies were of the view that a lack of information and awareness within Romani communities about the importance of documentation was one of the key challenges. Furthermore, their responses often demonstrated stereotypical views of Roma, including that Roma were ‘indifferent’ to being documented, or ‘avoided being in the system’, or that their ‘traditional lifestyle’ made them responsible for their own lack of documentation.

The [Government Department] does not differentiate among applicants based on ethnicity and nationality. Every person who fulfils the requirements according to the Law on Citizenship is able to obtain Macedonian nationality. Ethnicity has no influence during the procedure... Through our experience with the Roma I have noticed that they are not sufficiently informed and educated on this issue... I have not noticed any other differences. (Government Ministry, Macedonia)

Therefore, it is not surprising that awareness-raising campaigns were among the first measures to be recommended by the authorities as a solution.

The only solution is raising the interest of the Roma population for integration into the institutions of the system, meaning that Roma need to be interested to resolve their status in the first place. (Government Ministry, Montenegro)

In contrast to this official perspective, many Romani interviewees revealed both an awareness of the importance of documentation and a strong desire to address their lack of documentation. However, they also described a series of financial and bureaucratic challenges that they faced when trying to do so.

Four [of my] children don't have birth certificates because I didn't have money to even survive when they were born... I knew that I have to register them. They were born at home. I started a procedure for late registration, and for the past 10 years I can't register them. I was required to provide many documents. They asked for DNA analysis which is expensive and we could not pay for it... The problem was mostly due to the fact that we didn't have money to pay for the analysis. (Romani man, Macedonia)

The case of a young Romani man in Serbia, who ‘realised how important it was to have papers’ as a teenager, demonstrates both his awareness and desire to resolve his documentation issues and the bureaucratic challenges he faced in seeking to do so. In 2014, with

the assistance of a friend who was employed as a court officer, this man initiated and successfully completed the procedure for determining the date and place of his birth and received a birth certificate for the first time. However, the registry office did not simultaneously register his citizenship, which it should have done as his mother was a Serbian citizen. Thus, even though he finally had a birth certificate, he could not obtain a citizenship certificate, and without it, he could not obtain an ID card, a precondition for the enjoyment of almost all rights in Serbia. He tried several times to initiate a citizenship determination procedure at different police stations, but each time he was refused. However, he did not give up and approached an NGO for assistance to finally resolve his case.

Many Romani interviewees were well aware of the clear link between documentation and access to services, employment and basic freedoms.

Not having documentation causes problems on many areas of my life. Namely, I cannot find a job... because I cannot be registered as employee if I do not have ID... There is no way out for me unless I receive documents... Since I do not have documents, I cannot prove who am I, and often have to spend night in prison and not being guilty for anything... If I want to have telephone number I must register my number by using personal ID also, and now for me it is not possible... Everybody thinks of me as different... I have no reputation or status. And I have no way to explain to my children why this is happening to us. (Romani man, Montenegro)

Several also clearly articulated the practical, emotional, and psychological impact on their and their children's lives of not having documentation:

My children as well as us, compared to the children that have birth certificates, live a more difficult life. If they are stopped by the police and asked for documents, my wife and I have to inform the police that they have no documents. If they become sick, I have to indebt myself to pay for their medical treatment because they don't have health insurance. (Romani man, Macedonia)

I do not know how I perceive myself. I have fear. It is deep inside of me. It is because I cannot live as others; I cannot find a proper job; I do not know if anyone will hire me after I graduate. They will for sure ask for documents, which I will not have. I do not want to stay without anything in my life. (Romani woman, Montenegro)

Some officials did acknowledge that the state had a role to play in addressing documentation issues and that discrimination was a factor.

The...authorities [are] not doing enough to enrol [Roma] in registers and determine their nationality... (Municipal Registry Officer, Bosnia-Herzegovina)

They surely face discrimination, and we all are aware that the Roma community is discriminated. Unfortunately, it exists. (Municipal Official, Serbia)

But the prevailing official response was one that first and foremost placed responsibility upon Roma themselves:

Firstly, the most responsible are Roma who have been passive for many years when it comes to solving their problems. Responsibility lies also in the community, which means that we all need to get involved, primarily services and institutions, to resolve this problem in the best possible way for both society and Roma population. (Government Ministry, Montenegro)

And sometimes with NGOs:

We have cases of third generation undocumented persons. This means that if the parents are not registered in the civil records, they can't register their children. This is also a call for you as NGOs to work on raising awareness among the parents. (Government Ministry, Macedonia)

Among non-state actors, there was clear recognition across research countries that discrimination and lack of state action were key factors in perpetuating documentation problems:

Roma are the largest group of persons at risk of statelessness. The state doesn't recognise them and access to other rights. It is necessary to establish clear procedures that will facilitate access to civil registration, residence registration and obtaining of identification documents. The state should relieve socially vulnerable groups of costs during extraction of identification documents. (International Agency, Bosnia-Herzegovina).

The problem Roma have in their daily lives is that they face a lot of discrimination by the institutions, they are being rejected service, are not paid attention to and they face a different treatment than others. (NGO, Macedonia)

It is evident that documentation remains a significant challenge for Roma and one that must be tackled to reduce the risk of statelessness. The discrepancy between the prevalent perspective of officials on the one hand, and that of Roma and civil society on the other, points to an incomplete or inaccurate diagnosis of the root cause of Romani documentation problems, which has led to a focus on awareness raising within the community as the primary – and thus incomplete – solution. Two areas in which Roma appear to face particularly strong challenges in relation to civil documentation are birth registration and permanent residence. These are explored further below.

5.1. Birth Registration

Every child's right to immediate birth registration is protected under the UN Convention on the Rights of the Child.⁸³ Birth registration establishes the key information (including place and date of birth and identity of the parents) required to determine the nationality of the child. Therefore, while the failure to register birth does not make the child stateless, it does

⁸³ UN Convention on the Rights of the Child, 1989 (Article 7).

heighten the risk of statelessness. This is particularly so when the child belongs to a minority whose belonging is questioned.⁸⁴

Challenges relating to accessing birth registration were identified in all research countries. Evidentiary requirements and complex administrative procedures were cited as the main barriers encountered when seeking to register births.

Several Romani interviewees reported women giving birth at home rather than in a healthcare setting, which posed a significant barrier to registration due to the additional documentation required.

In Macedonia, one Romani woman said as follows:

We have seven children. Except for my youngest daughter, none of my children have been registered. I have six undocumented children. I gave birth to my youngest daughter in hospital, that's why she was registered. I gave birth to the six other children at home, that's why they are not registered.

She sought help from an NGO to register her children, which is now paying for the DNA analysis required by the authorities to process the registrations. However, her experience highlights the cyclical and inter-generational nature of documentation problems among Roma. Her undocumented status and lack of financial means prevented her from accessing healthcare, which in turn prevented her from giving birth in hospital, leading to her children's births not being registered as she could not afford the financial cost of the procedure, perpetuating the lack of documentation, the risk of statelessness and related financial difficulties through the next generation.

