

“UNLESS SOMEONE HEARS US”

APPLYING INTERNATIONAL CRIMINAL LAW’S ROME STATUTE AS A
NEW APPROACH TO ADDRESSING THE HUMAN RIGHTS ABUSES
AGAINST SERBIAN ROMA

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“We have no security of tenure. This is the problem. My father has a heart disease and angina, and it is very stressful for him. He was very upset and threatened to set himself on fire when he heard about the last eviction. He worked legally all his life. He really earned the flat. We can’t find out why they want to evict us but they have sent us a document, saying we have to pay 700 dinars for the costs of eviction.”¹

– *Danica Sremčević*

ABSTRACT

The struggles of Roma people have been seriously overlooked in academic literature, especially recently. Much attention in the media is rightfully focused on the abuses committed by Balkan and other European countries against Syrian refugees and others attempting to find safety for themselves and their families. This attention is proper—indeed, it should intensify. Yet unwittingly, an exclusive spotlight on the recent—and perhaps more noticeable—plight of the refugees can sometimes mute more persistent, normalized forms of persecution in the region. This makes the struggles faced by minorities like the Roma all the more relevant. In Serbia, discrimination and persecution of the Roma is especially egregious; yet for the most part their voices go unheard and their persecution remains unchecked. Despite enacting international laws and domestic statutes to prohibit discrimination of Roma, Serbia’s federal and local governments have directly and indirectly undermined international efforts to combat this issue. In the following analysis, existing principles of international law will be identified, as well as a framework suggesting an approach designed to

¹ Amnesty International, <https://www.amnesty.ch/de/themen/diskriminierung/ethnische-minderheiten/roma/amnesty-bericht-zur-lage-von-roma-in-serbien> (last visited Sept. 22, 2016).

give teeth to the laws intended to protect minorities like the Roma. Moreover, an available mechanism will be proposed in order to hold Serbia accountable for discrimination committed against the Roma people. Focusing on the abuses in Serbia serves to highlight a much broader, though often less visible, global issue.

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I. INTRODUCTION

Born to fail. Imagine being born into a society that despised you from the moment you were born. Imagine a society that made it impossible for you to obtain the education and employment training you needed to work to pay for proper housing. If you complained, you were ignored, lambasted and shunned by society and by your government. In other words, imagine that you were born to fail. For the Serbian Roma²— this is a daily reality. Many of these realities never make the headlines, their stories do not get told, but they must be.

Following the wars that ravaged the former Yugoslavia, tens of thousands of Roma were forced to leave their homes.³ Additionally, according to estimates, more than 100,000 Roma were forced to leave Kosovo during and after the racially-charged Kosovo War in 1998 and 1999.⁴ Tens of thousands of Roma found refuge in Western Europe, while thousands more fled to Serbia.⁵

Throughout Serbia, Roma continue to fall victim to oppressive societal structures and perceptions.⁶ Thousands of Roma continue to be displaced, living in makeshift camps consisting of shacks and metal containers.⁷ Thousands more continue to be placed in segregated schools, often receiving a substandard education.⁸ In sum, Roma citizens are treated as if they are invisible, as though they are a stain on the face of society.⁹ Despite having begun formal negotiations about membership in the European Union (EU), Serbia still has significant obstacles to overcome in terms of its human rights record.¹⁰ For example, even over the last few years, tens of thousands of

² The terms “Roma” and “Romani” (more commonly referred to as gypsies) are being used to refer collectively to the various different sub-groups of Roma. Interestingly, Roma often tend to identify themselves based on a number of historical, and professional criteria. See Amnesty International, *Left Out: Violations of the Rights of Roma in Europe*, INT’L PUBLICATIONS, Sept. 2010, at 5, 6.

³ Bernard Rorke, *25 Years After Yugoslavia: Roma Exclusion (Part 1)*, European Roma Rights Centre, July 20, 2016, <http://www.errc.org/blog/25-years-after-yugoslavia-roma-exclusion-part-1/118>

⁴ *Id.*

⁵ *Id.*; see also Stephan Müller & Željko Jovanović, *Pathways to Progress? The European Union and Roma Inclusion in the Western Balkans*, http://lastradainternational.org/lisidocs/1010_pathways-progress-20100402_original.pdf

⁶ See e.g., Sidita Kushi, *Romani Women of the Balkans: Battling Intersectional Oppression*, Jan. 18, 2016, <https://www.opendemocracy.net/sidita-kushi/romani-women-of-balkans-still-battling-intersectional-oppression>.

⁷ Rorke, *supra* note 3.

⁸ Amnesty International, <http://www.amnesty.org/en/roma> (last visited Nov. 22, 2014).

⁹ UNICEF, http://www.unicef.org/serbia/reallives_18153.html (last visited Dec. 9, 2016).

¹⁰ *Id.*

Roma people, including women and children, continue to be forced from their homes every year.¹¹ The most recent national census indicates that there are approximately 147,600 Roma currently living in Serbia.¹² But these numbers underline the sheer magnitude of the problem, because according to the Office of Human and Minority Rights, the number is closer to 600,000 Roma people living in about 750 settlements throughout Serbia.¹³ Of those 600,000, nearly seventy percent have been forced to live in informal settlements subject to eviction.¹⁴ As of February 2016, nearly 3,000 predominantly Roma communities have been forcibly evicted since 2009 just in the city of Belgrade alone.¹⁵ So far, the global human rights community has failed to offer an adequate response to end these practices, or to deliver to the Roma people peace, security and an opportunity to succeed.

When it comes to the Roma, the Serbian government is both failing to respect binding international human rights standards and committing crimes against humanity, as we see by examining the struggles faced by the Roma through the lens of international criminal law. Part II of this analysis describes the background of the Roma and identifies Serbia's system of persecution and discrimination. However, a specific focal point will be on the deportation, forcible population transfer and persecution of the Roma. These two crimes reflect both the historical oppression of the Roma people and the recent events that have left many homeless and unemployed. Although Serbia's national government has focused on mitigating these issues on paper, Part II explains that state and local governmental actions directly and indirectly undermine these efforts. Because international criminal law is governed by the Rome Statute—the treaty that established the International Criminal Court (ICC) —Part III proposes a statutory framework under which the ICC could establish jurisdiction over Serbia's actions. Then, Part IV defines the elements necessary under the Rome Statute to prove Serbia's actions against the Roma constitute crimes against humanity. Subsequently, Parts V and VI lay out an argument that Serbia's conduct meets these elements under the Rome Statute. Ultimately, a joint effort of non-governmental and international organizations is needed to address the issues facing the Roma. In addition, more severe penalties—such

¹¹ Amnesty International, *supra* note 8.

¹² *Roma in the Balkan Context*, http://europeandcis.undp.org/uploads/public/File/rbec_wb/vgr/chapter1.1.pdf (last visited Nov. 30, 2014).

¹³ INNEWS, <http://inserbia.info/today/2013/11/there-are-750-roma-settlements-in-serbia/> (last visited Nov. 30, 2014).

¹⁴ *Id.*

¹⁵ Amnesty International, <https://www.amnesty.org/en/documents/eur70/3411/2016/en/> (last visited December 8, 2016); *see also* Amnesty International: *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, INT'L PUBLICATIONS, 2014, AT 5, 9, <https://www.amnesty.org/en/documents/EUR70/008/2014/en/>.

as those established by international criminal law precedent—are needed for failing to respect and enforce human rights standards. Combined, these steps may pave the way to overcoming the obstacles the Roma face each day.

II. BACKGROUND ON THE ROMA IN SERBIA

The Roma are one of Europe’s oldest minorities, and their history of discrimination goes back hundreds of years.¹⁶ Today, the Roma face systematic and widespread discrimination that permeates every sphere of their lives, and many view them as second-class citizens.¹⁷ The unemployment numbers among the Roma are staggering. Those who are fortunate enough to find jobs generally must accept very low-paying positions.¹⁸ Poverty among the Roma is extremely high and widespread.¹⁹ Moreover, many of them do not even have access to clean water or electricity.²⁰

A. Serbia’s System of Persecution and Discrimination

Serbia’s economic and social policies effectively deny thousands of Roma legal status, education, employment and housing. These policies are the linchpin to Serbia’s system of persecution and discrimination.

i. Inadequate Housing

Many Roma once owned or rented their own homes, but have been forced to relocate to what locals commonly call “Gypsy settlements”²¹ due

¹⁶ Laura Renzi, *Roma People in Europe: A Long History of Discrimination*, in EUROPEAN SOCIAL WATCH REPORT 40, 40-41 (2010), http://www.socialwatch.eu/wcm/documents/Roma_a_long_history_of_discrimination.pdf.

