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## When a Home Is Not a House: The Destruction of Romani Personal Property as a Human Rights Violation

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# WHEN A HOME IS NOT A HOUSE: THE DESTRUCTION OF ROMANI PERSONAL PROPERTY AS A HUMAN RIGHTS VIOLATION

INTRODUCTION .....	558
I. BACKGROUND .....	561
A. <i>Mistreatment and Misperception of the Romani People</i> .....	561
B. <i>Nomadic Culture and Recent Trends of Sedentarism</i> .....	563
C. <i>Current State of Housing for the Roma</i> .....	564
1. <i>A Lower Standard of Living</i> .....	564
2. <i>Halting Sites and Cultural Adequacy</i> .....	566
3. <i>French Repatriation Efforts</i> .....	567
4. <i>Destruction of Romani Homes in the Wake of                 Repatriation</i> .....	570
II. DESTRUCTION OF ROMANI PERSONAL PROPERTY AS A <i>DE FACTO</i> HUMAN RIGHTS VIOLATION .....	572
A. <i>International Law Provides a Basis for Protection of the             Right to Property and Protection from Forced Eviction</i> .....	572
B. <i>Right of Tenure and Protections Against Eviction</i> .....	574
C. <i>Enforceability of the Right to Housing</i> .....	576
D. <i>Legal Status of Caravans as Homes and Illegal Parking</i> .....	577
1. <i>France</i> .....	578
2. <i>United Kingdom</i> .....	580
3. <i>Greece</i> .....	580
E. <i>The Detrimental Impact of Destruction of Romani Personal             Property on Roma People</i> .....	581
III. ACCESS TO COURTS AND COMPENSATION: ARE THERE SOLUTIONS FOR THE ROMA? .....	583
A. <i>Solutions and Criticisms</i> .....	583
1. <i>A Roma “Nation”?</i> .....	584
a. <i>Roma Reservations Using the United States’ Native                     American Model</i> .....	585
b. <i>Israel and the Zionist Model</i> .....	586
c. <i>A Unique Migratory Solution?</i> .....	587
d. <i>Host State</i> .....	587
i. <i>Statelessness</i> .....	589
2. <i>Representation by International Organizations</i> .....	592
B. <i>Satisfactory Solution?</i> .....	593

Hello, I'm the common Rom.  
 When us Rom are organized and live in one area, that place is a  
*lageri* [concentration camp] . . .  
 Hello, I'm the common Rom.  
 What do you mean, we are trash, the lowest of the low?  
 Then we probably deserve the way *gadje* [non-Roma] treat us.  
 —Gregory Dufuni Kwiek, *I Am the Common Rom*<sup>1</sup>



“A Roma child runs as a bulldozer prepares to tear down a ramshackle house in Craica . . . .”<sup>2</sup> “Roma families expelled by police from their camp near Villeurbanne . . . .”<sup>3</sup> These are only a selection of the multitudes of captions for photographs depicting the expulsions and evictions of the Roma people from their homes. The Roma,<sup>4</sup> known colloquially as “gypsies” or “travellers,” have suffered from racism and mistreatment for hundreds of years.<sup>5</sup> Xenophobia has followed the Roma from country to country, century after century, and the Roma have battled throughout history for their place and for their homes.<sup>6</sup>

The most heavily covered single eviction in the last decade was the October 2011 Dale Farm eviction in Essex, England,<sup>7</sup> Europe’s largest illegal traveller

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<sup>1</sup> Gregory Dufunia Kwiek, *I Am the Common Rom*, in ALL CHANGE!: ROMANI STUDIES THROUGH ROMANI EYES (Damian Le Bas & Thomas Acton eds., 2010).

<sup>2</sup> Andrei Pungovschi, Photograph of Bulldozer About to Tear Down House in Craica, in *Romania: One Town Evicts the Roma in its Midst*, TIME (June 21, 2012), <http://world.time.com/2012/06/21/romania-one-town-evicts-the-roma-in-its-midst/photo/to-go-with-afp-story-by-mihaela-rodinaa/>.

<sup>3</sup> Philippe Desmazes, Photograph of Roma Families Expelled by Police From Their Camp Near Villeurbanne, Outside Lyon, in Angelique Chrisafis, *Roma Raids Intensify in France as Socialists Seek Ways to End ‘PR disaster’*, GUARDIAN (Aug. 21, 2012, 12:44 PM), <http://www.guardian.co.uk/world/2012/aug/21/roma-raids-france-francois-hollande>.

<sup>4</sup> The terms “Roma,” “Romani,” or “Traveller” are synonymous and will be used interchangeably throughout this Comment.

<sup>5</sup> See, e.g., Adam M. Warnke, *Vagabonds, Tinkers, and Travelers: Statelessness Among the East European Roma*, 7 IND. J. GLOBAL LEGAL STUD. 335, 335–36 (2000) (stating that the Roma remain without rights, even in lands they have occupied for centuries).

<sup>6</sup> See Caitlin T. Gunther, *France’s Repatriation of Roma: Violation of Fundamental Freedoms?*, 45 CORNELL INT’L. L.J. 205, 224 (2013) (noting that the Roma’s struggles represent the state of the EU regarding the existence of racism and xenophobia); Jessica Parra, Comment, *Stateless Roma in the European Union: Reconciling the Doctrine of Sovereignty Concerning Nationality Laws with International Agreements to Reduce and Avoid Statelessness*, 34 FORDHAM INT’L. L.J. 1666, 1669 (2011) (indicating a long history of discrimination).

<sup>7</sup> See e.g., *Sheridan v. Basildon BC*, [2011] EWCA (Civ) 1374, [6] (Eng.); Sam Jones & David Batty, *Dale Farm Evictions—Wednesday 19 October 2011*, GUARDIAN (Oct. 19, 2011, 7:14 PM), <http://www.theguardian.com/uk/blog/2011/oct/19/dale-farm-evictions-live>; *The Facts Behind the Dale Farm Hysteria*,

site.<sup>8</sup> Dale Farm was the site of many years of dispute because the Roma owned the private land, but their ability to build on it and house eighty families with their caravans was disputed in the courts.<sup>9</sup> Finally, in 2011, the inhabitants of Dale Farm lost their last legal appeal. With the threat of eviction looming large, activists and residents maintained that the eviction violated human rights.<sup>10</sup> When the police finally arrived in riot gear to enforce the ruling, cranes and diggers dismantled the barricades, scaffolding, a lookout tower, and many caravans.<sup>11</sup> The destruction was catastrophic; during the eviction, caravans were torched to the ground.<sup>12</sup>

In recent years, the Roma have garnered even greater attention due to France's repatriation efforts, which placed hundreds of Romani people on chartered planes and paid them nominal compensation to leave France.<sup>13</sup> France deported as many as 12,000 Roma in 2009 alone, executing around twenty-five rounds of expulsion by the end of the summer of 2010.<sup>14</sup> As compensation for leaving France and returning to their countries of origin, each adult received €300 and each minor received €100.<sup>15</sup>

The French administration argues that the repatriation resolves problems with the illegal camps, not the Roma themselves.<sup>16</sup> French Interior Minister Brice Hortefeux stated that they were "enforcing simple rules [because] [o]ne

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MAIL ONLINE (Oct. 20, 2011, 10:24 AM), <http://www.dailymail.co.uk/debate/article-2051144/Dale-Farm-travellers-eviction-2011-The-facts-hysteria.html>.