There have been improvements in recent years through state and non-state action to address access to birth registration. For example, in April 2012, a Memorandum of Understanding was signed between the Serbian Ministry of Public Administration and Local Self-Government, Ombudsman and UNHCR, resulting in a series of legal amendments leading to systemic solutions. This included, the adoption of new Serbian legislation in 2012 introducing a procedure to facilitate determination of birth for those whose births had remained unregistered for years.⁸⁵ This had a significant impact extending across the region, including to Montenegro, where a similar procedure was established in April 2015.⁸⁶

The Law in Serbia enables the determination of birth through a court procedure when the standard administrative procedure cannot apply, including where parents are deceased or have

⁸⁴ For more discussion on birth registration and statelessness, see Chapters 8 and 10 of Institute on Statelessness and Inclusion, *The World's Stateless*, January 2017. Available at: <http://www.institutesi.org/worldsstateless17.pdf>.

⁸⁵ Law on Amendments to the Law on Non-Contentious Procedure, Official Gazette of the Republic of Serbia (85/2012).

⁸⁶ European Commission, *Commission Staff Working Document for Montenegro*, 2015. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_montenegro.pdf.

no contact, or where there are no witnesses or other evidence to confirm the birth.⁸⁷ However, under the Serbian procedure, the court decision is not binding on the Ministry of Interior. The amendments in Montenegro are similar with one significant difference: the court's decision on the date and place of birth is binding on the administrative body that deals with citizenship, and must be respected.

In Bosnia-Herzegovina, UNHCR and civil society have delivered outreach programmes in Romani communities to encourage birth registration, and national legislation has also been amended⁸⁸ to ensure unlimited validity of documents such as birth certificates, and establish a more proactive role for social welfare centres, as well as a central civil registry across the different entities.⁸⁹ Nevertheless, the research data suggests that challenges remain and Roma continue to be disproportionately affected by documentation issues stemming from barriers to accessing birth registration.

There are Roma who do not have a valid [identity card], usually because they are unable to prove citizenship. A number of these people have invalid identity documents from countries in which they were born. We have cases that persons born in one of the republics of the former Yugoslavia now live in Bosnia-Herzegovina with invalid documents and they have children [here]. The problem with determination of citizenship arises. New-borns of such persons cannot acquire citizenship of Bosnia-Herzegovina by birth, and local authorities cannot determine the foreign nationality by origin to enrol it in the birth certificate. (Municipal Registry Office, Bosnia-Herzegovina)

To register a birth in Bosnia-Herzegovina, parents must provide copies of their own birth and citizenship certificates, even where they have a valid identity document. Parents without documentation will not be able to record the child's name within the legal deadline (30 days)⁹⁰ and the two-step late registration procedure is even more complicated and onerous. In 2013, around 200 unregistered births per year were being reported across Bosnia-Herzegovina.⁹¹ Children born outside hospitals, or to women who give birth under someone else's name to secure access to health insurance, are at heightened risk. Compounding the complexity of the procedures and lack of harmonisation across entities, one interviewee, a Municipal Registry Officer, reported an

⁸⁷ For more information and analysis, see Praxis, *Analysis of Practical Application of the Law on non-contentious procedure determining the date and place of birth*, 2014. Available at: http://www.praxis.org.rs/images/praxis_downloads/Analysis_of_Practical_Application_of_the_Law_on_Non-Contentious_Procedure_-_Determining_the_Date_and_Place_of_Birth.pdf.

⁸⁸ Law on Registers of Federation of Bosnia and Herzegovina (FBiH Official Gazette, no. 37/12 and 80/14); Law on Registers of Republika Srpska (RS Official Gazette, no. 111/09 and 43/13); Law on Registers of Brčko District (Official Gazette of Brčko District, 58/11).

⁸⁹ Bosnia-Herzegovina comprises two autonomous entities: The Federation of Bosnia-Herzegovina and the Republika Srpska. Along with a third region, the Brčko District, these entities are governed locally, with limited central government control.

⁹⁰ See Article 43 of the I Law on the Registers of FBiH (FBiH Official Gazette 37/14, 108/14) and Article 16 of the RS Law on the Registers (RS Official Gazette, 111/9,43/13). It must be noted that although registrars can lawfully take a statement from parents before an administrative authority and enrol the child in the registers, they often refuse and instead refer to the CSW to issue a decision on whether the child's name can be recorded.

⁹¹ Woldenberg S, *Access to Civil Documentation and Registration in South Eastern Europe: Progress and Remaining Challenges since the 2011 Zagreb Declaration*, 2013, pp. 15-16. Available at: <http://www.refworld.org/pdfid/5280c5ab4.pdf>.

excessively formalistic approach by the authorities, such as rejecting copies that are more than six months old or expired ID cards, further hindering access to birth registration for Roma.

In Serbia, one Romani interviewee described realising the importance of documentation when he was a teenager. With the help of an NGO he was able to register his birth when he was 18, but he could not acquire Serbian citizenship because only his mother was registered in the birth registry and she was a citizen of Bosnia-Herzegovina. To register the birth and name of a child through the regular procedure in Serbia, parents must submit their own birth certificates, ID cards, or passports.⁹² This means that children whose parents are undocumented cannot be issued a birth certificate and must go through legal determination procedures either for determination of personal name, subsequent birth registration or determination of the date and place of birth. Therefore, some children risk never being registered as they cannot fulfil the required criteria.⁹³ Roma living in informal housing, and particularly those from Kosovo, are disproportionately affected.⁹⁴

In Macedonia, when a birth certificate is issued at the point of registration, the child's citizenship is registered on the certificate. However, undocumented parents cannot complete their children's registration due to the evidentiary requirements, particularly when birth registration is late:

In terms of the birth registration procedure, statelessness can be a particular problem. This problem especially comes to light when we have cases of unregistered parents who can't register their children into the birth registry books. Especially among the Roma, ignorance is a particular issue, as they do not understand that since they have not been timely registered into the civil records, more evidence is needed to conduct the late registration, both for the parents and the children. (Government Ministry, Macedonia)

The documentary evidence required to register a child's name and birth in Macedonia is not set out in law, which means that practice varies and the evidence required is at the discretion of the registry officer. For late registration (after 30 days), the law allows officials to request additional information such as medical evidence or other civil documentation.⁹⁵ In some cases, where several years have passed since birth, the parents may need to obtain DNA analysis, presenting an additional costly barrier. In such cases, many registrars, particularly those in rural areas where they may have less experience of complex cases, can be more inclined to

92 Praxis, *The Right to Citizenship in the Republic of Serbia: a brief analysis of the remaining challenges*, 2014. Available at: http://www.praxis.org.rs/images/praxis_downloads/The_Right_to_citizenship_in_the_Republic_of_Serbia_-_a_brief_analysis_of_the_remaining_challenges.pdf.

93 Praxis, ISI, ENS, *Civil Society Submission on the right of every child to acquire a nationality under Article 7 CRC*, 2016. Available at: http://www.institutesi.org/CRC_Serbia_2016_additional.pdf.

94 Statistical Office of the Republic of Serbia and UNICEF, *Serbia Multiple Cluster Survey and Serbia Roma Settlements Multiple Indicator Cluster Survey 2014*, Final Reports, December 2014; UNCHR, *Persons at risk of Statelessness in Serbia, Progress Report 2010 – 2015*, 2016, pp. 8-9. Available at: http://www.unhcr.rs/media/docs/UN-HCR_Brosura_Apatridi_ENGLESKI.pdf.