¹⁷ Minority Rights, <http://www.minorityrights.org/4032/serbia/roma.html> (last visited Dec. 1, 2014); see also B92, *Planned Roma Settlement Sparking Angry Reaction*, http://www.b92.net/eng/news/society.php?yyyy=2008&mm=10&dd=08&nav_id=54081 (last visited Dec. 8, 2016).

¹⁸ Christian Bodewig & Akshay Sethi, *Poverty, Social Exclusion and Ethnicity in Serbia and Montenegro: The Case of the Roma*, WORLD BANK, Oct. 2005, at 1, 3, http://siteresources.worldbank.org/INTROMA/Resources/SAM_Roma_Poverty_Discussion_Paper.pdf; see, e.g., Nikola Garic, *The Life of Roma in Serbia*, <http://www.youtube.com/watch?v=K2Sv-uWMEig> (last visited Nov. 30, 2014); see also <http://www.youtube.com/watch?v=KuCpw1JDod0#t=70> (last visited Dec. 9, 2016).

¹⁹ See Bodewig, *supra* note 18 at 3.

²⁰ OSCE Rights Chief Calls for Improved Housing and Living Conditions for Roma, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (Apr. 05, 2012), <http://www.osce.org/odihr/89512>.

²¹ Amnesty International, *Home is More than a Roof Over Your Head*, AMNESTY INT’L PUBLICATIONS, Apr. 2011, at 3, 13.

to poverty and discrimination. In 2011, the Serbian government reported that “[t]here are some 600 Roma settlements in Serbia These are mostly illegal and non-hygienic settlements and/or without a legal basis and in severely bad conditions.”²² In reality, many “Gypsy settlements” are nothing more than overcrowded shantytowns made up of a few shipping containers, cardboard boxes, an assortment of plywood, and pieces of plastic and corrugated metal.²³ Slightly more fortunate Roma may live in structures built of brick or other leftover building materials.²⁴ As Chaloka Beyani, a former Special Rapporteur on the human rights of internally displaced persons lamented “entire families have been living in spaces of about 12 square metres for over a decade, with limited access to running water, electricity and heating fuel and sharing kitchens and bathrooms.”²⁵ Unfortunately, this is what many Roma call home.

In 2015, while visiting Serbia, Leilani Farha, the current Special Rapporteur on the human rights of internally displaced persons, described conditions as appalling. According to her report, “[c]hildren play amidst garbage heaps and broken glass.” In addition, Farha stated that “electricity is generally not provided, and in some cases there is not even piped water.”²⁶ Ultimately, housing and the communal areas continue to remain both unsanitary and unsafe.²⁷ Numerous settlements are infested with rats which pose a significant risk to children.²⁸ In one case, a child was even disfigured after being bitten by a rat.²⁹

It has been estimated that the settlements are most densely populated in the city of Belgrade.³⁰ In 2006, Belgrade had plans to build housing for the Roma; however, those plans were quickly abandoned as a result of demonstrations by nearby residents.³¹ Now, many Roma are stuck in an endless limbo with many living destitute on the street.³²

²² Committee for the Elimination of Discrimination (CERD), *Reports submitted by States parties under Article 9 of the Convention: Initial report of States parties due in 2008: Serbia*, UN Doc. CERD/C/SRB/1, ¶ 73, (Oct. 1, 2009).

²³ Amnesty International, *Serbia: Submission to the UN Committee on Economic, Social and Cultural Rights*, *supra* note 15, at 7.

²⁴ *Id.*

²⁵ Chaloka Beyani, *Report of the Special Rapporteur on the human rights of internally displaced persons*, U.N. Doc. A/HRC/26/33/Add.2, ¶ 10.

²⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See id.*

³⁰ Božidar Jakšić & Goran Bašić, *Romany Settlements, Living Conditions and Possibilities of Integration of the Roma*, ETHNICITY RESEARCH CENTER, Dec. 2002, at 18-21.

³¹ *Id.*

³² *New Report on Statelessness Reveals Shocking Human Rights Abuse across Europe*

ii. Forced Evictions

Ever since the failed housing attempt, Amnesty International and Human Rights Watch have “documented a pattern of forced evictions of Romani communities . . .”.³³ Most of these evictions were carried out by authorities from the City of Belgrade, the Belgrade Land Agency (Beoland) or other municipalities within the city itself.³⁴ However, Serbian national policies have certainly contributed to these evictions.³⁵ Not only are most of the resettlement sites largely located on the outskirts of the city, but they are also far from employment opportunities.³⁶

One such mass removal occurred in the early morning hours of April 5, 2009, when local authorities forcibly evicted more than 250 Roma from an informal settlement in New Belgrade’s Blok 67.³⁷ These forced evictions were carried out by bulldozers escorted by police officers.³⁸ The residents were never given any formal eviction notice.³⁹ Leaving no time for people to

and *Calls for Urgent Reform*, PRAXIS, Oct. 3, 2014, <http://www.praxis.org.rs/index.php/en/praxis-in-action/nationality-statelessness/item/815-novi-izveštaj-evropske-mreže-za-pitanja-apatridije-oktriva-šokantno-kršenje-ljudskih-prava-širo-m-evrope-i-poziva-na-hitne-reforme>.

³³ Amnesty International, *Serbia: Submission to the UN Committee on Economic, Social and Cultural Rights*, *supra* note 15, at Amnesty International, *supra* note 11, at 5.

³⁴ *Id.* at 9; Research done by the NGO Praxis has discovered that approximately 89% of the 936 evictions carried out in Serbia took place in Belgrade. *Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing*, PRAXIS 67-68 (2013).

³⁵ Walter Kälin, *Report of the Representative of the Secretary-General on the human rights of internally displaced persons: Follow-up visit to the mission to Serbia and Montenegro (including Kosovo) in 2005*, U.N. Doc. A/HRC/13/21/Add.1, ¶¶ 55-56, (Dec. 11, 2009), http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.1_serbia_montenegro.pdf

³⁶ See Amnesty International, *Left Out: Violations of the Rights of Roma in Europe*, *supra* note 2, at 5, 10.

³⁷ Amnesty International, *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, *supra* note 15, at 5, 12; see B92, *Protest zbog raseljavanja Roma*, http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=04&dd=08&nav_id=354502; see also, Coalition Against Discrimination: *The new, forcible eviction of barracks on Novi Beograd*, <http://minoritycentre.org/actuals/coalition-against-discrimination-new-forcible- eviction-barrack-s-novi-beograd> (last visited Nov. 30, 2014).

³⁸ Amnesty International, *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, *supra* note 15, at 5, 10-12.

³⁹ *Id.*; Also, Article 41 of the UN Guiding Principles on Development-Based Evictions and Displacement states, “Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.”

grab their personal property, the settlement was torn apart.⁴⁰ Among those evicted were approximately forty-seven families including women, children, as well as the elderly and infirm.⁴¹ With nowhere else to go, many of the Roma from Blok 67 were rendered homeless.⁴²

More recently, on September 20, 2012, eighty Roma, including forty of them children, were forcibly evicted from the abandoned factory they had been living in in New Belgrade on Zemunska ulica. This was not the first time these Roma had been evicted; many moved here after being forced from their homes the previous April.⁴³ The eviction was carried out by a number of court bailiffs accompanied by approximately thirty government police officers in riot gear.⁴⁴ According to Amnesty International, journalists as well as “[r]epresentatives of NGOs and UN bodies were excluded from independently monitoring the eviction, in violation of international standards.”⁴⁵ Once again, these Roma people were left homeless and alone.⁴⁶

These examples are only a small sample of the dozens of forced evictions since 2009 that have left thousands of Roma homeless.⁴⁷ Nevertheless, these patterns of forced evictions highlight how the Serbian government and the authorities from the City of Belgrade are still failing to observe international human rights protocols. More viscerally, they have ignored the devastating impact such evictions have had on people’s lives and families.

iii. Inadequate Access to Education and Employment

Serbian Roma also face considerable challenges and discrimination when it comes to education. Many Roma children do not even attend school.⁴⁸ Those who do attend school often find themselves relegated to

⁴⁰ See Amnesty International, *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, *supra* note 15, at 5, 12. In some cases, the authorities even prevented the residents from securing their property.