<sup>8</sup> See *Sheridan*, [2011] EWCA (Civ) 1374 at [6], [8] (Eng.); Julian Sturdy, *Dale Farm: Basildon Council Considering Further Action*, BBC NEWS (last updated Oct. 18, 2012), <http://www.bbc.co.uk/news/uk-england-esssex-19990136>.

<sup>9</sup> See *Basildon DC v. McCarthy*, [2009] EWCA (Civ.) 13 (Eng.); *McCarthy v. Basildon DC*, [2008] EWHC (Admin) 987 (Eng.); *Wychavon DC v. Sec'y of State for Cmty. & Local Gov't*, [2008] EWCA (Civ.) 692 (Eng.); U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2010, REPORT TO S. COMM. ON FOREIGN RELATIONS & H. COMM. ON FOREIGN AFFAIRS, S. PRT. NO. 112-30, vol. I, at 1975 (1st Sess. 2010); Sturdy, *supra* note 8.

<sup>10</sup> *Sheridan*, [2011] EWCA (Civ) 1374 at [6] (Eng.); Grattan Puxon, *UK in Breach of UN Rules Over Dale Farm Assaults*, INT'L ALLIANCE INHABITANTS (June 19, 2012), [http://www.habitants.org/news/inhabitants\\_of\\_europe/uk\\_in\\_breach\\_of\\_un\\_rules\\_over\\_dale\\_farm\\_assaults](http://www.habitants.org/news/inhabitants_of_europe/uk_in_breach_of_un_rules_over_dale_farm_assaults).

<sup>11</sup> See Josie Ensor, *Dale Farm Eviction: As It Happened, October 19*, TELEGRAPH (Oct. 20, 2011, 7:15 AM), <http://www.telegraph.co.uk/news/uknews/law-and-order/8837820/Dale-Farm-eviction-as-it-happened-October-19.html>; Jones & Batty, *supra* note 7, for a timeline of the events that unfolded during the eviction of travelers from Dale Farm once police arrived to handle the situation.

<sup>12</sup> Jones & Batty, *supra* note 7.

<sup>13</sup> Sebastian Moffett, *France Expels Group of Gypsies to Romania*, WALL ST. J., Aug. 20, 2010, at 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

cannot just illegally occupy land without authorization.”<sup>17</sup> These camps represent not only the poverty that Roma are dealing with due to a lack of job opportunities and government support but also their centuries-old tradition of caravan camps. The camps have protected their isolationist culture, which includes music, language, and livelihood.<sup>18</sup> With multitudes of expulsions and government pressure to move into permanent homes that ignore Romani culture, many Roma simply become homeless or move into new illegal camps with the threat of eviction still looming.<sup>19</sup>

Another unfortunate reality is that European countries have created laws that, in practice, do not allow the Roma to gain residency.<sup>20</sup> There are also many Roma who do not have a country of origin that they call home; they are stateless.<sup>21</sup> For both those who are unable to acquire legal status within a country and those who are stateless, this Comment argues that the destruction of their makeshift homes and their personal property rises to the level of an egregious human rights violation.

This Comment provides a new perspective on Romani legal issues typically overlooked by scholars by not simply focusing on major human rights issues classically discussed in light of the mistreatment of the Roma. Instead, this Comment examines legal issues that are not classified as human rights violations but impact the Roma in ways that rise to the level of a human rights violation based on their unique background and culture. By focusing on the destruction of chattels and personal property, this Comment evaluates the effectiveness of legal claims for actions that may rise to the level of human rights violations in the unique cultural context of nomadic Romani life. Finally, this Comment concludes that there is a severe lack of adequate legal remedies available, and that current efforts have been insufficient to remedy the marginalization and mistreatment suffered by the Romani people.

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<sup>17</sup> *Id.* (alterations in original) (quoting Brice Hortefeux, Minister of the Interior, Overseas Territories, and Territorial Collectivities, Crécy-la-Chapelle, Fr).

<sup>18</sup> Anthony Faiola, *Italy Closes the Door on Gypsies*, WASH. POST, Oct. 12, 2010, at A1.

<sup>19</sup> Amnesty Int'l, *French Authorities Must Stop Stigmatizing the Roma* (Jan. 5, 2011), <http://www.amnesty.org/en/appeals-for-action/french-authorities-must-stop-stigmatizing-roma>; Steve Bird, *How to Crush a Gypsy Camp French-style*, MAIL ONLINE (Aug. 28, 2012), <http://www.dailymail.co.uk/news/article-2194704/Saint-Priest-Police-clear-Roma-gypsy-camps-France.html>.

<sup>20</sup> See *infra* Part I.B.

<sup>21</sup> See *infra* Part III.c.1, for a discussion on stateless Roma and how this statelessness affects their ability to obtain residency and the rights afforded to EU citizens.

Part I examines the nomadic lifestyle and culture of the Roma and whether this lifestyle is still an important and accurate representation. Part I also examines the current housing crisis, evictions of the Roma, and their attempts to maintain their nomadism in a changing world. Part II discusses current jurisprudence in the various European legal systems regarding rights to housing and right of tenure afforded to members of the European Union. Part II additionally argues that the destruction of Romani personal property during evictions, specifically their caravans, mobile homes, equivalents, and the items within, rises to the level of a human rights violation in light of the unique nature of Romani life and culture. Finally, Part III examines possible ways in which the Roma might seek redress under various international and domestic tribunals, specifically criticizing the lack of adequate options for representation and standing in court to seek just compensation for their loss of property during evictions. These criticisms consider the Roma inability to gain legal residency and the issue of statelessness.

## I. BACKGROUND

### A. *Mistreatment and Misperception of the Romani people*

The word “gypsy” elicits various popularized and unrealistic representations of the Romani people: from Disney’s *The Hunchback of Notre-Dame*, Esmeralda and the Gypsy Fools, to stereotypical fortune-telling old women with crystal balls in wooden caravans, to thieving and manipulating con-artists.<sup>22</sup> History is rife with incidents of mistreatment of the Romani people.<sup>23</sup> Misperceptions and biases still color the treatment of the Roma in many parts of the world, especially in Europe. Even so-called “reality” television shows, such as *My Big Fat Gypsy Wedding*, serve to reinforce negative stereotypes, and only superficially touch upon issues of segregation and harsh judgment of the Roma.<sup>24</sup>

Even the etymology of the term “gypsy” in many European languages reflects common misinformation and prejudice against the Roma, and other words used for the Roma demonstrate the negative perceptions of others

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<sup>22</sup> THE HUNCHBACK OF NOTRE DAME (Walt Disney Pictures 1996); Peter Godwin, *Gypsies—The Outsiders*, NAT’L GEOGRAPHIC, Apr. 2001, at 72.

<sup>23</sup> DAVID M. CROWE, A HISTORY OF THE GYPSIES OF EASTERN EUROPE AND RUSSIA 235–38 (1994).