95 Law on Records of Births, Deaths and Marriages, Official Gazette of the Republic of Macedonia, No. 08/1995, published on 15.02.1995, as amended in No. 38/2002, 66/2007, 98/2008, 67/2009, 13/2013, 43/2014, 148/2015, 27/2016, Articles 22 & 23.

require extensive documentation from applicants. This disadvantages Roma applicants who lack documentation but are nonetheless legally entitled to register their children.⁹⁶

In Montenegro too, Roma, especially those displaced from Kosovo, are disproportionately affected by problems with birth registration⁹⁷:

The main problems for Roma are related to obtaining personal documentation such as birth certificate, certificate of citizenship, proof of good conduct from mother countries; in our case usually ex-Yugoslav republics who were involved in the war. (Government Ministry, Montenegro)

Surveys conducted by UNHCR and UNICEF of Roma in Montenegro in 2009 found that nearly 40% of those surveyed (more than half of whom were children) had incomplete personal documentation, and needed to initiate a legal procedure to resolve this.⁹⁸ Of those who were not registered, 66% were displaced persons and three quarters were children, particularly children born in Montenegro whose parents had fled Kosovo in 1999. More recent data has shown that the average birth registration rate in Montenegro of 99.4% drops to 94.5% for children under five living in Romani communities.⁹⁹

In Albania, children born abroad, especially in Greece and to Romani parents, face particular difficulties with registering their births and acquiring or confirming Albanian (or Greek) nationality. Albanian Roma often travel irregularly to Greece for work to overcome poverty. If they have a child in Greece, while the birth is often recorded, the document provided is incomplete for Albanian registration purposes, and does not include key information such as the name of the child. Thus, the child is left at risk of statelessness as, when the family returns to Albania, the Albanian authorities refuse to register the birth on the basis of that document, even if the parents of the child are Albanian nationals.

In Ukraine, birth registration is also a challenge for undocumented Roma. In practice, undocumented parents cannot register the birth of a child until their citizenship is established, or until they are issued identity documents or they have documented proof of the legality of their stay in Ukraine. Additionally, to proceed with birth registration, a medical certificate confirming the child's birth, or in the case of a birth outside of a medical institution, a document issued by a commission specifically created for this purpose, is needed. In case no medical evidence can be provided, the parents must go before the court to confirm the birth.¹⁰⁰ Late birth registration is

⁹⁶ Anecdotal evidence from casework practice of Macedonian Young Lawyers Association.

⁹⁷ Woldenberg S, *Access to Civil Documentation and Registration in South Eastern Europe: Progress and Remaining Challenges since the 2011 Zagreb Declaration*, 2013, p 27. Available at: <http://www.refworld.org/pdfid/5280c5ab4.pdf>.

⁹⁸ UNHCR and UNICEF, *Civil Registration and the Prevention of Statelessness: a Survey of Roma, Ashkaelia and Egyptians in Montenegro*, 2009. Available at: https://www.unicef.org/montenegro/Booklet_Civil_registration_of_RAE_2009_ENG.pdf.

⁹⁹ UNICEF & MONSTAT, *Montenegro and Montenegro Roma Settlements Multiple Indicator Cluster Survey*, 2013. Available at: <https://app.box.com/s/zq4l86xhf53ck6gp2rftbr3cj3jazgdj>.

¹⁰⁰ Law of Ukraine "On State Registration of Civil Status Acts" (Article 13); Regulation of the Cabinet of Ministers of Ukraine No. 9 of January 9, 2013 (a special legal act regulating the procedure of confirming the fact of a child's birth outside of a medical institution).

subject to a fine if it is not for a well-founded reason.¹⁰¹ Furthermore, undocumented stateless persons in Ukraine may be detained. Such factors represent a real barrier to birth registration for Roma in Ukraine for several reasons, including fear of state authorities, life in rural areas located far from institutions, poverty, the prevalence of home births and a lack of awareness of procedures that are complex, costly and time-consuming.

It is clear that despite legislative amendments and policy changes in recent years in the attempt to simplify procedures and improve access to birth registration, challenges remain for Roma communities, stemming from intergenerational lack of documentation and statelessness, their marginalisation from healthcare and other public services, financial barriers, overly complex procedures and underlying discrimination and prejudice.

5.2. Permanent Residence

Following the breakup of the former Yugoslavia, permanent residence was critical to the determination of nationality. Procedures for naturalisation in the newly-formed states often required proof of permanent residence or domicile and identity documents, which posed challenges for Roma communities who often lived in informal settlements and were therefore unable to provide a legal address to secure permanent residence.

All successor states faced this challenge. In Macedonia, for example, all those originating from other republics of the former Yugoslavia who were legally domiciled in the newly-established Macedonia and possessed a Macedonian identity document, could naturalise.¹⁰² However, applicants had to prove they had a registered permanent residence at the time of independence.¹⁰³ In Montenegro, following the dissolution of the State Union with Serbia, a similar mechanism applied.¹⁰⁴ In Bosnia-Herzegovina, a large number of citizens of the former Yugoslavia, who could in theory qualify for facilitated naturalisation, were unable to do so, because they did not have the required registered permanent residence.¹⁰⁵

For various reasons, the requirement of permanent residence still represents a barrier for Roma in their attempts to acquire or confirm that they have a nationality. In Serbia, legally

¹⁰¹ Under the Code of Ukraine on Administrative Offenses, Art. 212-1 a fine is prescribed for late birth registration to the sum of 17.00 – 51.00 UAH (approx. 0,6 – 1,7 EUR on 4 Sept 2017).

¹⁰² Article 26, Law on Citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia n.67/1992; UNHCR Bureau for Europe (2011), *Report on Statelessness in South Eastern Europe*, UNHCR, pg. 18.

¹⁰³ Initially 15 years of uninterrupted residence were required, but this was amended in 2004 to a two-year transitional provision, following criticism of indirect discrimination against ethnic minority communities (UNICEF & MONSTAT (2013), *Montenegro and Montenegro Roma Settlements Multiple Indicator Cluster Survey*, pp.18-19).

¹⁰⁴ The 2008 Law on Montenegrin Citizenship and Decision on the Criteria on Establishing Conditions for Acquiring Montenegrin Citizenship by Admittance (Official Gazette of Montenegro, No. 1/07) confirmed the principle of continuity of citizenship and provided the possibility of acquisition of Montenegrin citizenship for those who had registered permanent residence in Montenegro before 3 June 2006.

¹⁰⁵ UNHCR Bureau for Europe, *Report on Statelessness in South Eastern Europe*, 2011, pg. 17. Available at: <http://refworld.org/docid/514d715f2.html>.

registered permanent residence is a condition for obtaining the documentation needed for birth registration. While there exists a provision¹⁰⁶ to obtain identity documents based on temporary residence for those without permanent residence, in practice this is not implemented.¹⁰⁷ Roma face particular challenges with regard to registering their residence, because they are often unable to produce a certificate or contract of property ownership or a verified lease agreement. Amendments to the law in 2011 which enabled people to register at local social welfare centres have benefitted many. However, there are gaps in implementation, with differing interpretation and implementation of the procedures still posing challenges.¹⁰⁸

Legal residence is also a factor contributing to the risk of statelessness of Roma in Ukraine and Albania. In Albania for example, to register the birth of a child and obtain a birth certificate, the parents must bring the notification issued by the health institution where the child was born to the registrar in the place where the parents have their permanent residence. Many Roma have moved from the place where they have their permanent residence registered and have no means to go back to register the birth. They face additional problems registering a new place of permanent residence because in many cases, they lack the required documentation such as a certificate of ownership or rental agreement.