⁴¹ *Id.* at 5, 10.

⁴² *Statement for Working Session 6: Roma and Sinti, with a focus on empowerment of Romani women to access their human rights*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, <http://www.osce.org/odhr/95145?download=true>.

⁴³ Ignored Voices of Roma, <http://ignoredvoiceofroma.wordpress.com/nieuws/>.

⁴⁴ Amnesty International, *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, *supra* note 15, at 14.

⁴⁵ *Id.*

⁴⁶ See, e.g., Ignored Voices of Roma, *supra* note 44.

⁴⁷ For more examples, see Rorke, *supra* note 3; see also <https://www.youtube.com/watch?v=K2Sv-uWMEig>.

⁴⁸ Minority Rights, *supra* note 17.

special schools for the mentally handicapped.⁴⁹ Roma children are often placed in such schools because of a lack of economic possibilities as well as inadequate categorizing by medical commissions, forcing Roma families to send their children to special schools because such schools are less expensive.⁵⁰ There are even recorded instances where Roma students were physically segregated in primary schools.⁵¹ Because the majority of Roma children are forced to receive substandard tutelage, many are unable to pass the tests required to complete their elementary education.⁵² In other words, the Serbian government has failed to adopt regulations to ensure affirmative action measures for the schooling of Roma children.⁵³

Serbian law requires people to complete elementary education in order to be eligible for employment.⁵⁴ Roma who do not complete elementary education are consequently unable to register at the State Employment Office.⁵⁵ Without access to employment opportunities, many Roma are unable to pay rent. Absent alternative housing, many are either left homeless or forced to find accommodations in informal settlements with the constant threat of eviction and deportation, as described above.⁵⁶ As such, the system has locked many of the Roma into a vicious cycle of eviction, flight and forced deportation. Ultimately, the lack of access to education and employment creates situations of *de facto* statelessness for Serbia's Roma population.⁵⁷ Further investigation of this system presents convincing evidence that the Roma in Serbia are victims of crimes against humanity.

⁴⁹ *Id.*; see also UNICEF (a), *When Special Means Excluded, Roma Segregation in Special Schools in the CEE/CIS Region*. UNICEF Regional Office for Central and Easter Europe and the Commonwealth of Independent States, 2009.

⁵⁰ The European Roma rights Centre (ERRC), *Written Comments of the European Roma Rights Centre, Bibija, Eureka and Women's Space Concerning the Republic of Serbia for Consideration by the United Nations Committee on the Elimination of Discrimination Against Women*, <http://www.errc.org/cms/upload/media/03/7C/m0000037C.pdf>.

⁵¹ See e.g., the "Vuk Karadžić" Primary School in Niš. Open Society Institute, *Monitoring Report: Equal Access to Quality Education for Roma, Serbia*. Belgrade, Open Society Institute, 2007, p. 485; see also Tijana Joksic, *Lecture on Discrimination of Roma in the Republic of Serbia 6-7* (June 18, 2015) (unpublished manuscript) (on file with the University of Education Freiburg), https://www.freiburger-forum.net/wordpress/wp-content/uploads/2015/05/Tijana_Joksic_Roma_Discrimination-1.pdf

⁵² see generally *Minority Rights*, *supra* note 17.

⁵³ Tijana Joksic, *supra* note 52, at 7.

⁵⁴ Amnesty International, *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, INT'L PUBLICATIONS, 2011, at 5, 9.

⁵⁵ Amnesty International, *Serbia: Submission to the UN committee on Economic, Social and Cultural Rights*, *supra* note 55, at 9.

⁵⁶ Amnesty International, *supra* note 11, at 3, 13.

⁵⁷ See Tijana Joksic, *supra* note 52, at 6-8.

III. JURISDICTION FRAMEWORK

Established by the UN in 1998 under the Rome Statute, the ICC has jurisdiction over acts of genocide, crimes against humanity, crimes of aggression and war crimes.⁵⁸ However, the ICC's jurisdiction is limited. It may only exercise jurisdiction over (1) States or individuals of States who have accepted the jurisdiction of the Court through ratification of the Rome Statute; or (2) crimes that have taken place in the territory of a State which has accepted the Court's jurisdiction.⁵⁹

Serbia became a party to the Rome Statute on September 6, 2001.⁶⁰ Because Serbia is a party to the Rome Statute, the Court has jurisdiction over any crimes against humanity committed within Serbia after the date of ratification.⁶¹ However, the ICC has deemed itself a court of last resort.⁶² Thus, the ICC will not always act simply because it has jurisdiction.⁶³ Rather, the Court will generally limit its jurisdictional discretion to cases that national authorities are either unwilling or unable to carry out a genuine investigation or, if necessary, prosecute.⁶⁴ Therefore, assuming there are indeed crimes against humanity being committed against the Roma within Serbia, the likelihood of those crimes being brought before the ICC is contingent on Serbia's willingness and ability to investigate and prosecute on its own.

IV. CRIMES AGAINST HUMANITY FRAMEWORK

Article 7 of the Rome Statute outlines crimes against humanity as being any of ten enumerated acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."⁶⁵ The ten enumerated acts include murder, rape, torture, forcible transfer and persecution of a population. The statute also contains a "catch-

⁵⁸ *Jurisdiction and Admissibility*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/about/how-the-court-works/Pages/default.aspx#legalProcess>.

⁵⁹ *Id.*

⁶⁰ *The States Parties to the Rome Statute*, INTERNATIONAL CRIMINAL COURT, https://asp.icc-cpi.int/en_menus/asp/states%20parties/eastern%20european%20states/Pages/serbia.aspx

⁶¹ The ICC only has jurisdiction after the Statute entered into force for that State. *See Jurisdiction and Admissibility*, *supra* note 59.

⁶² *ICC at a Glance*, INTERNATIONAL CRIMINAL COURT, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx.

⁶³ *Jurisdiction and Admissibility*, *supra* note 47.

⁶⁴ *ICC at a Glance*, *supra* note 51.

⁶⁵ Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 at art. 7(1), Jul. 17, 1998. http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf. [Hereinafter Rome Statute].

all” provision prohibiting “[o]ther inhumane acts of a similar character” which intentionally cause “great suffering, or serious injury to body or to mental and physical health.”⁶⁶ Article 7(2) defines an “attack” as “a course of conduct involving the multiple commission of acts referred to in [Article 7(1)] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack.” While the ICC has yet to consider whether non-violent acts rise to the level of crimes against humanity, the International Criminal Tribunal for Rwanda (ICTR) noted in the landmark case against Jean-Paul Akayesu that “[a]n attack may also be non violent in nature . . . if orchestrated on a massive scale or in a systematic manner.”⁶⁷

In its definition of crimes against humanity, the Rome Statute lays out four elements that must be met to establish something as a crime against humanity. The requirements are (1) a State or organizational policy exists; (2) the State or organizational policy is part of a widespread or systematic attack; (3) the attack is directed against a civilian population; and (4) those responsible for the attack did so knowing of a widespread or systematic attack against a civilian population.

A. Definition of a State or Organizational Policy

A crime against humanity requires the existence of a State or organizational policy.⁶⁸ The Rome Statute does not expressly define either of these terms. In fact, the lack of definition has generated significant debate among scholars and lawyers.⁶⁹ However, it is important to note that a

⁶⁶ *Id.*

⁶⁷ During the 1994 Rwandan Genocide, Akayesu was responsible for the deaths of numerous Tutsis. Akayesu not only refused to stop the killings, he personally supervised the murder of many other Tutsis. Akayesu’s actions also contributed to violence and other forms of hatred against the Tutsis. See e.g., *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, at ¶¶ 581, 648-744 (Int’l Crim. Trib. for Rwanda, Sept. 2, 1998), <http://www.unict.org/sites/unict.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf>; see also *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgment and Sentence, at ¶ 70 (Int’l Crim. Trib. for Rwanda, Dec. 6, 1999), <http://www.unict.org/sites/unict.org/files/case-documents/ictr-96-3/trial-judgements/en/991206.pdf>; *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Judgment and Sentence, at ¶ 205 (Int’l Crim. Trib. for Rwanda, Jan. 27, 2000), <http://www.unict.org/sites/unict.org/files/case-documents/ictr-96-13/trial-judgements/en/000127.pdf>; *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Judgment and Sentence, at ¶ 327 (Int’l Crim. Trib. for Rwanda, May 15, 2003), <http://www.unict.org/sites/unict.org/files/case-documents/ictr-97-20/trial-judgements/en/030515.pdf>.