<sup>24</sup> See *My Big Fat Gypsy Wedding: Out of Site, Out of Mind* (TLC television broadcast Mar. 20, 2012), for an episode of the TLC reality television show that follows British-Romani individuals through big milestones in their lives, predominantly their wedding days.

towards them.<sup>25</sup> The term furthers the popular thought that gypsies originated in Egypt.<sup>26</sup> As Walter Weyrauch notes: “Even the terms ‘Rom’ (singular) and ‘Roma’ (plural) lend themselves to misunderstandings because they seem to imply descent from Romania . . . .”<sup>27</sup> In France, when “[p]oliticians and social commentators speak of ‘*les marginaux*,’ ‘*les défavorisés*,’ ‘*les fragilisés*,’ ‘*les précaires*,’ or ‘*les exclus*,’”<sup>28</sup> these words demonstrate that the administration recognizes the Roma’s mistreatment. In Hungarian, to call another person by the term “*cigany*” is generally derogatory since it implies low rank, dirtiness, and deceitful behavior.<sup>29</sup>

In reality, the Roma people date back to as early as 250 B.C.E.<sup>30</sup> They migrated from India and settled across Europe.<sup>31</sup> Their transient history, interlaced with countless instances of persecution, sheds some light on the nomadic lifestyle that has become engrained in gypsy culture. They have been victims of enslavement,<sup>32</sup> ethnic cleansing in World War II,<sup>33</sup> and more recently, segregation.<sup>34</sup> Today, the Roma are spread out in “widely scattered group[s] of small, closely-knit communities, living in nearly every part of the world, bound together by a common ethnic, linguistic, and social heritage,” with an estimated eight to twelve million Romani living in forty European countries as of 2007.<sup>35</sup> Though the old wooden caravans have been upgraded to mobile homes, modern Roma have partially retained this historical nomadism.

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<sup>25</sup> Warnke, *supra* note 5, at 335 n.2.

<sup>26</sup> *Id.*; Walter O. Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the “Gypsies,”* in *GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE* 11, 22 (Walter O. Weyrauch ed., 2001).

<sup>27</sup> *Editor’s Note on Terminology*, in *GYPSY LAW*, *supra* note 26, at vii, vii.

<sup>28</sup> FERNANDA EBERSTADT, *LITTLE MONEY STREET: IN SEARCH OF GYPSIES AND THEIR MUSIC IN THE SOUTH OF FRANCE* 30 (2006). The above words translate to “the marginalized,” “the disfavored,” “the weakened,” “the at-risk,” and “the excluded,” respectively.

<sup>29</sup> See MICHAEL STEWART, *THE TIME OF THE GYPSIES* 113 (1997).

<sup>30</sup> Warnke, *supra* note 5, at 338.

<sup>31</sup> *Id.*; Parra, *supra* note 6, at 1670–71.

<sup>32</sup> Jack Greenberg, *Report on Roma Education Today: From Slavery to Segregation and Beyond*, 110 *COLUM. L. REV.* 919, 924 (2010).

<sup>33</sup> *Id.* at 925.

<sup>34</sup> *E.g.*, *D.H. v. Czech Republic*, 2007-IV Eur. Ct. H.R. 241, 252–54; see also EUR. UNION AGENCY FOR FUNDAMENTAL RIGHTS [FRA], *HOUSING CONDITIONS OF ROMA AND TRAVELLERS IN THE EUROPEAN UNION: COMPARATIVE REPORT 5* (2009) [hereinafter *HOUSING CONDITIONS OF ROMA*] (discussing the limitations on access to education, medical care, jobs, and adequate living conditions caused by Romani segregation); Gunther, *supra* note 6, at 215 (for a discussion on educational segregation of Roma children).

<sup>35</sup> JEAN-PIERRE LIÉGEOIS, *ROMA IN EUROPE* 31 tbl. (2007); Warnke, *supra* note 5, at 343.

### B. *Nomadic Culture and Recent Trends of Sedentarism*

Romani identity is inextricably linked with nomadism in the collective conscience, but the common picture of free-spirited gypsies traveling in colorful caravans from village to village is in many respects a mischaracterization of the history of the Romani people. “‘There’s a willful misunderstanding about the Roma being nomadic’ . . . [allowing] governments to bypass the question of integration . . . . ‘They are forced to be nomadic.’”<sup>36</sup>

There are economic concerns as well. Ever since the Soviet Union collapsed, the Roma have faced hard times due to a widespread lack of education and marketable skills.<sup>37</sup> With a lack of education and basic job skills, the Roma have used the EU’s right to free movement to seek better opportunities in Western European countries, as the Eastern European countries are not perceived to have as much opportunity.<sup>38</sup>

But, moving from one nation to another exacerbates the problem because Roma are generally unwanted in the destination country, and therefore not afforded the opportunities that they seek. Even though many Roma try to incorporate themselves into mainstream society and adopt sedentary lifestyles, they rarely escape pervasive anti-gypsy sentiment and discrimination often precludes their attempts at sedentarism.<sup>39</sup> With both conceptions that the Roma are criminals<sup>40</sup> and that they do not truly belong to the European community or race,<sup>41</sup> the Roma are segregated from non-Roma leading to poverty and the creation of gypsy camps.<sup>42</sup> This segregation further marginalizes the Roma.<sup>43</sup>

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<sup>36</sup> Elisabetta Povoledo, *Italian Cities Plan to Shut Roma Camps*, N.Y. TIMES, Sept. 4, 2010 at A4 (quoting Pietro Massarotto).

<sup>37</sup> Eastern European Roma benefited from the Soviet economy since many jobs did not require education and were controlled by the government. When the Soviet Union collapsed, they found themselves with a worse economy, as well as more competition for jobs, and the Roma could not compete. Greenberg, *supra* note 32, at 925.

<sup>38</sup> Faiola, *supra* note 18, at A8.

<sup>39</sup> Sedentarism refers to the trend of Roma ascribing to a sedentary lifestyle. See Warnke, *supra* note 5, at 336.

<sup>40</sup> *Id.* at 340.

<sup>41</sup> Riccardo De Corato, Milan’s Vice Mayor from Prime Minister Silvio Berlusconi’s ruling party, who is in charge of handling the camps, was quoted as saying: “These are dark-skinned people, not Europeans like you and me . . . .” Faiola, *supra* note 18, at A1.

<sup>42</sup> Greenberg, *supra* note 32, at 932.

<sup>43</sup> Warnke, *supra* note 5, at 336 (“This marginality has led them historically to be a traveling people, which in turn has caused them difficulties in the citizenship context.”).

Common perceptions regarding gypsies as thieves and vagabonds also fuel the misperception that all gypsies lack permanent homes and ascribe to nomadic culture.<sup>44</sup> But the barriers surrounding legal halting sites<sup>45</sup> and nomadic desires, in addition to some Roma acquiring more modern lifestyles, have created a movement of sedentarism among the Roma. Certain countries make it even more difficult for the Roma to acquire positions that could help make them more sedentary,<sup>46</sup> effecting veiled discriminatory policies. For example, France limits the types of professions available to Roma seeking work.<sup>47</sup> Also, employers have to pay €700 in taxes to simply hire a non-resident Roma.<sup>48</sup> Therefore, the Roma have the right under EU law “to travel around, but the current regulations prevent them from working and settling in France.”<sup>49</sup> Without opportunities or education and with barriers for living as legal residents in new countries, the Roma are forced to live in unbearable living conditions under which they can barely make ends meet.

### C. *Current State of Housing for the Roma*

#### 1. *A Lower Standard of Living*

Many Roma live in desolate and barely livable conditions. Some live in “ramshackle caravan[s] . . . filled with dirty clothes and threadbare teddy bears” that are “anything but roadworthy.”<sup>50</sup> Others even live in “tarpaulin and plastic sheeting being used as tents.”<sup>51</sup> Many trailers, caravans, and camps lack basic plumbing and electricity.<sup>52</sup> As such, the living standards of many Roma

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<sup>44</sup> Robbie McVeigh, *Theorising Sedentarism: The Roots of Anti-Nomadism*, in *GYPSY POLITICS AND TRAVELLER IDENTITY* 7, 8 (Thomas Acton ed., 1997).

<sup>45</sup> Halting sites are government-funded sites for Roma to park their mobile homes where basic amenities are more likely to be provided by the government. *HOUSING CONDITIONS OF ROMA*, *supra* note 34, at 6.