In the Bosnia-Herzegovina legal system, permanent residence is one of the most important factors for the enjoyment and exercise of many citizens' rights. These include the right to civil registration, identity documents, healthcare, social welfare, registration at the Employment Bureau, and access to travel documents. Roma living in informal settlements, due to poverty and lack of legal property ownership are usually unable to register their permanent residence at the address where they live.¹⁰⁹ The authorities do have discretion when assessing the evidence of those in vulnerable circumstances, but rarely use it in such cases.¹¹⁰ Moreover, citizenship law requires at least eight years of legal and continuous residence prior to making an application for naturalisation, causing further barriers for Roma populations. There is a facilitated route to naturalisation for refugees and stateless persons, requiring five instead of eight years of residence, but no waiver of the permanent residence requirement.¹¹¹

In Macedonia, long-term residents may acquire Macedonian citizenship through naturalisation, most often either on the basis of marriage to a Macedonian national, or after a period of legal and

¹⁰⁶ Article 5 paragraph 3 of the Identity Card Law, Official Gazette of Republic of Serbia, no. 62/2006 and 36/2011.

¹⁰⁷ Casework information from Praxis.

¹⁰⁸ Praxis, *Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Citizenship and Registration of Permanent Residence*, 2016, p.21. Available at: https://www.praxis.org.rs/images/praxis_downloads/Report_UNHCR_2016_-_28.11.pdf.

¹⁰⁹ Article 8 of the Law Amending the Law on Permanent and Temporary Residence of Citizens of BiH (Official Gazette of BiH, 32/01, 56/08 and 58/15).

¹¹⁰ Article 8a of the Law Amending the Law on Permanent and Temporary Residence of Citizens of BiH (Official Gazette of BiH, 32/01, 56/08 and 58/15).

¹¹¹ Law on Citizenship of Bosnia and Herzegovina, Official Gazette of the Bosnia and Herzegovina Nos 4/97, 13/99, 41/02, 6/03, 14/03, 82/05, 43/09, 76/09 I 87/13, Articles 9 - 11a.

continuous residence.¹¹² Marriage to a Macedonian national however again requires documentation, and while the residence period is reduced from eight to six years for stateless persons¹¹³, without a statelessness determination procedure few people enjoy this facilitated procedure.¹¹⁴ Legal residence moreover requires a registered address, excluding those in informal housing arrangements. For undocumented Roma, who face severe poverty, these conditions are almost impossible to meet.

The impact of the lack of access to civil documentation on Roma in the region is significant and, as has been shown in this section, often cyclical and passed on from generation to generation. In most countries in the region, almost all rights, aside from primary education and emergency healthcare, are denied to people who are undocumented. In some cases, even emergency healthcare may be subject to payment and education may in practice only be accessible to those who have a birth certificate.¹¹⁵ Without documentation, they cannot access healthcare, social security, employment, property rights, or get married. Their movement is restricted and can be made subject to police interrogation. This compounds the extreme exclusion and marginalisation faced by Roma and in turn creates barriers to accessing birth registration, recognising paternity, getting married, registering residence, acquiring or inheriting property, thus perpetuating the discrimination they face. The marginalisation, poverty and exclusion faced by stateless Roma is further explored below.

5.3. Progress towards addressing documentation challenges

As alluded to in this report, there has also been considerable progress made in the field of birth registration and documentation. In Macedonia, stakeholders highlighted structural measures that had been taken to address the issue of unregistered children:

I think that compared to the past, there are changes. Now we have an inter-sectoral working group for resolving the issue of unregistered children. Today, the Roma Informational Centres are also involved, in the past they weren't. There are also more NGOs working on this issue. The state institutions are more involved in the process by being part of the working group.¹¹⁶ There are positive changes, but the key aspect is that there is interest. I would like to highlight though that resolving this issue should be expedited. (NGO, Macedonia)

112 As set out in Article 46 of the Macedonian Law on Foreigners, continuous residence exists both on the basis of permanent residence and temporary residence.

113 Article 7-a of the Law on Citizenship of the Republic of Macedonia.

114 NGOs report cases where stateless persons in Macedonia are not recognized as stateless, but instead receive an X in the registration box for nationality. In some cases, the X is accepted as an alternative for statelessness status in the procedures for facilitated naturalization, allowing for six years of legal residence to suffice instead of eight years.

115 NGOs in Macedonia report cases of people who are undocumented without health insurance being provided with emergency care but then being pressured to pay for their treatment. In the case of childbirth, undocumented women in labour are accepted in hospital and provided the necessary treatment. However, if they cannot pay, they may not be issued with any medical documentation on the birth, which is key evidence for the birth registration procedure.

116 For more on the joint campaign by state and civil society stakeholders to register unregistered and undocumented persons see European Network on Statelessness, *Ending Childhood Statelessness: A Study on Macedonia*, 2015. Available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/Macedonia_0.pdf, pg. 14.

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In Bosnia-Herzegovina officials also noted an improvement in the rate of birth registration among Roma children:

At one point, it was evident that a large number of Roma have a problem with enrolling children in registers; today the number of such cases is smaller. (Social Worker, Bosnia-Herzegovina)

A 2017 report on Ukraine by the European Commission against Racism and Intolerance, which notes that in some communities 30-40% of Roma lack basic documents, cautiously records some improvements:

A data collection system has been established for monitoring acquisition of documents by Roma. According to this, 2 143 internal identity documents were issued in 2015. Furthermore, it has been informed that simplified procedures are envisaged; a successful pilot project was recently initiated in Odessa, with a view to extending it to the rest of the country, whereby a commission of one person each from the State Migration Service, the Department of Justice and a registered Roma NGO meet every three months to decide on applications. New rules also exist for problematic cases and, as a last resort, court proceedings can still be used to prove identity.¹¹⁷

Improvements such as these are often the result of concerted and tireless advocacy, awareness raising and direct support to affected persons being provided by Roma community groups, NGOs and other actors over many years.

For example, over the past 10 years Praxis Serbia has been actively working to provide free legal aid, information and counselling to the most marginalised Roma to register births, acquire citizenship and solve their documentation issues. Free legal aid activities are based on individual assistance in a number of relevant court and administrative procedures and strong outreach and field presence in informal Roma settlements throughout the country. These activities include obtaining personal documents from registry books, initiating administrative and/or court procedures for those who have never been registered into registry books, re-registration in cases of missing or destroyed registry books or procedures for determination or acquisition of citizenship, paying the administrative fees for obtaining ID cards and assistance and counselling in cases of personal name determination, residence registration. Field visits are regularly made to the most isolated communities populated by individuals in vulnerable circumstances who often do not have means to access competent bodies and access justice. Roma individuals are advised on procedures and options, accompanied to relevant institutions, and further empowered to access their rights.

In addition to providing legal aid, through monitoring policies, strategies, rules and regulations, Praxis has identified and documented the most concerning gaps in legislation and practice, presenting these in the form of case studies and reports along with

¹¹⁷ European Commission against Racism and Intolerance (2017) *ECRI Report on Ukraine* (fifth monitoring cycle), Adopted on 20 June 2017 CRI(2017)38. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-V-2017-038-ENG.pdf>.

recommendations for overcoming obstacles. Advocacy and influencing actions Praxis has carried out range from organising individual meetings and roundtables with relevant stakeholders, presenting case studies, proposing model legislation, exposing the problems and human rights impact through the media to organising street level action and building coalitions. Praxis has accompanied all of this work with a strong awareness-raising campaign. National advocacy has been complemented by joint submissions to the Universal Periodic Review and Committee on the Rights of the Child, which generated strong recommendations to the Serbian state.