⁶⁸ Rome Statute, *supra* note 66, at art. 7(2).

⁶⁹ Mathias Holvoet, *The State or Organizational Policy Requirement within the Definition of Crimes Against Humanity in the Rome Statute: An Appraisal of the Emerging Jurisprudence and the Implementation Practice by ICC States Parties*, INTERNATIONAL

majority of the judges of the ICC's Pre-Trial Chamber conclude that this definition encompasses even non-state entities.⁷⁰ A majority of the Court has stated that the decision should be measured by the organization's capability to infringe on basic human values.⁷¹

"Whether a given group qualifies as an organization under the Statute must be made on a case-by-case basis."⁷² While no specific definition has been given defining "State or Organizational Policy", the ICC's Pre-Trial Chamber has given a list of factors to be considered when making a determination. Those factors include:

- (i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; (vi) whether the group is part of a larger group, which fulfills some or all of the abovementioned criteria.⁷³

This broad interpretation of the majority also seems supported by a substantial amount of scholarly literature.⁷⁴ The majority's interpretation is also consistent with the reality that crimes against humanity can be orchestrated against a civilian population by non-state organizations such as terrorist groups and political parties.⁷⁵ This interpretation also seems to comport with the direction of international criminal justice in general, as many of the crimes currently being investigated and prosecuted by the ICC come from places like Uganda, the Democratic Republic of the Congo, and

CRIMES DATABASE 1, 1 (2013), <http://www.internationalcrimesdatabase.org/upload/documents/20140916T170710-ICD%20Brief%202%20-%20Holvoet.pdf>.

⁷⁰ Situation in the Republic of Kenya, Pre-Trial Chamber II, Case No. ICC-01/09, at ¶ 92, Mar. 31, 2010, <http://www.icc-cpi.int/iccdocs/doc/doc854287.pdf>.

⁷¹ Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation Into the Situation in the Republic of Kenya, Mar. 31, 2010, ¶ 90. This interpretation was similarly recognized once again by the majority in their Decision on the Confirmation of Charges, *see* ICC, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a)-(b) of the Rome Statute, Jan. 23, 2012, ¶ 33; *see also*, Mathias Holvoet, *supra* note 70, at 6.

⁷² Situation in the Republic of Kenya, *supra* note 59, at ¶ 93, Mar. 31, 2010.

⁷³ *Id.*

⁷⁴ Mathias Holvoet, *supra* note 58, at 6.

⁷⁵ *Id.*

the Central African Republic.⁷⁶ In many of those cases, the crimes were not committed by a State or State-like organization.⁷⁷ This suggests that local entities such as city police or demolition teams—organizations perhaps not directly linked to the State—may also be considered in the analysis.

B. Definition of “Widespread or Systematic” Attack

Article 7(2)(a) of the Rome Statute defines the “attack” element as “a course of conduct involving the multiple commission of acts . . . against any civilian population, pursuant to or in furtherance of a State or organizational policy.”⁷⁸ The Elements of Crimes⁷⁹ further states that an attack “need not constitute a military attack” but must merely constitute a “multiple commission of acts” enumerated by Article 7(1). Rodney Dixon, a leading expert on the Rome Statute and the ICC, further explained that an attack “need not even involve military forces or armed hostilities, or any violent force at all.”⁸⁰ The International Criminal Tribunal for the former Yugoslavia (ICTY) supported this liberal interpretation in *Prosecutor v. Kunarac et al.*, in which it stated that an attack for purposes of Article 7(2)(a) “is not limited to the use of armed force; it encompasses any mistreatment of the civilian population.”⁸¹

Furthermore, the attack must be “widespread or systematic.” Here, once again, the Rome Statute has not given any further guidance as to what this means. However, in the *Tadić* and *Kunarac* cases, the Trial Chambers have explained that “widespread” refers to “the large-scale nature of the attack and the number of victims.”⁸² On the other hand, “systematic” refers to “the organized nature of the acts of violence and the improbability of their

⁷⁶ *See id.*

⁷⁷ *See id.*

⁷⁸ Rome Statute, *supra* note 66, at art. 7(2).

⁷⁹ The Elements of Crimes assist the ICC in interpreting and applying articles 6, 7 and 8 of the Rome Statute. Elements of Crimes, U.N. Doc. PCNICC/2000/1, Sept. 9, 2000, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁸⁰ Rodney Dixon, *Crimes Against Humanity*, in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT 124 (Otto Triffterer ed., 1999).

⁸¹ *Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1, Judgment, at ¶ 86 (Int’l Crim. Trib. for the former Yugoslavia, June 12, 2002), <http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>.

⁸² *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, at ¶ 648 (Int’l Crim. Trib. for the former Yugoslavia, July 15, 1999), <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>; *see also* *Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1, Judgment, at ¶ 94 (Int’l Crim. Trib. for the former Yugoslavia, June 12, 2002), <http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>.

random occurrence.”⁸³

The requirement that the attack be “widespread or systematic” highlights the notion that these actions are crimes committed with “humanity” as their victim. Specifically, it “underscores that the social harm that gives crimes against humanity their essence are the massive nature and scale of the crimes.”⁸⁴ Furthermore, it guarantees “the acts of individuals alone, which are isolated, uncoordinated, and haphazard [are] excluded.”⁸⁵

C. Definition of “Civilian Population”

Under international case law, the terms “civilian” and “civilian population” have typically referred to “people who are not taking any active part in . . . hostilities.”⁸⁶ In addition, “civilian population” need not refer to the entire population of a geographic entity, so long as an “attack” was directed at “a limited and randomly selected number of individuals.”⁸⁷ The ICTY suggested that a broad definition of “civilian” and “civilian population” is warranted “by the object and purpose of the general principles and rules . . . prohibiting crimes against humanity,” which are to “safeguard basic human values by banning atrocities directed against human dignity.”⁸⁸

D. Definition of “Knowledge”

Article 30(3) of the Rome Statute defines “knowledge” as the “awareness that a circumstance exists or a consequence will occur in the ordinary course of events.”⁸⁹ The court in *Tadić* noted that actual or constructive knowledge is enough.⁹⁰ This interpretation seems to be consistent with commentary.⁹¹ The Elements of Crimes further states that the knowledge requirement “should not be interpreted as requiring proof” that the perpetrator knew that the conduct was part of a widespread or

⁸³ *Id.*; see also *Prosecutor v. Kunarac et al.*, *supra* note 69, at ¶ 94.

⁸⁴ Machteld Boot, Rodney Dixon & Christopher K. Hall, *Article 7: Crimes Against Humanity*, in COMMENTARY ON THE ROME STATUTE OF THE INT’L CRIMINAL COURT, 117, 159 (Otto Triffterer ed., 1999).

⁸⁵ *Id.*

⁸⁶ See, e.g., *Prosecutor v. Akayesu*, *supra* note 56, at ¶ 175.

⁸⁷ *Prosecutor v. Kunarac et al.*, Case No. IT-96-23/1-A, Judgment, at ¶ 90 (Int’l Crim. Trib. for the former Yugoslavia, June 12, 2002).

⁸⁸ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Judgment, at ¶¶ 547-549 (Int’l Crim. Trib. for the former Yugoslavia, Jan. 14, 2000); see also *Prosecutor v. Jelisić*, Case No. IT-95-10-T, Judgment, at ¶ 54 (Int’l Crim. Trib. for the former Yugoslavia, Dec. 14, 1999).

⁸⁹ Rome Statute, *supra* note 66, at art. 30(3).

⁹⁰ *Tadić*, *supra* note 83, at ¶ 659.

⁹¹ See, e.g., Simon Chesterman, *An Altogether Different Order: Defining the Elements of Crimes Against Humanity*, 10 DUKE J. COMP. & INT’L. L. 307, 321-22.

systematic attack against a civilian population.⁹² Rather, like the court in *Tadić* indicated, knowledge “can be implied from the circumstances.”⁹³ Therefore, the element is satisfied if the circumstances underlying the conduct imply that the perpetrator knew or should have known that their conduct was part of a widespread or systematic attack against a civilian population.