<sup>46</sup> *Id.* at 6–7.

<sup>47</sup> See Natalia Román Morte, *Hanging with Roma Family in Bastille, As France Resumes Forced Evictions*, CAFÉ BABEL (Tansy Larsen trans., Oct. 12, 2012), <http://www.cafebabel.co.uk/society/article/hanging-with-roma-family-in-bastille-as-france-resumes-forced-evictions.html>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* See Consolidated Version of the Treaty on the Functioning of the European Union art. 45, Oct. 26, 2012, 2012 O.J. (C 326) 47 [hereinafter TFEU]; Directive 2004/38/EC, of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Member States Amending Regulation (EEC) No 1612/68 and Repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 2004 O.J. (L 158) 77 [hereinafter Directive 2004/38/EC on the Right to Move and Reside Freely], for the legal basis of this right.

<sup>50</sup> Bird, *supra* note 19 (describing conditions in European Romani camps).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

fall far below the international norms for adequate housing.<sup>53</sup> For example, “[m]ost Roma groups in France live in squalid, shanty towns, often without access to water or electricity.”<sup>54</sup> Professor Jack Greenberg observed that “[a]ll cities and towns of any size in Romania, Bulgaria, the former Yugoslavia, Hungary, the Czech Republic, and Slovakia have at least one [Roma shantytown with desperate living conditions].”<sup>55</sup> Even though these conditions are not specifically tied to the mere existence of caravans, they follow the Roma who must make homes out of whatever is available. Roma homes, most often composed of one-story structures made of salvaged materials, are commonly relegated to specific neighborhoods on the outskirts of town.<sup>56</sup> These neighborhoods are unsanitary and lack many basic necessities such as running water and sewer, and seem like a step back into the past with pig pens in the middle of streets.<sup>57</sup>

Roma who do not own land and lack access to any public housing are forced to set up illegal housing that does not meet their basic necessities.<sup>58</sup> The Committee on Economic, Social and Cultural Rights (“CESC”) stated that all individuals have “the right to adequate housing . . . [including] sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”<sup>59</sup> Yet these conditions are not met in many countries.<sup>60</sup> In the Polish region of Świętokrzyska Vovoidship in 2001, eighty-five out of 125 Roma apartments did not have running water.<sup>61</sup> In 2004 in Slovakia, as few as nineteen percent of the Roma had sewage, and only sixty-three percent had access to running water.<sup>62</sup> Finally, in Romania, as many as seventy-three percent did not have running water, and seventy-two percent did not have access to sewage.<sup>63</sup>

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<sup>53</sup> See HOUSING CONDITIONS OF ROMA, *supra* note 34, at 5.

<sup>54</sup> Council of Eur. Comm’r for Human Rights, *Memorandum: Following His Visit to France From 21 to 23 May 2008*, at 29, Doc. No. CommDH(2008)34 (Nov. 20, 2008) (by Thomas Hammarberg) [hereinafter *Comm’r Memorandum Following 2008 Visit to France*].

<sup>55</sup> See *id.* at 932.

<sup>56</sup> Greenberg, *supra* note 34, at 932.

<sup>57</sup> *Id.* at 932–33.

<sup>58</sup> HOUSING CONDITIONS OF ROMA, *supra* note 34, at 62.

<sup>59</sup> United Nations, Econ. & Soc. Council, Comm. on Econ., Social & Cultural Rights, Rep. on its 6th Sess., Nov. 25–Dec. 13, 1991, General Comment No. 4 (1991): The Right to Adequate Housing (Article 11 (1) of the Covenant), para. 8(b), U.N. Doc. E/1992/23 (Jan. 1, 1992).

<sup>60</sup> HOUSING CONDITIONS OF ROMA, *supra* note 34, at 67.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

These deplorable living situations have “been accompanied by housing conditions that fall well below the standards of the general population.”<sup>64</sup> The standard of living is so low in European countries that it has forced countries like Spain to implement housing programs.<sup>65</sup> Navarra, Spain started the Housing Programme for Social Integration (“HPST”) to assist citizens living in substandard housing in becoming homeowners.<sup>66</sup> In 2009, forty percent of the beneficiaries of this program were Roma.<sup>67</sup> But the Spanish example is not followed closely by other EU Member States like Bulgaria, where only fifteen percent of Roma live in public housing.<sup>68</sup>

These terrible conditions are mostly felt by the vast majority of Roma who are unable to claim the state they are living as their home.<sup>69</sup> As a non-national, it is extremely difficult, if not impossible, to gain public assistance, even as a citizen of an EU member state.<sup>70</sup> “As a consequence, non-nationals are far more likely to reside in unauthorised and informal encampments or abandoned buildings with the attendant consequences of not being able to access public services and utilities and vulnerability to eviction.”<sup>71</sup> Without hope of a better life in their home states, or in the case of stateless individuals, no home state from which they can get assistance, many Roma have no alternative to the inhumane conditions of the camps.

## 2. *Halting Sites and Cultural Adequacy*

Halting sites—government-supported areas for Roma—have become a solution for Roma who have been expelled from their previous illegal sites. Halting sites are specifically tailored to Roma culture, allowing them to continue their transient living style by providing space to park their mobile homes and some infrastructure such as water and electricity, unlike illegal sites.<sup>72</sup>

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<sup>64</sup> Gunther, *supra* note 6, at 210.

<sup>65</sup> HOUSING CONDITIONS OF ROMA, *supra* note 34, at 57–60.

<sup>66</sup> *Id.* at 60.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* The lack of use of the public housing may be attributed to the fact that the Roma prefer living in their nomadic lifestyle.

<sup>69</sup> EUR. UNION AGENCY FOR FUNDAMENTAL RIGHTS, SUMMARY REPORT: THE STATE OF ROMA AND TRAVELLER HOUSING IN THE EUROPEAN UNION: STEPS TOWARDS EQUALITY 9 (2010) [hereinafter SUMMARY REPORT].

<sup>70</sup> *See id.*

<sup>71</sup> *Id.*

<sup>72</sup> HOUSING CONDITIONS OF ROMA, *supra* note 34, at 62.

Though these halting sites appear to present a solution to the inhumane living conditions in the illegal camps, two large problems arise. First, legal living sites cannot service the sheer size of the population in need of them.<sup>73</sup> But, creating more sites to accommodate the population is not feasible because of the rampant xenophobic feelings towards the Roma.<sup>74</sup> Second, certain country-specific laws obstruct the creation of legal halting sites for the Roma. For example, in France, Besson's Law requires sanitary facilities at all halting sites to maintain a basic standard of living for the Roma in line with EU Law, while accommodating the traveller lifestyle.<sup>75</sup> Under Besson's Law, sanitary facilities for caravans are required in any district with more than 5000 citizens as a method of discouraging illegal sites.<sup>76</sup> But this rule is generally made ineffectual because there is also an exemption for cities with fewer than 20,000 residents.<sup>77</sup> As a further example, the Brussels Capital Region of Belgium issues permits for caravan sites that range from six months to ten years but cannot be extended after issuance.<sup>78</sup> Such practices are discriminatory while remaining "helpful" and legal on their face.

### 3. French Repatriation Efforts

The French government has sponsored a repatriation effort to move individuals who have not achieved legal resident status back to their home countries.<sup>79</sup> The repatriation effort has been criticized for its discrimination against Roma and their settlements, under the guise of legal evictions.<sup>80</sup> In

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<sup>73</sup> *Id.* at 62–63. For example, “[i]n France... by the end of 2008, 17,365 caravan places had been provided across 729 sites, representing just over 40 per cent of those planned for by the departmental Traveller programmes.” *Id.* at 63.