6. Marginalisation, Poverty and Exclusion

6.1. Marginalisation as a cause and consequence of statelessness

At the heart of many of the challenges facing Roma across the region – including in relation to documentation and statelessness – is their marginalised position in society. Although the degree and impact of their exclusion may vary in different contexts, and different actors may attribute different reasons behind it, all interviewees identified marginalisation and exclusion as factors exacerbating the challenges faced by Roma.

In interviews with Roma, exclusion manifested as lack of financial means, lack of access to education, to civil status documentation, to governance and democratic structures, to formal employment, to healthcare, and to basic dignity and a sense of self-worth and belonging:

I have not gone to school. I went once, but when they asked for a birth certificate, I was very ashamed and left. I never went back... My life is nothing. I want to study, like this I am ashamed that they ask for a birth certificate and I do not have one. (Romani man, Macedonia)

State authorities and other stakeholders across the research countries spoke explicitly of ‘*vulnerability*’, ‘*marginalisation*’, low literacy, poverty, and acknowledged challenges accessing healthcare, education, housing and social security. Some said progress had been made in tackling Roma marginalisation in recent years in specific contexts, but most said much more remained to be done.

It is a total marginalisation, deprivation of rights and their existence on the margins of society. They live with the conviction that society is preoccupied with other problems and that they, due to the traditional attitude of the society towards them, will not be the focus of social concern soon. (Municipal Authorities, Bosnia-Herzegovina)

The Roma population is the poorest population, lagging behind other members of Montenegrin society. Majority of them are born stateless, spending most of their life fighting the inequality they inherited, and unfortunately often passing on their problems to future generations. (Government Ministry, Montenegro)

The research shows that marginalisation is both a cause and a consequence of statelessness amongst Roma. Although some progress has been made, the vicious cycles perpetuating exclusion, lack of documentation and the risk of statelessness amongst Roma remain prevalent to differing degrees in different domains in all research countries.

POVERTY AND UNEMPLOYMENT

Poverty is both a consequence of a lack of documentation because being undocumented prevents people from accessing formal employment; and a factor contributing to the risk of

statelessness, because access to documentation procedures in many countries bears a financial cost that is beyond the means of those living in poverty. This dichotomy is illustrated by the experience of one of the Romani interviewees in Macedonia:

I can't find a better job because I know they will ask for ID documents so they can employ me... They asked for many documents from my parents [to register my birth] and even a DNA analysis, which we could not afford.

And verified by an NGO worker specialising on problems facing Roma:

We know of cases where the children are prevented in enjoying this right [to nationality], because a DNA analysis is required which the parents are not able to pay. These are undocumented children which have not been registered at birth and don't have any legal document, let alone a nationality. (NGO, Macedonia)

Much of the research data highlights the fragility of Romani livelihoods in the region. UNHCR research found that in 75% of the households studied in Serbia, the main source of income came from collecting secondary raw materials, social assistance, and seasonal jobs.¹¹⁸ In Montenegro, a Romani community association expressed how discrimination is a key factor in Romani unemployment there:

We have excellent craftsmen, but they are usually unemployed, as nobody wants to hire them. We have excellent drivers, but the situation is the same as with the craftsmen. We even have college-educated people among Roma and Egyptians, but they can't work in their field of work. Still, we are hoping that situation will change in the positive way. (Roma Association, Montenegro)

One interviewee in Bosnia-Herzegovina expressed the high rates of Romani unemployment as a function of both discrimination and the generally poor economic situation in the country:

... in a workplace, you will always give priority to non-Roma due to extremely strong prejudices. In general, there is over half a million unemployed in Bosnia-Herzegovina. Now imagine a situation where one Roma is applying at one position among hundreds of unemployed. Realistically, [he/she] does not stand a chance here. (Journalist, Bosnia-Herzegovina)

In many of the interviews with Roma, the fragility of livelihoods emerged. Most were reliant on informal work for any source of income they could scrape together by whatever means:

I don't work. I collect plastic bottles and cardboard. (Romani woman, Macedonia)

I occasionally do some physical work, such as moving. I am not employed and I cannot get employed because I do not have an ID card, so all the work I do is undeclared. (Romani man, Serbia)

¹¹⁸ UNCHR, *Persons at risk of Statelessness in Serbia, Progress Report 2010 – 2015*, June 2016. Available at: <http://www.refworld.org/docid/57bd436b4.html>.

EDUCATION AND LITERACY

Low rates of literacy and access to formal education are also both a consequence of statelessness as documentation is required to be able to go to school, but also a cause, as many Romani interviewees said they did not understand bureaucratic procedures or know how or where to get help:

I sometimes ask them (the authorities) to write things down for me because I don't understand, for example the documents I need to bring, but they refuse and tell me that I am an adult, I should learn these things. (Romani woman, Macedonia)

Generally, across the different research sites, education emerges as a key factor in Roma marginalisation and thus a contributing factor to the risk of statelessness:

There is still a significantly lower educational status. There is still a high degree of stereotyping and discrimination, low expectations from the community, which is the most evident in relation to Roma girls... (International Agency, Serbia)

Several non-Roma interviewees across different countries claimed that education is often not valued by Roma, which adds to the challenges, but the interviews with Roma tell a different story. As a Romani interviewee in Macedonia, said: *'If I could, I would go to school'.*

HEALTHCARE

Usually, health insurance – and thereby access to free healthcare – is only provided to those who are documented and have residence status. Therefore, undocumented persons are more likely to be denied adequate healthcare. Without healthcare, many undocumented women cannot access maternity care and give birth in hospitals, and, as discussed above, the barriers to birth registration are greater for those born outside of hospitals. Hence, the lack of access to healthcare can be both a cause and consequence of statelessness or lack of documentation. In Macedonia and Bosnia-Herzegovina this was identified as a particularly important issue:

My mother gave birth to me in the hospital, but because she did not have money to pay for health insurance they did not give her the hospital papers confirming she gave birth, until she pays. Without this document, she could not register me in the birth registry. (Romani man, Macedonia)

In Serbia too, an international agency representative noted that while progress has been made in relation to healthcare access for Roma more generally, *“the issue of health insurance has not been fully resolved”* and *“in the field of reproductive health of women there are still great problems. The percentage of pregnancy termination for non-medical reasons is still high; infant mortality is still higher.”*

Access to healthcare was a key concern articulated by Romani interviewees and one of the main ways in which they felt statelessness or lack of documentation impacted on their lives. One man interviewed in Bosnia-Herzegovina said that all four of his children had died within

40 days of birth, raising serious concerns about access to healthcare. Others articulated fear for the future and what would happen if they or their families got sick:

That I don't have documents. This is my biggest burden. The thing I am scared the most for is my health. I am sick and I can't undergo treatment anymore because I don't have any medical insurance because I don't have a nationality, and I don't have money to pay privately. (Romani woman, Macedonia)

Some said they used others' health insurance cards or begged for money to access healthcare:

I go to the hospital with my cousin's health insurance card, because I don't have health insurance and I don't have the money to pay for the doctor's appointments on my own [privately]. (Romani man, Macedonia)