V. CRIME OF DEPORTATION OR FORCIBLE TRANSFER OF POPULATION

Deportation or a forcible transfer of a population has long been viewed as a crime against humanity by all of the major international criminal instruments in existence prior to the ICC, including the Nuremberg Charter as well as the ICTY and ICTR.⁹⁴ Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which Serbia signed on March 12, 2001, establishes that everyone has “the right to liberty of movement and freedom to choose his residence.”⁹⁵ The freedom to choose one’s residence includes the right to *not* be moved.⁹⁶ The Rome Statute supports and strengthens this right by characterizing forcible transfers as crimes against humanity.⁹⁷

Various bodies of the UN have further defined this right. In 1997, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities issued a resolution affirming “the right of persons to remain in their own homes, on their own lands, and in their own countries.”⁹⁸ Additionally, it called on governments and other organizations to do everything possible “to cease at once all practices of forced displacement [and] population transfer . . . in violation of international legal standards.”⁹⁹

⁹² Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 at art. 7 ¶ 2, Sept. 9, 2000.

⁹³ *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgment, at ¶ 657 (Int’l Crim. Trib. for the former Yugoslavia, May 7, 1997), <http://www.icty.org/x/cases/tadic/tjug/en/tad-tsj70507JT2-e.pdf>.

⁹⁴ See ROY LEE, *THE INTERNATIONAL CRIMINAL COURT: ELEMENTS OF CRIMES AND RULES OF PROCEDURE AND EVIDENCE* 86 (Roy Lee & Hakan Friman eds., 2001); M. CHERIF BASSIOUNI & PETER MANIKAS, *THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA 627-28* (Transnational Publishers, 1996) (arguing that the crime of “deportation” under the Nuremberg Charter included “all unjustified forceful transfers [including] internal displacement”).

⁹⁵ International Covenant on Civil and Political Rights, art. 12. [Hereinafter ICCPR].

⁹⁶ See, e.g., Patrick McFadden, *The Right to Stay*, 29 VAND. J. TRANSNAT’L L. 1, 36 (1966).

⁹⁷ Rome Statute, *supra* note 66, at art. 7(1)(d).

⁹⁸ United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Freedom of Movement and Population Transfer*, U.N. Doc. E/CN.4/SUB.2/RES/1997/29.

⁹⁹ *Id.*

A. Defining Deportation and Forcible Transfer of Population

Article 7(2)(d) defines deportation or forcible transfer of population as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”¹⁰⁰ The long-standing definition of “deportation” also includes the crime of forced population transfer within a state’s borders.¹⁰¹ Deportation or a forcible transfer of a population includes “the full range of coercive pressures on people to flee their homes.”¹⁰² Such pressures include “destruction of their homes, and other acts of persecution, such as depriving members of a group of employment, [and] denying them access to schools.”¹⁰³

Non-violent forced evictions also fall within the meaning of deportation and forcible transfer.¹⁰⁴ This assertion is supported by the fact that a number of international scholars argue that forced evictions can still rise to the level of crimes against humanity, even in situations that are not connected to armed conflict.¹⁰⁵ For example, the Appeal Chamber of the ICTY affirmed this position: “It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict.”¹⁰⁶

For example, there have been calls to indict the president of Zimbabwe, Robert Mugabe, before the ICC for crimes against humanity on account of

¹⁰⁰ Rome Statute, *supra* note 66, at art. 7(2)(d).

¹⁰¹ See, e.g., *Draft Report of the International Law Commission on the Work of its 43rd Session*, U.N. Doc. A/CN.4/L.464/Add.4/1991 at 31 (stating that the prohibition of deportation as a crime against humanity also applies internally); *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment, at ¶ 521 (Int’l Crim. Trib. for the former Yugoslavia, Aug. 2, 2001) (stating that “[d]eportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.”); *Prosecutor v. Nikolić*, Case No. IT-94-2-R61, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, at ¶ 23 (Int’l Crim. Trib. for the former Yugoslavia, Oct. 20, 1995) (finding that unlawful transfers of civilians within Bosnia could be characterized as deportation and therefore crimes against humanity); *Crimes Against Humanity Charges*, Serious Crimes Unit, Feb. 25, 2003 (announcing the indictment, on February 24, 2003, by the Serious Crimes Unit of the U.N.M.S.E.T. (established by Security Council Resolution 1272, 1999), of eight Indonesian and East Timorese government and military officials for crimes against humanity for the “forcible transfer of civilians from districts across East Timor to West Timor”)

¹⁰² Machteld Boot & Christopher K. Hall *supra* note 145, at 162.

¹⁰³ *Id.*

¹⁰⁴ See Malcolm Langford & Jean du Plessis, *Dignity in the Rubble? Forced Evictions and Human Rights Law*, CENTRE ON HOUSING RIGHTS AND EVICTIONS, 2006, at 22-23.

¹⁰⁵ Declaration of International Law Scholars on Forced Relocation, Originally written and submitted for *Doe v. Unocal*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000), <http://homepage.ntlworld.com/jksonc/docs/bancourt-d3b.html>.

¹⁰⁶ See *Tadić*, *supra* note 83, at ¶¶ 35-36.

large-scale forcible evictions that were supposedly part of a campaign to forcibly clear slum areas across the country.¹⁰⁷ More recently, victims of forced evictions in Cambodia have called on the ICC to consider their mass evictions by the national government as crimes against humanity.¹⁰⁸ Furthermore, there have been several cases where individuals have been prosecuted by war crimes tribunals for actions related to similar forced evictions.¹⁰⁹ Given the similarity between these cases and the actions taken against the Roma settlements in Serbia, we can infer the non-violent forced evictions of the Roma fall within the meaning of deportation and forcible transfer.

The forced evictions of the Roma between 2009 and 2014 establish a *prima facie* case that the City of Belgrade and the Serbian government have committed the crime of deportation or forcible transfer against the Roma population. However, for the ICC to recognize the forced evictions of the Roma as crimes against humanity, the forced evictions must also be “part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹¹⁰

B. The Forcible Deportations and Population Transfers of Roma are Crimes Against Humanity

For deportation and population transfers of the Roma to rise to the level of crimes against humanity, the Roma must have been evicted “from the area in which they were lawfully present.”¹¹¹ In 2008, Serbia’s Deputy Prime Minister, Božidar Delić, argued that most of the Roma settlements are informal, and thus illegal.¹¹² But Amnesty International has noted that

¹⁰⁷ See Augustine Mukaro, *EU/UN slam govt*, ZIM. INDEP., June 10, 2005, available at <http://www.theindependent.co.zw/news/2005/June/Friday9/2514.html>; see also, Langford, *supra* note 105, at 23.

¹⁰⁸ CHANNEL NEWSASIA, <http://www.channelnewsasia.com/news/asiapacific/cambodia-land-grab/1401254.html> (October 7, 2014); see also SEIFF, <https://abbyseiff.wordpress.com/2012/07/27/icc-asked-to-investigate-government/> (July 27, 2012).

¹⁰⁹ See *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction, (Int’l Crim. Trib. for the former Yugoslavia, Oct. 2, 1995) and *Prosecutor v. Nikolić*, Case No. IT-95-2-R61, Decision of Trial Chamber I – Review of Indictment Pursuant to Rule 61. (Int’l Crim. Trib. for the former Yugoslavia, Oct. 20, 1995); see also Langford, *supra* note 105, at 22.

¹¹⁰ Rome Statute, *supra* note 66, at art. 7(1).

¹¹¹ *Id.* at art. 7(2)(d).

¹¹² See Amnesty International, *Briefing to the UN Committee on the Elimination of Racial Discrimination*, 2010, at 7, <https://www.amnesty.org/en/documents/EUR70/016/2010/en/>; see also Božidar Delić, *Decade of Roma Inclusion, Republic of Serbia – Taking over the Presidency*, June 24, 2008.