<sup>74</sup> *See id.* at 6.

<sup>75</sup> *Travellers Law Not Enforced in France*, EUR. ROMA RIGHTS CTR. (July 10, 2012), <http://www.errc.org/article/travellers-law-not-enforced-in-france/948>.

<sup>76</sup> Loi 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage [Law 2000-614 of July 5, 2000 on the Home and Habitat of Travelers], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 6, 2000, p. 10189; HOUSING CONDITIONS OF ROMA, *supra* note 34, at 64.

<sup>77</sup> Loi 2003-239 du 18 mars 2003 pour la sécurité [Law 2003-239 of March 18, 2003 on Internal Security], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], March 19, 2003, p. 4761; HOUSING CONDITIONS OF ROMA, *supra* note 34, at 64.

<sup>78</sup> CODE BRUXELLOIS POUR L'AMÉNAGEMENT DU TERRITOIRE [C.B.A.T.] [BRUSSELS REGIONAL PLANNING CODE] of Apr. 9, 2000, Moniteur Belge [M.B.] [Official Gazette of Belgium], May 26, 2004, 40769; *see also* HOUSING CONDITIONS OF ROMA, *supra* note 34, at 63.

<sup>79</sup> Moffett, *supra* note 13, at 5.

<sup>80</sup> *See France, Romania Sign Roma Repatriation Deal*, EURACTIV.COM (Sept. 14, 2012), [www.euractiv.com/socialeurope/france-romania-ink-roma-repatria-news-514783](http://www.euractiv.com/socialeurope/france-romania-ink-roma-repatria-news-514783); Gavin Hewitt, *The Roma Repatriation*, BBC (Aug. 19, 2010), [http://www.bbc.co.uk/blogs/thereporters/gavinhewitt/2010/08/the\\_roma\\_](http://www.bbc.co.uk/blogs/thereporters/gavinhewitt/2010/08/the_roma_)

2010, Nicolas Sarkozy, the President of France, outlined his plan to destroy illegal camps in France, and publicly stated that the plans were not aimed at Roma specifically.<sup>81</sup> But, in a leaked memo, France's Interior Minister wrote that "300 camps or illegal settlements must be evacuated within three months; Roma camps are a priority," and that "[i]t is down to the préfet [state representative] in each department to begin a systematic dismantling of the illegal camps, particularly those of the Roma."<sup>82</sup> No matter the publicly advertised motive for the expulsions, it was clear that alternate discriminatory motives were present.

The disproportionate number of Roma expelled from France as a part of Sarkozy's repatriation effort, as opposed to other groups and ethnicities, confirms France's goal of evicting the Roma.<sup>83</sup> Indeed, over half (13,241 of 21,384) of those expelled were Roma of Romanian and Bulgarian origin.<sup>84</sup> The French government stated that these expulsions were voluntary, though critics of the program stated that they left little choice for the Roma.<sup>85</sup> Each adult Roma received €300 to leave.<sup>86</sup> Some critics stated that "by offering Roma monetary compensation to leave the homes they have chosen, the French government has demonstrated a lack of respect for the Roma's chosen home."<sup>87</sup> It also demonstrates an attempt by France to paint its true agenda in a more palatable color.

Additionally, many of these expulsions did not follow legally-prescribed methods. Many expulsion notices were issued without assessing individual circumstances, such as length of residency and amount of economic resources, and many were issued without sufficient notification, going against the eviction requirements mentioned earlier.<sup>88</sup> "According to research by the European Roma Rights Centre ("ERRC"), in some instances, up to [ninety] expulsion orders have been prepared and distributed to Romani individuals

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repatriation.html; Corinne Ruff, *French Divided on Roma Expulsion*, INTERNATIONAL (Nov. 19, 2013), <http://www.theinternational.org/articles/476-french-divided-on-roma-expulsion>.

<sup>81</sup> Kim Willsher, *Orders to Police on Roma Expulsions From France Leaked*, GUARDIAN, Sept. 14, 2010, at 20.

<sup>82</sup> *Id.*

<sup>83</sup> EUR. ROMA RIGHTS CTR., PARALLEL REPORT: CONCERNING FRANCE 4–5 (2013), available at <http://www.errc.org/cms/upload/file/france-un-upr-submission-9-july-2012.pdf> [hereinafter ERRC PARALLEL REPORT].

<sup>84</sup> *Id.*

<sup>85</sup> Gunther, *supra* note 30, at 206–07.

<sup>86</sup> *Id.* at 205.

<sup>87</sup> *Id.* at 221.

<sup>88</sup> ERRC PARALLEL REPORT, *supra* note 83, at 6.

within a matter of several hours.”<sup>89</sup> In some cases, plain clothed police officers would threaten the camps with imminent evictions, without providing specific dates or documentation.<sup>90</sup> In other cases, residents were only given an hour to gather their personal belongings before their homes were bulldozed.<sup>91</sup> Additionally, many Roma felt pressured into accepting the expulsion orders. One example of extreme pressure occurred in Massy in March 2010 when Roma escaped to a gymnasium following a fire in their camp and were detained until they accepted “voluntary” expulsions.<sup>92</sup>

In order to determine the legality of the evictions and the procedures taken in France, we can look to the legal obligations under the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), a treaty also signed and ratified by France.<sup>93</sup> This treaty states that “[t]he UN Committee on Economic, Social and Cultural Rights which oversees the ICESCR’s implementation has found forced evictions to be *prima facie* incompatible with

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<sup>89</sup> *Id.*

<sup>90</sup> Amnesty Int’l, France: Scores of Roma Left Homeless in Forced Eviction Near Paris (Oct. 15, 2012), <http://www.amnesty.org/en/news/france-scores-roma-left-homeless-forced-eviction-near-paris-2012-10-15>.

<sup>91</sup> *Id.*

<sup>92</sup> ERRC PARALLEL REPORT, *supra* note 83, at 6.

<sup>93</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. EXEC. DOC. D 95-2, 993 U.N.T.S. 3 (1977) [hereinafter ICESCR]. Article 11 of the Romanian Constitution states that Romania pledges to fulfill its obligations as deriving from treaties it is party to, and further states that treaties ratified by Parliament are part of national law. CONSTITUȚIA ROMÂNIEI [ROMANIAN CONSTITUTION] art. 11. Romania is a state party to the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which recognizes at Article 11(1): “The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” ICESCR, *supra* note, art. 11(1). The U.N. Committee on Economic, Social and Cultural Rights, which oversees the ICESCR’s implementation, defined appropriate protections against forced evictions as including:

[a]n opportunity for genuine consultation between those affected [and state officials]; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, should be made available in reasonable time to all those affected; especially where groups of people are involved, government officials or their representatives should be present during an eviction; all persons carrying out the eviction should be properly identified; evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; provision of legal remedies; and provision of legal aid to persons who are in need of it to seek redress from the courts.