One Macedonian interviewee spoke of what had previously been a 'catastrophic' lack of access to healthcare among Roma without health insurance. The interviewee spoke of incidents of children falling sick and their parents pleading with hospital staff to treat them even though they were not registered. Improvements in recent years were noted, with the community being more informed about how to access their rights and the creation of a working group within government with the involvement of Roma NGOs, Roma Information Centres and a state fund to address the lack of documentation, but Roma interviewees in Macedonia revealed ongoing issues with access to healthcare:

I always have to beg when I go to the ambulance or the hospital so they can treat my children for free, because I have no money to pay and they have no health insurance. Sometimes they don't even admit my children to the hospital. I also can't ask for social welfare assistance for them since they are not registered and don't have birth certificates... I think that if my children had birth certificates they would treat us much better in the hospital and would treat them without any problems. (Romani woman, Macedonia)

HOUSING

In relation to housing, complex procedures for registering residency impact disproportionately on Roma communities as they are more likely to live in informal settlements. As discussed in Section 5 above, proof of residence is a requirement in many cases for documentation and citizenship, and so exclusion from mainstream housing can also be an indirect cause and consequence of statelessness. The situation in Serbia illustrates this, where, although there has been positive change in recent years, rigid residence rules have prevented Roma – and especially those internally displaced during the war – from registering their permanent residence:

This problem especially affects those Roma living in informal settlements, without a legal address. While Roma IDPs in such a situation cannot change their address from their original place of residence... in the last four years, the State has adopted legislation alleviating this issue... [but] a significant number of Roma IDPs that have a permanent residence registered in... [Kosovo] [still] cannot register with the social welfare centre. (International Agency, Serbia)

TREATMENT BY THE POLICE

Several of the Romani interviewees in different research sites expressed a fear of the police, articulating this as one of the main concerns they had about being undocumented or stateless. In many of the research countries, Romani people had experienced detention due to their lack of documentation. In Bosnia-Herzegovina and Macedonia, interviewees explicitly expressed a lack of trust and fear of the police, saying this made them feel ‘*ashamed*’ and in one case that they felt ‘*under constant harassment by the police*’:

When I didn't have an ID card I was afraid to go out, afraid that the police would stop me. (Romani woman, Macedonia)

This situation has had and still has emotional and psychological consequences; I am under constant harassment by police and other authorities. (Romani man, Bosnia-Herzegovina)

In Serbia, interviewees appeared to have a more mixed experience with the police. One said that although he felt he could not move freely and was often stopped by the police:

...some policer officers are kind to me and forgive me for not having [an ID] ... Luckily, so far, I have not had to pay a fine. (Romani man, Serbia)

Another had had mixed experiences saying:

The police have been stopping me and punishing each time they found out that I do not own identity documents, a few times I was also arrested... My sister can travel freely and visit our cousins, and I cannot, because I would get into a big trouble each time I encounter police... In the place where I live the police know me, and at the moment I don't have problems with them. (Romani woman, Serbia)

But still another, reported problems with the police because of a lack of documentation:

No one has ever treated me differently because I do not have citizenship except the police. They say that I don't belong here until I show them Serbian documents. (Romani man, Serbia)

DIGNITY AND BELONGING

Roma interviewees expressed that their lack of status, documentation or citizenship contributed to their exclusion and feeling of not belonging. The desire to ‘*be somebody*’ and ‘*to belong*’, as well as to be able to secure a ‘*better job*’ to support their families were articulated in many of the interviews, alongside their frustration at the lack of action or assistance from the state to regularise their situation:

It is much easier if you have [a nationality]. I will feel Macedonia as my own. Like this, I feel like I don't belong here. (Romani woman, Macedonia)

I am aware that I'm nobody; I can't find job. (Romani man, Bosnia-Herzegovina)

A long time ago I began to consider myself inferior. Due to the lack of personal documents I am practically excluded from social life and I just vegetate. (Romani woman, Serbia)

GENDER

Some interviewees expressed gendered factors contributing to the marginalisation and exclusion faced by Roma, such as barriers to accessing healthcare for women, gender gaps in education and labour market participation, and violence against women and girls.¹¹⁹ These gender discrimination factors can also be seen as a cause and consequence of Romani statelessness. A heightened risk of exploitation and abuse was linked to being an undocumented, unregistered woman:

...[stateless Romani women and children] are not registered anywhere and easily become victims of a range of violations, trafficking and violence. (NGO, Macedonia)

Romani girls who have children before they reach the age of majority may also be unable, or too afraid, to register the births of their children, including because in some places they themselves may not have the necessary identity documentation. In Montenegro, parents can register their children born in healthcare facilities by submitting a hospital attestation and photographic identity documents. However, it is common to find that girls giving birth before the age of majority face problems from an administrative perspective as well. The ID cards of displaced minors do not contain a photograph, preventing girls from registering the births of their children. Many Romani women and girls give birth at home, in which case parents may need to provide additional documentation, which may be impossible to obtain.¹²⁰

6.2. Responsibility and blame

Although research participants without exception acknowledged marginalisation as a factor impacting Roma (and to some extent their documentation), there was less consensus on its root causes, with respondents sometimes contradicting themselves in their answers. Some stakeholders – particularly international agencies and NGOs – clearly attributed socio-economic exclusion to institutional racism and discrimination:

Roma face discrimination on daily basis, by individuals and institutions, but it is a form of discrimination that is difficult to prove. They remain at the margins of society because of discrimination. (International Agency, Bosnia-Herzegovina)

¹¹⁹ European Union Agency for Fundamental Rights, Second European Union Minorities and Discrimination Survey Roma - Selected findings, 2016, p.10. Available at: <http://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>; see also <http://www.coe.int/en/web/portal/roma-women>.

¹²⁰ Woldenberg S, *Access to Civil Documentation and Registration in South Eastern Europe: Progress and Remaining Challenges since the 2011 Zagreb Declaration*, 2013, p 28. Available at: <http://www.refworld.org/pdfid/5280c5ab4.pdf>.

Others clearly demonstrated institutional prejudice in their responses, placing the responsibility for their marginalisation and lack of documentation on Roma themselves for being ‘tardy’, or not ‘wanting’ or not being ‘willing’ to engage with the authorities:

The problems arise due to their tardiness. They [Roma] don't register their children within the deadline, and are not very cooperative when additional evidence and documents are needed for the additional late registration procedure, which the law requires. (Civil Registry Official, Macedonia)

Some expressed a combination of these views, in one part of the interview recognising the discrimination that Roma face, and in another, placing at least some of the blame on the communities themselves:

These persons are the ones who are most marginalised in comparison to others as they face multiple discrimination... In the majority of local institutions... solving these cases is accompanied by discrimination. The target population at the same time is without education, inadequately informed and does not know who to refer to. This exacerbates the likelihood that they will be discriminated and that this will have further negative effects...

[...] An additional obstacle is the lack of interests among the concerned Roma community to muster through the procedures and administrative labyrinths. (Government Official, Macedonia)

The understanding of state officials of systemic exclusion and institutional discrimination varied considerably. Some officials appeared not to recognise the connection between Roma being disproportionately impacted on by statelessness, discrimination, and the need for action on the part of the state to achieve equality before the law:

All citizens have equal treatment before law and competent authorities, only difference is in fact that Roma are in poor financial situation and usually uninformed or illiterate... The state cannot grant nationality to a person who does not want and apply for the same – the statutory requirements have to be fulfilled. Therefore, I think about that as process in which persons with interest in the approval of such status should actively participate in resolving... All citizens are equal before law and if there are cases of discrimination I am not familiar with them. (Government Official, Bosnia-Herzegovina)

Others suggested that local NGOs should take more responsibility for addressing exclusion.