Serbian laws have created a situation where the Roma have no other housing option *but* to live in these informal settlements.¹¹³ Discrimination and internal displacement have forced many Roma “into poverty and consequently made [them] homeless.”¹¹⁴ Therefore, Serbia’s argument that the Roma settlements are illegal, and eviction thus justifiable, is not persuasive in light of the historical treatment of the Roma people. Allowing such an argument to pass would create a massive loophole in the framework of the Rome Statute, and would actually promote mistreatment of already-marginalized populations in order to deny them legal status. This view is strengthened by the fact that there has been a recent trend towards strengthening protections against forced evictions, even in the case of illegal settlements.¹¹⁵

The ICC has yet to address a case pertaining to forced evictions from areas where people were not technically “lawfully present”; however, a number of national and international courts have considered the illegality of a home irrelevant for purposes of forced evictions.¹¹⁶ Rather they appear to take a more principled approach by focusing on the person’s relation to that home and area.¹¹⁷ For example, in India forced evictions have been prohibited based on the right to life. In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.*, India’s Supreme Court stated:

[I]t is the duty of the State to construct houses at reasonable rates and make them easily accessible to the poor. The State has the constitutional duty to provide shelter to make the right to life meaningful Where the poor have resided in an area for a long time, the State ought to frame schemes and allocate land and resources for rehabilitating the urban poor.¹¹⁸

More recently, in *SAHAJ v. Vadora Municipal Corporation*, India’s

¹¹³ Amnesty International, *supra* note 11, at 3, 21.

¹¹⁴ Amnesty International, *supra* at 7; *see also* Amnesty International, *supra* note 11, at 3, 13 (asserting that many of the Roma living in these settlements previously owned or rented their own homes, but were driven to these settlements due to poverty and discrimination. Additionally, many Roma faced discrimination in employment and access to housing, including a lack of low-cost or affordable housing and were thus forced to find accommodations in the settlements. Others were forced to flee their homes because of the war in Kosovo, but received no help whatsoever from the authorities. Another group of Roma have found themselves in in these settlements after being forcibly returned to Serbia from EU member states.)

¹¹⁵ *See generally* Langford, *supra* note 105, at 18-20.

¹¹⁶ *Id.* at 20.

¹¹⁷ *Id.*

¹¹⁸ *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.*, 11 SCC 121 (1997). For discussion, see Colin Gonsalves, *The Right to Housing—The Preserve of the Rich*, in 1 HOUSING & ESC RTS. LITIG. Q. 1, 1-3 (2005).

Supreme Court held that the demolition of ‘hutments’ without providing alternative accommodation created a *prima facie* case that the right to housing and shelter had been violated.¹¹⁹

If the ICC accepts the more principled approach similar to that followed by the Indian Supreme Court, then the Roma were lawfully present, and Serbia has certainly violated their rights. Walter Kälin, the former UN Representative of the Secretary General on the human rights of internally displaced persons, wrote a report in 2005 criticizing the Serbian government for failing to protect the rights of Roma who had been displaced from Kosovo.¹²⁰ In his report, Kälin specifically recommended that the Serbian government “provide particular support in the areas of housing, access to livelihoods, and education to Romani . . . , in particular those living in [informal] settlements.”¹²¹ A subsequent report published by the UN in 2010 found that conditions had not changed, and that the Serbian government has refused to consider integration of these Roma “for political reasons associated with the contested status of Kosovo.”¹²² Indeed, Serbia has placed so many restrictions on Roma movement that the Roma have little choice but to live in informal settlements. In short, if the Roma are not lawfully present in their informal settlements, then they cannot be lawfully present anywhere in Serbia. These facts make a strong case that the Roma are lawfully present, and that the crime of deportation and forcible transfer of population is applicable. With the requisite enumerated act established under Article 7(1)(d), the next step of the inquiry to determine whether a state or organizational actor has carried out the policy, knowing it to be part of a widespread attack against a civilian population.

i. The Serbian Government and the City of Belgrade have a State or Organizational Policy to Forcibly Displace the Roma.

There must be a State or organizational policy of forcible displacement for the deportations and forcible population transfers of the Roma to qualify as crimes against humanity.¹²³ The policy must also constitute a widespread or systematic attack on the Roma.¹²⁴ In addition, the Roma must be a civilian population within the meaning of the Rome Statute, and those perpetrating the attack must satisfy the knowledge requirement.¹²⁵

Deportation or forcible population transfer requires an organizational

¹¹⁹ Langford, *supra* note 105, at 20.

¹²⁰ See generally E/CN.4/2006/71/Add.5, ¶¶ 71, 76(c).

¹²¹ *Id.*

¹²² Amnesty International, *supra* note 11, at 3, 22.

¹²³ Rome Statute, *supra* note 66, at art. 7(2).

¹²⁴ *Id.*

¹²⁵ *Id.*

policy that is “coercive.”¹²⁶ Although it is more difficult to prove, the totality of the State’s response suggests that a State policy of coerced displacement exists.

For example in May 2009, authorities from the City of Belgrade approved a plan to resettle a Roma community located in the center of Belgrade.¹²⁷ Pursuant to this plan, on August 31, 2009, nearly 200 Roma families were surrounded by police as trucks and bulldozers appeared. In less than an hour, the city authorities demolished over 200 Roma homes, forcibly evicting over 178 Roma families.¹²⁸ For many, alternative housing arrangements were not provided.¹²⁹ And even if these forces can be considered to be individual bad actors, a case can be made that actions by police are tacitly supported by the Serbian government, and therefore reflect government complicity in forced displacement of the Roma.

This plan was carried out without any consideration of the safeguards required under international law.¹³⁰ The Roma families were never given any information as to the intended demolition, which prevented them from making alternative plans or removing their personal belongings.¹³¹ This action by the City of Belgrade effectively rendered these Roma families homeless, forced once again to move to a different informal settlement where they would be at risk of future forced evictions.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has stressed that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with . . . merely having a roof over one’s head Rather it should be seen as a right to live somewhere in security, peace and dignity.”¹³² Perhaps even more damning, the economic and social policies of the Serbian government and the City of Belgrade make it virtually impossible for many Roma to obtain education and employment training in order to work to pay for proper housing. This is because education, social welfare and employment benefits require recognition as a citizen.¹³³ Recognition as a citizen requires the possession of a birth

¹²⁶ *Id.* at art. 7(2)(d).

¹²⁷ *Action Plan for Dismantling of Unhygienic Settlements in Belgrade*, adopted on May 28, 2009; Changes and Amendments to the Action Plan for the Resettlement of Shanty Settlements on the Territory of the City of Belgrade in 2009, City of Belgrade, and Secretariat for Social Protection, 29 Aug. 2009.

¹²⁸ Amnesty International, *supra* note 11, at 3, 5.

¹²⁹ B92, *AI: Roma were forced from shanty town*, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=06&dd=10&nav_id=67724.

¹³⁰ Amnesty International, *supra* note 11, at 3, 5.

¹³¹ B92, *supra* note 131.

¹³² CESCR, General Comment 4, The Right to Adequate Housing, The right to adequate housing, (Art. 11(1) of the ICESCR), (Sixth session, Dec. 13, 1991) UN Doc.E/1992/23, ¶. 7.

¹³³ *See* Kälin, *supra* note 36, at ¶¶ 55-56.

certificate, and if applicable, marriage and death certificates from other members of the family. Without these documents, one cannot register to obtain an identity card as well as other documents establishing residency. Due to the high cost of obtaining these documents, many Roma cannot afford to register.¹³⁴ But even if the Roma could afford it, Serbian law also requires proof of a legally recognizable address to be able to register.¹³⁵ Because informal settlements are not considered legally recognizable addresses, many Roma do not have a legally recognized address.¹³⁶ Consequently, many Roma find themselves in situations of *de facto* statelessness.¹³⁷ The Roma people are, therefore, legally invisible. As a result, they are not able to register. Without registration, Roma are denied access to social assistance, employment and education.¹³⁸

The policies stated above make it very difficult for Roma people to obtain employment training and make actual employment nearly impossible. Without employment, many Roma are unable to pay rent and absent alternative housing. Thus, they are forced into homelessness or to find accommodations in these informal settlements, which subjects them to eviction and deportation within the country.¹³⁹ These acts therefore reflect, at best, government acquiescence, and at worst, complicity in forced displacement.

The resettlement plans provided by the Serbian government have further isolated the Roma from employment. The majority of displaced Roma have been resettled in “container settlements” on the outskirts of the city away from the majority of the population. Some have even been moved as far as forty-seven kilometers away.¹⁴⁰ Not only does this lead to further ethnic segregation and discrimination, it prevents the Roma from making a living because they are removed from every place that would offer suitable employment opportunities.