United Nations, Econ. & Soc. Council, Comm. on Econ., Social & Cultural Rights, Rep. on its 16th and 17th Sess., Apr. 28–May 16, Nov. 17–Dec. 5, 1997, General Comment No. 7 (1997): The Right to Adequate Housing (Article 11, Paragraph 1, of the Covenant): Forced Evictions, para. 16, U.N. Doc. E/1998/22 (May 20, 1997); *see also* EUR. ROMA RIGHTS CTR., TAKEN FROM THE CITY: A REPORT BY THE EUROPEAN ROMA RIGHTS CENTRE 8 (2012), *available at* <http://www.errc.org/cms/upload/file/romania-report-pata-rat-17-dec-2012-en.pdf> [hereinafter TAKEN FROM THE CITY].

the Convention.”<sup>94</sup> In addition to being expelled from their homes and placed into public housing located in a garbage dump, their previous homes were destroyed by bulldozers with a complete disregard for the personal possessions within.<sup>95</sup> The value of their possessions, including furniture, fixtures, and important personal property, was never reimbursed and the Roma received no compensation for the actions.<sup>96</sup> Additionally, in some cases, efforts to return to their homes to save their belongings from the bulldozers were quashed by tear gas.<sup>97</sup>

Clearly, there is an argument to be made that France did not comply with various treaties and customary law relating to human rights law. But, the French government maintains that it is fully within its rights to condemn deplorable living conditions and to enforce its immigration laws and it is not basing its policies against illegal camps based on discriminatory aims.<sup>98</sup> Indeed, the Council of Europe supports the right to housing and the right to free movement for citizens of the European Union, but allows governments to legally expel individuals who are affecting public health or public security.<sup>99</sup> In France, the conditions in the shanty towns are so far below standard<sup>100</sup> that the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stated that the “appalling living conditions must . . . be brought to an end.”<sup>101</sup> Effectively, this directive allows the government to condemn Roma housing as unsuitable and use this as a legal reason for expulsion.

#### 4. *Destruction of Romani Homes in the Wake of Repatriation*

The repatriation of the Roma, whether for reasons of health or illegal immigration, does not simply constitute displacement of individuals, but also destruction of property. The movement towards sedentarism, as well as the makeshift qualities of Roma homes, do not allow for easy movement of the Roma at the time of eviction. Indeed, at the time of eviction, the government

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<sup>94</sup> TAKEN FROM THE CITY, *supra* note 93, at 8.

<sup>95</sup> *Id.* at 7.

<sup>96</sup> *Id.* at 5.

<sup>97</sup> ERRC PARALLEL REPORT, *supra* note 83, at 2.

<sup>98</sup> *The Eviction of the Roma: Reding and the Riot Act*, ECONOMIST (Sept. 14, 2010), [http://www.economist.com/blogs/charlemagne/2010/09/eviction\\_roma](http://www.economist.com/blogs/charlemagne/2010/09/eviction_roma) (“France is a large country. It is sovereign . . . France is not before a tribunal.” (quoting Pierre Lellouche, French Minister for Eur. Affairs ) (internal quotation marks omitted)).

<sup>99</sup> Directive 2004/38/EC on the Right to Move and Reside Freely, *supra* note 49, art. 27.

<sup>100</sup> *See supra* Part I(C)(a).

<sup>101</sup> *Comm’r Memorandum Following 2008 Visit to France*, *supra* note 54, at 29.

destroys caravans with large construction machines and crushes and dismantles makeshift homes made of refuse and plastic sheeting.<sup>102</sup> The French repatriation efforts dismantle these Roma sites at a more expedited rate than in the United Kingdom, where it can sometimes take years and a substantial amount of time in court before eviction and dismantling can occur.<sup>103</sup>

As mentioned in this Comment's introduction, the most famous eviction in recent history in the United Kingdom is Dale Farm.<sup>104</sup> After years of legal battles, the residents were evicted and Dale Farm was bulldozed on October 19, 2011.<sup>105</sup> Construction-site diggers tore down the scaffolding tower, the most recognizable structure on the site.<sup>106</sup> The site is now barren, but still houses a few damaged relics of its former residents: "a sofa with its innards torn out, a smashed ping pong table, an array of broken light-fittings."<sup>107</sup>

Other European countries have also bulldozed Romani homes, which raises serious human rights issues. In 2006, the Greek Interior Minister met with a family whose home had been bulldozed that morning and noted "the 'procedures' for making them homeless were in total contradiction to human rights standards."<sup>108</sup> In Bucharest in 2002, one city official stated "carts are not allowed in Bucharest. If they [Roma] return, I will burn their carts."<sup>109</sup> After widespread evictions, Roma homes were then destroyed, leaving the Roma not only homeless, but without their personal property that was left within.<sup>110</sup> There is an increasing likelihood of conflicts in the future due to the rise of sedentarism among Roma and the increased governmental action against Roma settlements.

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<sup>102</sup> Bird, *supra* note 19.

<sup>103</sup> *Id.*

<sup>104</sup> See *supra* text accompanying notes 1-15; R v. Basildon DC, [2011] EWHC (Admin) 2938 (Eng.).

<sup>105</sup> Alexandra Topping, *One Year After Eviction, the Saga of Dale Farm Is Far From Over*, *GUARDIAN*, Oct. 17, 2012, at 18.

<sup>106</sup> Jonny Cooper, *Dale Farm Eviction: As It Happened*, *TELEGRAPH* (Oct. 20, 2011), <http://www.telegraph.co.uk/news/uknews/law-and-order/8835560/Dale-Farm- eviction-as-it-happened.html>.

<sup>107</sup> Topping, *supra* note 105.

<sup>108</sup> HOUSING CONDITIONS OF ROMA, *supra* note 34, at 62.

<sup>109</sup> DAVID M. CROWE, *A HISTORY OF THE GYPSIES OF EASTERN EUROPE AND RUSSIA* 283 (2d ed. 2007).

<sup>110</sup> *Id.*

## II. DESTRUCTION OF ROMANI PERSONAL PROPERTY AS A *DE FACTO* HUMAN RIGHTS VIOLATION

### A. *International Law Provides a Basis for Protection of the Right to Property and Protection from Forced Eviction*

Calls for a united Europe became stronger after the devastation of World War II.<sup>111</sup> The European Union began its formation in the 1950s with the 1951 Treaty of Paris establishing the European Coal and Steel Community (“ECSC”).<sup>112</sup> But the European Union, in its modern form, was created in 1993 with the Treaty of Maastricht.<sup>113</sup> In addition to well-known economic changes such as the creation of a single currency, the Euro, the EU also established standards and an enforcement mechanism for human rights and citizenship rights for citizens of its member states.<sup>114</sup> EU citizens are guaranteed four freedoms as a part of the European Union’s economic and social policy, one of which is the right to free movement.<sup>115</sup> Under the right to free movement, citizens of member states may move and reside freely for up to three months within the borders of EU member states.<sup>116</sup> In order to stay longer than three months, one must satisfy a few conditions, some of which include being employed, living as a student, or being a family member of someone who is qualified to stay.<sup>117</sup> These requirements were implemented to avoid having individuals who burden the member state.<sup>118</sup> Regardless of citizenship status within a country, if a person is a citizen of the EU, he or she is entitled to these and other rights.

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<sup>111</sup> Sir Winston Churchill, Speech at Zurich University (Sept. 19, 1946) (calling for a “United States of Europe” at the conclusion of World War II); *see also* Treaty Instituting the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 140 [hereinafter Treaty of Paris] (stating in its preamble that an organized Europe is vital to the “maintenance of peaceful relations”).

<sup>112</sup> Treaty of Paris, *supra* note 111; *see also* *The History of the European Union*, EUROPA.EU, [http://europa.eu/about-eu/eu-history/index\\_en.htm](http://europa.eu/about-eu/eu-history/index_en.htm) [hereinafter *The History of the European Union*] (last visited Feb. 08, 2014).