But data from Roma interviews suggests that the accusations of a lack of interest in engaging with the authorities and society are ill-founded. Almost all interviewees expressed frustration and a desire to resolve their situation, and interviewees in Macedonia also expressed a desire to vote and participate in society:

I feel bad and stressed very often. I take pills to calm down. I am afraid that one of my children will be sick and I will not be able to take them to the hospital. Because they are not registered I cannot take care of them fully. I am angry at this situation. (Romani woman, Macedonia)

I am frustrated all the time. I am born here, and I don't have a nationality. I am angry that they are not giving the nationality to me and I am born here. (Romani woman, Macedonia)

I would also like to vote. Like this, I can't even go out on elections and vote. (Romani woman, Macedonia)

I hope, but not too much, that my problem will be solved. I didn't give up, but I don't see that something will happen and change my situation for better. I am sorry because I know that many things would have gone better, if I only had the citizenship and documents. (Romani woman, Serbia)

6.3. Progress towards addressing marginalisation and statelessness

Several interviewees recognised the progress made in recent years through government, NGO, and community initiatives to tackle Romani statelessness. In Serbia, stakeholders noted measures to prevent statelessness and increase documentation have been taken and adopted in legislation, but suggested that social exclusion and discrimination were still presenting barriers to their implementation:

A special field of attention should be anti-discrimination and social inclusion measures. More attention is needed on raising awareness among the general population and decreasing xenophobia and hatred amongst the general population against the Roma.... [as well as] increasing the participation of Roma in decision making processes at local and central levels. (International Agency, Serbia)

In Montenegro, a UN official reported a significant improvement in the general situation of Roma in the last few years due to better cooperation both within the country and with other countries in the region:

... there are some challenges but Roma are definitely in [a] better situation than five years ago, sometimes even better than some non-Roma. I personally believe that this happened due to raising awareness of Roma and Egyptians on their position and rights. For example, in 2007... the number of NGOs dealing with this issue was insignificant and we could count them on the fingers of one or two hands. Today this is not the case. There are Roma women NGOs, NGO Young Roma, etc. If we look at 2003 census results, less than 3,000 of respondents declared themselves as Roma. General opinion was that this information doesn't reflect the real number. The NGO sector claimed that there are more than 20,000 Roma in Montenegro. The 2011 census has shown that there are almost 9,000 of Roma in our country. I think that this number didn't change because of birth rate, but because of raised awareness of Roma and Egyptians that there is no problem in declaring that they are Roma. Moreover, they became aware of the significance to do so....

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We have contributed to the improvement of situation significantly, but we weren't the only ones. Contribution came from all other organisations dealing with the issue of statelessness, including people affected by this problem who realized that it is very important to obtain documentation. (International Agency, Montenegro)

NGOs working directly with Roma also acknowledged greater awareness amongst Roma themselves of how to address statelessness:

Now we see a positive change. Many Roma now can identify their problem, they know where to go and who to contact/ address. Simply they are more informed and the awareness is higher among them, but the fact that there are still many marginalised persons in Macedonia that's a problem of the state. They have not protected these persons. (NGO, Macedonia)

Therefore, there is evidence of aspects of the issue being resolved. However, a disproportionate focus on awareness raising, and inadequate attention to structural discrimination and entrenched prejudicial attitudes, is undermining further progress towards the elimination of Romani statelessness.

7. Conclusion

The #RomaBelong project set out to better understand the nexus between discrimination, statelessness and marginalisation of Roma communities in European Union candidate and neighbourhood countries in the Western Balkans (Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia), and Ukraine. Drawing on interviews with Roma individuals, associations, and other key stakeholders, this report synthesises the key research findings across all the research countries, identifying and analysing the main contributing factors and consequences of (the risk of) statelessness among Roma communities in the region.

Three underlying themes were identified in all the countries: systematic discrimination against and exclusion of Roma, the barriers Roma face to accessing justice, and the bureaucratic challenges presented by the administrative systems in the countries researched. These common themes, emerging to varying degrees from the different countries, point both to the specific challenges of discrimination faced by Roma, as well as to more general administrative challenges – overly-complex and bureaucratic civil registration procedures for example – constraining the realisation of individual rights in practice, which affect the whole population, but have a disproportionate impact on the most marginalised communities.

A fourth common theme across all research countries is the lack of data on both statelessness and Roma populations. This is symptomatic of the invisibility that accompanies structural discrimination. It further exacerbates the problem of Roma statelessness, makes it more difficult to plan appropriate policy responses, and makes it easier to deny the scale or seriousness of the issue. Consequently, even though the countries researched have strong international treaty accession records and have reasonably strong legal frameworks (to varying degrees, and with some significant gaps), these national, regional and international norms and standards are not universally and equally applied to protect Roma from discrimination and statelessness.

One of the key issues that emerged from the research relating to the risk of statelessness amongst Roma was their lack of access to identity documentation. Many interviewees representing state authorities or international agencies were of the view that a lack of information and awareness amongst Roma about the importance of documentation was one of the key challenges. Furthermore, their responses often demonstrated stereotypical views of Roma, including that Roma were *'indifferent'* to being documented, or *'avoided being in the system'*, or that their *'traditional lifestyle'* made them responsible for their own lack of documentation. However, many Roma interviewees demonstrated a clear understanding of the importance of documentation and clearly articulated their own experience of the impact being undocumented had on their or their children's daily lives. Despite this knowledge, in many instances they were unable to access documentation due to factors beyond their control, including bureaucracy, distance, cost and discrimination. Significantly, the inability of Roma to access documentation not only heightens the risk of individual statelessness, but also of intergen-

erational statelessness, as the children of undocumented parents are less likely to access documentation and citizenship.

The research data exposed official perspectives, perhaps clouded by prejudice, which point to an incomplete or inaccurate diagnosis of the problem among some key stakeholders. Notwithstanding notable progress towards reducing the risk of statelessness among Roma populations in some areas through legislative reform, simplification of procedures, community outreach and engagement, and cooperation between NGOs, international agencies and governments, the findings suggest that partial solutions have at times been put forward and pursued. Rather than focussing on how to make institutions and procedures more accessible, efficient and fair, government and other agencies often perceive top-down awareness raising in Roma communities as the primary solution to documentation issues. This report suggests that such approaches have not succeeded in fully mitigating the risk of statelessness, and builds on recent European Commission and Council of Europe Commission against Racism and Intolerance findings (amongst others), which highlight an urgent need to fully address the discrimination and marginalisation at the heart of Roma documentation issues.

Underpinning many of the challenges facing Roma across the region – including in relation to documentation and statelessness – is their marginalised position in society. Although the degree and impact of their exclusion may vary in different contexts, and different actors may attribute different reasons behind it, all interviewees identified marginalisation and exclusion as factors exacerbating the challenges faced by Roma. It is this marginalisation and exclusion which ultimately must be addressed, and which cannot be effectively eradicated, without also addressing the structural problems which cause, entrench and perpetuate statelessness among Roma. To do this effectively and avoid perpetuating the mismatch between how officials and agencies understand the problem and how Roma individuals live and experience it, Roma voices must be heard, and Roma communities must be integral to shaping and implementing change.