Although Serbia’s Ministry of Human and Minority Rights declared

¹³⁴ As one Roma woman living in Belvil suburb of Belgrade told AI: “*I can either register or I can feed my child.*” Amnesty International, *supra* note 11, at 3, 16.

¹³⁵ Official Gazette SRS, no. 42/77 (25/89, 42/77 (text), 25/89, бр. Official Gazette of RS, no. 53/93, 67/93, 48/94, (17/99, 33/99) 53,93, 67/93, 48/94, (17/99, 33/99). Under Article 1 of the Law on Permanent and Temporary Residence “citizens are required to report and register their residence and domicile”; The law, including in Article 5, provides that documents, which must be presented to the municipal police, include proof of identity and of an address (e.g., a deed of contract or tenancy).

¹³⁶ Amnesty International, *supra* note 11, at 3, 16.

¹³⁷ Tijana Joksic, *supra* note 52, at 6.

¹³⁸ Law on Social Insurance, September 2009, <http://www.porezi.rs/Arhival/Download/3060-099.pdf>.

¹³⁹ Amnesty International, *supra* note 11, at 3, 13.

¹⁴⁰ *Id.* at 37.

housing to be one of the government's top priorities, there is a large gap between what is being said and what is actually being done.¹⁴¹ According to a 2011 report by Amnesty International, the Serbian government and the City of Belgrade have "instead violated the [Romani] right to adequate housing in a programme of forced evictions."¹⁴² These forced evictions have resulted in livelihoods lost, property damaged, and made access to health and education impossible.¹⁴³

The actions by the Serbian government and the City of Belgrade meet the coercive element, which has led to the involuntary and unlawful evacuation of individuals from their territory of residence. Also, the actions of both groups sufficiently meet the State or organizational policy element.

ii. The Roma should be Considered a Civilian Population

The Roma are considered a civilian population, because they are not taking any active part in hostilities.¹⁴⁴ Moreover, given the history and nature of the actions conducted against the Roma, the attacks cannot be considered to be against a limited or randomly selected group of individuals.¹⁴⁵ Therefore, the Roma qualify as a civilian population under international law.

iii. Roma Displacement Constitutes a Widespread or Systematic Attack.

The actions by the Serbian government and the City of Belgrade constitute a widespread and systematic attack on the Roma population. Because the crime against humanity framework defines an attack as "any mistreatment of the civilian population," each action of the City of Belgrade and the Serbian government can be taken into consideration to establish the "widespread or systematic" element.

The economic and social policies of the Serbian government and the City of Belgrade, as well as their pattern of attacks on Roma, are not "isolated, uncoordinated, and haphazard," but rather are "massive, frequent, [or] large scale." The forced eviction of Roma from these informal settlements is nothing new. In November 2003, approximately 1,500 Roma living throughout Serbia were being threatened with forced eviction and faced "dehumanising discrimination and related housing rights

¹⁴¹ Amnesty International, *supra* note 11, at 3, 10.

¹⁴² Amnesty International, *supra* note 21, at 10.

¹⁴³ Amnesty International, <http://www.amnesty.org/en/news-and-updates/report/serbia-must-end-forced-evictions-roma-2010-06-10> (last visited Nov. 30, 2014).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

violations”¹⁴⁶ Those evicted were never offered or provided with any alternative accommodations.¹⁴⁷ In May 2003, over 300 Roma (mostly displaced children from Kosovo) were forcibly evicted from another unofficial settlement in Belgrade—again with no provision having been made for alternative housing.¹⁴⁸

The actions by the Serbian government and the City of Belgrade reflect a widespread attack on the Roma. As of 2014, at least 2,500 people, mostly Roma, have been forcibly evicted from informal settlements just in Belgrade alone.¹⁴⁹ In almost every case, these attacks have been planned without consulting or giving notice to those being evicted. The Roma in these cases have not been provided with adequate alternative housing solutions. Rather, they have been forced into the street, or to be housed in metal containers far away on the outskirts of town. The Special Rapporteur has recently expressed concern for the thousands who “still live . . . in dire conditions.”¹⁵⁰ The amount of people being displaced in these situations rises to the level of “widespread.”

These attacks are systematic as well. Over the years, particularly in the time between 2009 and 2014, there have been numerous documented policies and attempts to remove informal settlements.¹⁵¹ Most of these policies have been couched in language implying that the Serbian government and the City of Belgrade are simply clearing “unhygienic” settlements.¹⁵² Such policies would be considered admirable in a world where the Serbian government had managed to provide adequate alternative housing to those they displace. However, the fact remains that the Serbian government has not provided any alternative housing options for hundreds of Roma. Additionally, the attacks are all very similar in nature and some happening relatively close together, suggesting an element of prior planning.

The national and local displacement policies which all but single out Roma settlements, in conjunction with the economic and social policies serve to oppress the Roma population as a whole, combine to form a unified,

¹⁴⁶ Amnesty International, *supra* note 11, at 3, 6.

¹⁴⁷ *Id.*

¹⁴⁸ *Serbia and Montenegro, Amnesty International’s concerns and Serbia and Montenegro’s commitments to the Council of Europe*, Index EUR 70/022/2004, at 32-33 (2004).

¹⁴⁹ Amnesty International, *supra* note 30, at 9.

¹⁵⁰ A/HRC/23/33/Add.2, *supra* note 13, at Summary.

¹⁵¹ *See, e.g.*, Amnesty International, *supra* note 30, at 9-15.

¹⁵² *See e.g., Action Plan for Dismantling of Unhygienic Settlements in Belgrade*, adopted on May 28, 2009; Changes and Amendments to the Action Plan for the Resettlement of shanty Settlements on the Territory of the City of Belgrade in 2009, City of Belgrade, Secretariat for Social Protection, 29 August 2009; *see also* BEOLAND, http://www.beoland.com/zemljiste/tekst_GP_SI_list.pdf (last visited Nov. 30, 2014).

multi-pronged attack against the Roma people. These policies have directly contributed to the forced eviction and displacement of the Roma. Accordingly, the facts justify an investigation by the ICC.

iv. The State had knowledge that the Roma Displacement Constitutes a Widespread or Systematic Attack.

As outlined in the previous discussion, the underlying conduct involved in the destruction of the Roma settlements implies that the State knew or should have known that their conduct was part of a widespread or systematic attack against the Roma population. The Serbian government and the City of Belgrade have been complicit, both directly and indirectly, in carrying out these discriminatory laws and policies.¹⁵³ As a result, the knowledge element is met.

VI. CRIME OF PERSECUTION

Serbia's system of persecution has infiltrated nearly every aspect of Roma life. The system and policies discussed in this section barely scratch the surface of the discrimination that Roma are forced to endure on a daily basis. Regardless, it is important that at least some of these policies are brought to light. Taken together, these discriminatory restrictions establish a case for the crime of persecution.

A. Defining Persecution

Article 7(1)(h) of the Rome Statute defines persecution as an attack “against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender. . . , or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”¹⁵⁴ The statute adds that persecution “means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”¹⁵⁵ This adds another element to the analysis: intent. To establish persecution as a crime against humanity, the actor must also *intend* to commit the persecution.

However, the “in connection with” language has created definitional

¹⁵³ See, e.g., *Action Plan for Dismantling of Unhygienic Settlements in Belgrade*, *supra* note 156; *Changes and Amendments to the Action Plan for the Resettlement of shanty Settlements on the Territory of the City of Belgrade in 2009*, *supra* note 156; B92, *supra* note 117.

¹⁵⁴ Rome Statute, *supra* note 66, at art. 7(1)(h).