<sup>113</sup> Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 191) 2 [hereinafter Treaty of Maastricht]. Today, the EU operates under the Treaty of Lisbon. *See* Treaty of Lisbon Amending the Treaty on European Union and The Treaty Establishing the European Community art. 1, Dec. 13, 2007, 2007 O.J. (C 306) 1, 10 [hereinafter Treaty of Lisbon]; *see also* *The History of the European Union*, *supra* note 112.

<sup>114</sup> Treaty of Maastricht, *supra* note 113, art. F.

<sup>115</sup> Consolidated Version of the Treaty on European Union, Oct. 26, 2012, 2012 O.J. (C 326) 1 [hereinafter TEU]; TFEU, *supra* note 49, art. 3; *see also* Parra, *supra* note 6, at 1668.

<sup>116</sup> Directive 2004/38/EC on the Right to Move and Reside Freely, *supra* note 49, pmb1.

<sup>117</sup> *Id.* The directive became binding on all Member States on Apr. 30, 2006. *Id.* art. 7.

<sup>118</sup> *Id.* art. 7.

In 2009, the Treaty of Lisbon gave legal effect to the Charter of Fundamental Rights of the European Union.<sup>119</sup> The Treaty on the European Union states that the EU is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”<sup>120</sup> This treaty incorporates customary international law<sup>121</sup> and law from the European Court of Human Rights. While EU treaties automatically create enforceable rights for individuals, directives usually must be accompanied by legislation by a member state for it to be enforceable, unless the doctrine of direct effect applies.<sup>122</sup> Therefore, individuals can sue the state in the domestic courts if they do not follow the treaty or directive.<sup>123</sup>

Additionally, the United Nations issued General Comment 4 which puts forward a right to housing as follows: “[The] right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity.”<sup>124</sup> Instead, the right to housing should be interpreted as the “right to live somewhere in security, peace and dignity.”<sup>125</sup> This right to housing has been interpreted by scholars as having seven essential elements which includes:

- (a) [the] legal security of tenure; (b) an availability of services, materials, facilities, and infrastructure; (c) affordable housing costs; (d) habitability in terms of space and protection from the weather and hazards; (e) accessibility for marginalized and disadvantaged groups; (f) a location sufficiently close to place of employment and services and a safe distance from health-affecting pollutants; and (g) cultural adequacy.<sup>126</sup>

Together, the elements of the right to free movement and the right to housing propose an inalienable rights standard for housing for all people, regardless of their citizenship status. But, even with statements by U.N.

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<sup>119</sup> Treaty of Lisbon, *supra* note 113, art. 6.

<sup>120</sup> TFEU, *supra* note 49, art. 2.

<sup>121</sup> *Id.* art. 21.

<sup>122</sup> Greenberg, *supra* note 32, at 937.

<sup>123</sup> *Id.*

<sup>124</sup> General Comment No. 4: The Right to Adequate Housing, *supra* note 59, para. 7

<sup>125</sup> *Id.*; *see also* International Covenant on Economic, Social and Cultural Rights, *supra* note 93, art 11(1).

<sup>126</sup> Malcom Langford, *A Sort of Homecoming: The Right to Housing*, in FORGOTTEN GENOCIDES 166, 172 (Rene Lemarchand ed., 2011); *see also* General Comment No. 4: The Right to Adequate Housing, *supra* note 59, para. 7.

Committees about the right to housing, it is still unclear how these rights are legally enforceable.<sup>127</sup> It is also still unclear whether this right is customary law.<sup>128</sup> Even though all European states have accepted their obligations to the right to housing under the U.N. Charter, these rights are not necessarily enforceable in the international community, or by individuals if they have not been accepted as national law.<sup>129</sup> In addition to the right to basic housing, the U.N. Human Rights Committee also stated that individuals have the right to “protection against all forms of forced internal displacement.”<sup>130</sup> This protection extends to migrant workers<sup>131</sup> and those living under the right to free movement in many cases.<sup>132</sup>

### *B. Right of Tenure and Protections Against Eviction*

The right to property extends beyond the mere right to own property but also to the right of tenure and the right against unlawful eviction. Evictions are not all illegal as long as the state ensures that certain procedures are followed and that the individuals maintain their right to due process.<sup>133</sup> Because a loss of

<sup>127</sup> See Langford, *supra* note 126, at 174–75, 185.

<sup>128</sup> *Id.* at 183.

<sup>129</sup> See Comm’r for Hum. Rights, Council of Europe, *Housing Rights: The Duty to Ensure Housing for All*, para. 3.3, CommDH (2008) 1 (Apr. 25, 2008) [hereinafter *Housing Rights: Positive Duties and Enforceable Rights*]; see generally International Covenant on Economic, Social and Cultural Rights, *supra* note 93, art. 11; TEU, *supra* note 115, art. 21.

<sup>130</sup> Rep. of the Human Rights Comm., General Comment No. 27(67): Concerning Article 12 (Freedom of Movement), para. 7, U.N. Doc. A/55/40, Annex VI; GAOR 55th Sess., Supp. No. 40 (Oct. 10, 2000).

<sup>131</sup> Unsurprisingly, the Convention on the Protection of the Rights of All Migrant Workers is jurisdictionally and territorially focused since it is essentially concerned with the rights of non-nationals within a host state’s jurisdiction, while questions of supporting greater migration remain significantly controversial. States have obligations “to all migrant workers and members of their families within their territory or subject to their jurisdiction.

Langford, *supra* note 125, at 176; see also International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003). No EU member state is party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. *Id.*

<sup>132</sup> See *Housing Rights: Positive Duties and Enforceable Rights*, *supra* note 129, para. 3.3.

European Union Regulations in the 1960s and 1970s ensured that migrating non-national workers and their dependents were entitled to the same social benefits, including access to housing, as national of Member States, on the principle of non-discrimination in freedom of movement. . . . At another level, there are legally defined E.U. steps to harmonise the conditions of asylum-seekers across Europe, including housing conditions, to recognise the rights and status of third-country nationals, and to develop a common policy on illegal immigrants.

*Id.*

<sup>133</sup> SUMMARY REPORT, *supra* note 69, at 10.

housing can create problems such as interference with education and employment, “European and international human rights standards guarantee protection against eviction obliging States to guarantee ‘security of tenure’ as part of the right to adequate housing.”<sup>134</sup> Legal reasons for eviction include, but are not limited to, failing to pay rent, damaging property, and failing to meet contractual obligations agreed to prior to moving onto the property.<sup>135</sup> Still, due process must be maintained through the giving of notice prior to eviction, the ability to pursue a claim in court, or compensation.<sup>136</sup>

In addition, if public authorities evict individuals, they are under an additional obligation to consult inhabitants in advance and provide alternative accommodation if the residents cannot afford to fund replacement housing.<sup>137</sup> There are also several eviction procedures that must be adhered to in order to prevent discriminatory and illegal evictions.<sup>138</sup> However, even following the legal eviction procedures does not prevent an eviction if carried out in a discriminatory manner, “for instance if a private landlord or local authority selectively ends the tenancies of Roma occupants.”<sup>139</sup>

Such discriminatory accusations were the basis for criticisms of President Sarkozy’s repatriation program. France ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1971<sup>140</sup> and is therefore bound to its guarantee of freedom of movement and residence within its borders, regardless of race or ethnicity.<sup>141</sup> Under Article 5, the guarantee of residence ensures “the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . the right to housing.”<sup>142</sup> The three-month time period before France may evict someone staying simply under their right to free travel ensures that individuals have enough time to secure enough resources so that

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *General Comment No. 7: The Right to Adequate Housing*, *supra* note 93, para. 15.

<sup>139</sup> SUMMARY REPORT, *supra* note 69, at 10–11.