8. Recommendations

Central to the #RomaBelong project from the outset was a commitment by project partners to not only explore and better understand the nexus between discrimination, marginalisation and Romani statelessness in the Western Balkans and Ukraine, but also to use this knowledge to contribute to advocacy and awareness raising at national and regional levels to address the issues emerging from the research. A further goal of the project was to bridge the two fields of Roma rights and statelessness research and advocacy, to foster improved understanding and learning between the sectors and movements at all levels, from Romani people and Roma-led associations to NGOs, local, national and regional institutions.

To this end, this report makes a series of recommendations based on the research findings and emerging common themes across all the research countries. These are divided between recommendations to governments and national actors, and recommendations to European institutions and regional stakeholders. It is hoped that taken together, these recommendations will make a useful contribution to existing movements for Roma rights and the prevention of statelessness and protection of stateless people. Above all, we hope they serve as a catalyst for action needed to address the nexus between discrimination, marginalisation and statelessness among Roma in Europe.

Recommendations to national governments and stakeholders

1. Governments should ensure that all international and regional obligations related to the right to nationality, prevention of statelessness, protection of stateless persons, non-discrimination, and birth registration are fully incorporated into national law and implemented in practice.
2. Governments should consider nominating a dedicated lead with responsibility for protecting the rights of Roma whose mandate includes, as part of the eradication of discrimination, the reduction and prevention of statelessness among minorities; National Human Rights Institutions and Ombudspersons should have a mandate to monitor and report on these issues.
3. Governments should take steps to guarantee access (in law and practice) to fundamental rights for all Romani people on their territory, irrespective of documentation or citizenship status, including primary and secondary education, healthcare (including reproductive rights and maternity care for women), work, accommodation, and freedom from violations of rights such as child and early marriage.
4. Governments should take concrete steps to simplify complex civil registration procedures impacting disproportionately on Roma communities, including where these prevent Roma from registering the births of their children. This should incorporate law and policy reform where necessary, training and capacity building of frontline officials, cooperation and information sharing between countries, and community engagement.

5. In developing and implementing National Action Plans for Development in accordance with the Sustainable Development Goals, governments should ensure that “*no one is left behind*” in the pursuit of Target 16.9 to “*by 2030, provide legal identity for all, including birth registration*”; this must include guaranteeing universal, free and immediate birth registration for every child irrespective of the parents’ status, documentation, or whether the child was born in a medical institution.
6. Governments and other appropriate agencies should improve the collection and monitoring of data disaggregated by ethnicity including on birth registration, documentation status, and access to fundamental rights such as education and healthcare, with appropriate steps to ensure the data is fully anonymised.
7. Governments should make available effective remedies for all those seeking to resolve their documentation status, including state-funded legal aid, the removal of barriers to accessing justice such as court fees or fees for DNA testing, judicial oversight, and robust complaints and compensation mechanisms.
8. In addition to ensuring that all Roma can exercise their right to a nationality, governments should implement dedicated statelessness determination procedures to ensure that all stateless persons (who do not have a right to the nationality of the country in which they reside) are identified, protected and offered pathways to facilitated naturalisation.
9. Governments, NGOs, international agencies and state institutions such as civil registry departments, police and other public services should take responsibility for proactively identifying, addressing and eliminating any stereotypical or discriminatory views or actions among their staff concerning Roma through improved leadership, training, and capacity building on national and international obligations and good practice, as well as better monitoring and implementation of robust complaints procedures for service users to seek redress.
10. Governments, NGOs and INGOs should continue and build on work with Romani communities to identify the needs, concerns and barriers they face, and support the co-development of action to tackle priority issues.
11. Donors should undertake to invest in initiatives to tackle societal prejudice and discrimination, including through prioritising community development support for representative Roma-led organisations, strengthening and listening to Roma voices, opening more spaces for dialogue between Roma and policy makers, officials, and other sections of society.

Recommendations to regional institutions and stakeholders

12. European Union Institutions should ensure that Roma discrimination and statelessness in the Western Balkans and Ukraine is comprehensively addressed as a matter of priority through the EU enlargement process. Progress should be monitored through European Commission annual reports as part of its ‘Enlargement Package’, and scrutinised by the European Parliament.
13. The Roma Integration 2020 initiative should build on its objective to reduce socio-economic inequality between Roma and non-Roma by setting up a dedicated Task Force to focus political will, resources and action on addressing Romani statelessness, ensuring

that monitoring mechanisms align with the EU Framework and the European Commission's stated "fundamentals first" principle of prioritising the rule of law and fundamental rights within the enlargement process.

14. Council of Europe institutions should ensure that addressing Romani statelessness in the Western Balkans and Ukraine remains a key objective, including by maintaining and developing the European Commission against Racism and Intolerance focus on access to identity documentation in its reports, strengthening this through more detailed assessment of the specific causes of Roma statelessness and national-level action required to address this.
15. The Council of Europe Ad hoc Committee on Roma and Traveller Issues should establish a dedicated thematic group to address the nexus between discrimination and statelessness, and the Council of Europe Commissioner for Human Rights should continue to monitor this issue closely.
16. The Organisation for Security and Cooperation in Europe (OSCE), its Office for Democratic Institutions and Human Rights and High Commissioner for National Minorities should seek to build on progress made through the Action Plan on Roma and Sinti and Best Practices for Roma Integration project with an increased focus on the nexus between discrimination and statelessness, enhancing efforts to implement any outstanding actions, and consolidating other relevant initiatives such as the Zagreb Declaration.
17. Intergovernmental bodies including the European Union, the Council of Europe, and the OSCE should prioritise work to ensure that States in the region respect the right to immediate birth registration and provide disaggregated data on birth registration, statelessness, and risk of statelessness, as part of a clear strategy to eliminate statelessness.
18. UN Human Rights Bodies (including the Committees on the Rights of the Child, Elimination of Racial Discrimination, and Elimination of all Forms of Discrimination Against Women) should through the adoption of their 'list of issues' and subsequent dialogues with states, request information on relevant quantitative and qualitative data on access to birth registration, the right to nationality, and statelessness among Roma.

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The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development and training of Romani activists. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

The European Network on Statelessness (ENS) is a civil society alliance with over 100 members in 40 countries committed to addressing statelessness in Europe. ENS believes that all human beings have a right to a nationality and that those who lack nationality altogether are entitled to full protection. ENS aims to achieve its mission through awareness-raising, law & policy and capacity-building activities.

The Institute on Statelessness and Inclusion (ISI) is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy.

The #RomaBelong project is a joint initiative by the European Roma Rights Centre (ERRC), the Institute on Statelessness and Inclusion (ISI) and the European Network on Statelessness (ENS) in collaboration with partner organisations in Albania (Tirana Legal Aid Society), Bosnia-Herzegovina (Vaša prava BiH Association), Macedonia (Macedonian Young Lawyers Association), Montenegro (Mladi Romi), Serbia (Praxis) and Ukraine (Desyate Kvitnya). The project aims to better understand and address Romani statelessness (and risk of statelessness) in European Union candidate and neighbourhood countries in the Western Balkans (Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia), and Ukraine.



CHALLENGING DISCRIMINATION PROMOTING EQUALITY



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