¹⁵⁵ *Id.* at art. 7(1)(g).

inconsistencies. Since the ICC has yet to issue a decision defining the scope of persecution, it is difficult to know exactly what this phrase means. But if we draw from the notion that this requirement includes the idea that the crime of persecution is committed in connection with *any act* enumerated in Article 7, an argument could be made that this includes the very *act* of persecution itself.¹⁵⁶ This liberal approach seems to have been followed to some degree by the *ad hoc* tribunals who feared that a strict interpretation would allow “policies of discrimination not specifically linked to war crimes, genocide, or other crimes against humanity [to] go unpunished.”¹⁵⁷

The ICC could reject the liberal interpretation adopted by the *ad hoc* tribunals; however, it is not likely to do so. The current understanding of persecution in the context of crimes against humanity is practically a product of the ICTY and the ICTR.¹⁵⁸ The definitions set forth by these Tribunals have become well-established principles in international law, and therefore, will likely be applied by international courts in the future.¹⁵⁹

Assuming the ICC finds the *ad hoc* tribunals’ definition persuasive, it is fair to consider some non-enumerated acts as part of the persecution analysis. The crime of persecution adds a number of requirements to the framework. In order for persecution to rise to the level of a crime against humanity, a prosecutor must show that (1) the conduct constitutes a crime within the jurisdiction of the court; (2) there is discriminatory conduct towards an “identifiable group”; (3) the actors perpetrating these acts have the requisite intent to discriminate against the group; and (4) these acts, taken together, lead to the “severe deprivation of fundamental rights contrary to international law.”¹⁶⁰ The crimes of deportation and forcible population transfer can be placed within the context of persecution, creating a link for the persecutory policies.

B. Serbia’s Policies of Discrimination Amount to Persecution

For Serbia’s policies of discrimination to amount to persecution, there must be a link between the persecutory acts and an enumerated Article 7 crime. Section V has thoroughly discussed the crime of deportation and forcible population transfer. This crime serves as the backdrop to the rest of the discussion.

¹⁵⁶ See Machteld Boot & Christopher K. Hall, *Persecution*, in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVERS’ NOTES, ARTICLE BY ARTICLE, 151 (Otto Triffterer ed., 1999).

¹⁵⁷ Fausto Pocar, *Persecution As a Crime Under International Criminal Law*, 2 J. NAT’L SECURITY L. & POL’Y 355, 363-364 (2008).

¹⁵⁸ *Id.* at 365.

¹⁵⁹ *Id.*

¹⁶⁰ Rome Statute, *supra* note 66, at art. 7(1)(g).

i. The Roma are an Identifiable Group Based on Ethnicity or Religion

The Roma are a collective group based on their ethnicity. Members of the Serbian government and the City of Belgrade have consistently distinguished Roma from the rest of the Serbian population. For example, the Mayor of Belgrade, Dragan Djilas, who was present during some of the forced evictions, specifically stated that these evictions were directed at the “Roma”.¹⁶¹ But even more specifically, the Serbian government recently participated in what they referred to as the Decade of Roma Inclusion, which was designed to bridge the gap “between Roma and the rest of society.”¹⁶² These statements distinguish Roma people from the rest of society, indicating that there is indeed a distinction based on ethnicity. At first glance it would seem that at least some of these statements indicate an intention to cure the discrimination against the Roma; however, as evidenced by the preceding and proceeding discussions, this has not been the case. As such, the policies implemented by the Serbian government and the City of Belgrade have discriminated against the Roma people based on their ethnicity.

ii. The Serbian Government has a State Policy that Leads to Discrimination Against the Roma.

The economic and social policies of the Serbian government discussed previously certainly meet the criteria of a State policy that leads to discrimination against the Roma. Serbian law requires a legally recognizable address to be able to register as a citizen.¹⁶³ Given that informal settlements do not qualify as legally recognizable addresses, Roma living there are unable to register as citizens.¹⁶⁴ The fact that the majority of people living in these informal settlements are Roma, this law seems tailored to target them specifically. And without registration, the Serbian law effectively denies

¹⁶¹ Marija Ristić & Gordana Andrić, *Belgrade Continues Mass Eviction of Roma Families*, BALKAN TRANSITIONAL JUST., Apr. 27, 2012, <http://www.balkaninsight.com/en/article/belgrade-forcibly-evicted-roma-families/#o1449>.

¹⁶² Program of the Serbian Presidency of the Decade of the Roma Inclusion, http://www.romadecade.org/cms/upload/file/9335_file13_program-of-the-serbian-presidency-of-the-decade-of-roma-inclusion-2005%25E2%2580%25932015.pdf.

¹⁶³ Official Gazette SRS, no. 42/77 (25/89, 42/77 (text), 25/89, 6p. Official Gazette of RS, no. 53/93, 67/93, 48/94, (17/99, 33/99) 53,93, 67/93, 48/94, (17/99, 33/99). Under Article 1 of the Law on Permanent and Temporary Residence “citizens are required to report and register their residence and domicile”; The law, including in Article 5, provides that documents, which must be presented to the municipal police, include proof of identity and of an address (e.g., a deed of contract or tenancy).

¹⁶⁴ Amnesty International, *supra* note 11, at 3,16.

Roma people access to social assistance, employment and education.¹⁶⁵ As discussed previously, denial of employment means that many Roma are unable to afford rent and therefore, absent alternative housing, have no other alternative but to live in informal settlements or on the streets.¹⁶⁶ These acts reflect the government's complicity in forced displacement.

Despite assertions that these laws exist to advance "security" and "efficiency," the truth is that these policies suggest something more sinister; namely, that they are part of a plan to deprive the Roma of their rights. This argument is strengthened by the fact that Serbia has been notorious throughout history for its discrimination against the Roma.¹⁶⁷ As such, these policies strongly indicate that State policies of discrimination exist.

iii. The Serbian Government has the Intent to Discriminate and Deprive the Roma of their Human Rights

The actions by the Serbian government and the City of Belgrade arguably satisfy the element of specific intent. Serbia's history of rampant discrimination combined with the current laws and policies suggests a clear distaste for the Roma. Moreover, the Serbian government and the City of Belgrade have been complicit, both directly and indirectly, in carrying out these discriminatory laws and policies.¹⁶⁸ The Serbian government and the City of Belgrade have also refused to investigate other acts of discrimination and violence towards Roma people. These actions are especially telling because the Roma are still thought of as illegal and second-class citizens.¹⁶⁹ This is mainly due to the Roma population's inability to provide birth certificates or formal addresses. By the State's own admission, the Roma are the main victims of the policies described above.¹⁷⁰ Thus, these restrictions demonstrate that the Serbian government and the City of Belgrade have the specific intent to discriminate against the Roma.

VII. CONCLUSION

The actions described above show that the Serbian government and the

¹⁶⁵ Law on Social Insurance, Sept. 2009, <http://www.porezi.rs/Arhival/Download/3060-099.pdf>.

¹⁶⁶ Amnesty International, *supra* note 11, at 3, 13.

¹⁶⁷ *See generally* Laura Renzi, *supra* note 16, at 40-41.

¹⁶⁸ *See, e.g., Action Plan for Dismantling of Unhygienic Settlements in Belgrade, supra* note 156; Changes and Amendments to the Action Plan for the Resettlement of shanty Settlements on the Territory of the City of Belgrade in 2009, City of Belgrade, Secretariat for Social Protection, Aug. 29, 2009; B92, *supra* note 131.

¹⁶⁹ *See* UNICEF, *supra* note 2.

¹⁷⁰ Program of the Serbian Presidency of the Decade of the Roma Inclusion, *supra* note 151.

City of Belgrade have built a legal system on bricks of discrimination barbed with ethnicism, leaving many Roma homeless and helpless. This system has forced hundreds, if not thousands of Roma into a vicious cycle of eviction, flight and forced deportation. Moreover, it has impeded their access to the very tools that would enable them to get out of the cycle. Based on this discrimination, it is evident that the Serbian government and the City of Belgrade are in fact committing crimes against humanity. In addition to giving teeth to laws intended to protect minorities like the Roma, this article calls for the international community to step in and prevent harms where the state actor is failing to do so.

At the very least, the Serbian government and the City of Belgrade have been complicit in destroying Roma communities and in removing the Roma from society. The economic and social policies of the Serbian government and the City of Belgrade have left behind shattered homes, shattered dreams and shattered lives.

While thousands have already been left homeless as a result of state and local policies, odds are that thousands more will yet find themselves living ignominiously on the streets. That is, unless the international community intervenes. The inexcusable destruction of Roma life in Serbia goes against every fiber of human rights. The most tragic aspect of this crisis is that Serbia and the City of Belgrade have committed these crimes against humanity without legal repercussion. It is imperative that non-governmental and international organizations push harder in order to hold Serbia and its officials accountable for their actions. This enforcement is crucial to ensuring that the Roma are no longer marginalized and discriminated against, ignored, lambasted, or shunned. The global community cannot continue to sit back and wait on the sidelines. The time for action is now. As one young Roma woman once said, *“Nothing will change unless someone hears us.”*