<sup>140</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. EXEC. DOC. 95C-2, 660 U.N.T.S. 195 (1971); 1 UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, STATUS AS AT 1 APRIL 2009, at 157, U.N. Doc. ST/LEG/SER.E/26, U.N. Sales No. E.09.V.3 (2009).

<sup>141</sup> International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 140, art. 5.

<sup>142</sup> *Id.* art. 5.

they are not exhausting those of the state and to find alternate housing arrangements.<sup>143</sup>

Simply meeting the outlined requirements for eviction is not enough. Evictions are not legal if they do not provide alternate housing for those evicted, leaving the evictees homeless. In *Stanková v. Slovakia*, the European Court of Human Rights decided that meeting the requirements of eviction were not sufficient if the evictees had no alternate housing since it was against public policy to interfere with private life and the home.<sup>144</sup> Since many Roma are not eligible for any public housing available in France and have no options for housing once they leave France, these Roma are left homeless in further violation of international human rights law.

### C. *Enforceability of the Right to Housing*

The right to housing is an inalienable and enforceable right afforded to all European citizens,<sup>145</sup> with the aims of preventing homelessness especially for those who cannot afford stable and comfortable housing. Unfortunately, purchasing property is the best method of preventing eviction and maintaining the right to housing; it is a luxury that many Roma cannot afford.<sup>146</sup> But there are international agreements that aid in preventing unnecessary and unlawful evictions. There are several ratified treaties and conventions that would suggest that the right to housing is, in fact, enforceable law. The Universal Declaration of Human Rights, a result of the atrocities endured during World War II, was adopted to define freedoms and rights of individuals throughout the world.<sup>147</sup> Though a non-binding resolution, it has been accepted as customary international law through the ratification of several treaties guaranteeing similar rights.<sup>148</sup> It was also used to write the U.N. Charter,<sup>149</sup> and therefore, many of its rights are enforceable by the U.N. Security Council. Article 17 of

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<sup>143</sup> ERRC PARALLEL REPORT, *supra* note 83, at 4.

<sup>144</sup> *Stanková v. Slovakia*, App. No. 7205/02 (Eur. Ct. H.R. 2007), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82597>.

<sup>145</sup> Consolidated Version of the Treaty of European Union and the Treaty on the Functioning of the European Union art. 34, Dec. 13, 2007, 2012 O.J. (C 326) 402.

<sup>146</sup> SUMMARY REPORT, *supra* note 69, at 11.

<sup>147</sup> Universal Declaration of Human Rights pmb., G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter Universal Declaration].

<sup>148</sup> See International Covenant on Economic, Social and Cultural Rights, *supra* note 93; International Covenant on Civil and Political Rights, S. EXEC. DOC. 95E-2, 999 U.N.T.S. 171 (1977); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, S. TREATY DOC. No. 100-20, 1465 U.N.T.S. 85 (1988).

<sup>149</sup> U.N. Charter arts. 1, para. 3, art. 40, para. 1.

the UDHR states: “Everyone has the right to own property alone as well as in association with others . . . [and that] [n]o one shall be arbitrarily deprived of his property.”<sup>150</sup> It seems that, on its face, all individuals have the right to property and security from others or the government taking it without permission and without compensation. Therefore, it would be a human rights violation to deprive an individual of his property.

Other treaties signed by France and many others also reinforce that the right to property is a fundamental human right. First, the Declaration of International Law Scholars on Forced Relocations states that “forced relocation is a particularly egregious violation of international law because it implicates a variety of fundamental human rights . . . .”<sup>151</sup> Second, the Convention on the Protection of the Rights of All Migrant Workers declares that states have obligations “to all migrant workers and members of their families within their territory or subject to their jurisdiction . . . .”<sup>152</sup> Finally, the Universal Declaration states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, [or] home” and that “[e]veryone has the right to the protection of the law against such interference or attacks.”<sup>153</sup> The question then becomes whether and where the Roma may enforce these laws, and whether these laws apply to Roma mobile homes.

#### *D. Legal Status of Caravans as Homes and Illegal Parking*

The true nature of Roma housing, as nomadic or sedentary, is not necessarily evident by simply counting the number of individuals living in caravans; many who wish to live in caravans cannot legally do so, though it is possible to gain legal status depending on the country. In the United Kingdom, according to anecdotal evidence, as many as half of settled Roma desire to live in caravans or use caravans for seasonal travelling.<sup>154</sup> Under English law, much of the legality of caravan living is tied to the legal status of an individual as a

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<sup>150</sup> Universal Declaration, *supra* note 147, art. 17.

<sup>151</sup> This variety of rights affected includes: “the right to liberty and security of the person, the right to be free from arbitrary detention or exile, the right to be free from arbitrary interference with one’s privacy, family, and home, the right to freedom of movement and residence, and the right to human dignity.” Langford, *supra* note 126, at 183.

<sup>152</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *supra* note 131, art. 7.

<sup>153</sup> Universal Declaration, *supra* note 147.

<sup>154</sup> Robert Home, *Gypsies and Travellers in the United Kingdom: Planning, Housing and Human Rights in a Changing Legal Regulatory Framework*, 20 *STELLENBOSCH L. REV.* 533, 539 (2009).

“gypsy.”<sup>155</sup> Simply gaining and maintaining this status can be costly and difficult because of laws that, on their face, are meant to assist the Roma, but in practice are discriminatory.<sup>156</sup> Therefore, we must examine the status of Roma caravans with respect to the laws of different European countries, the taxation on caravans, and the protections for Roma caravans under EU law.

### 1. France

In France, caravans are generally inapplicable for legal status as property under the right to housing; the unique nature of Roma caravans currently does not fall under any law dealing with housing or caravans. Typical caravans are not considered housing because they are mobile and do not require a building permit.<sup>157</sup> French law only considers caravans to be vehicles that are used for living purposes on a temporary basis or for seasonal leisure purposes.<sup>158</sup> They must also maintain their mobility to the extent that they must be able to be towed on the highway in order to maintain their status as caravans.<sup>159</sup> But the laws change slightly when the caravans are parked on private land: Living on private land is limited to three months a year, and an empty caravan can be parked indefinitely if it maintains its mobility.<sup>160</sup> Thus, this is an exception that Roma may use, but only if private land is available to them and they have the ability to move from one plot of private land to another plot of private land. Since fifty-three percent of Roma live in caravans, many of which are immobile, and forty-one percent in makeshift squats and huts,<sup>161</sup> it is evident that the housing used by the Roma in their shantytowns does not meet the limited exception provided by French law, even though this is being used as permanent housing and is clearly a result of necessity.

Recent French taxation amendments support the idea that Roma caravans and mobile homes may be considered housing in the eyes of the law. In 2006,

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<sup>155</sup> See Caravan Sites Act, 1968, c. 52 (U.K.); Home, *supra* note 153, at 539–41.

<sup>156</sup> *Waverly BC v. Hilden*, [1988] 1 W.L.R. 246 (Eng); Home, *supra* note 154, at 540–41.

<sup>157</sup> *European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008 (Eur. Comm. of Social Rights 2008) 27 [hereinafter *ERRC v. France*].

<sup>158</sup> Décret 2011-1214 du 29 septembre 2011 portant adaptation des dispositions du code de l’urbanisme relatives aux terrains de camping et aux parcs résidentiels de loisirs [Decree No. 2011-1214 of September 29, 2011 Adapting the provisions of the Urban Planning Code Relating to Campgrounds and Residential Parks], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 5, 2011, p. 16501; see also *Caravans in France*, FRENCH-PROPERTY.COM, <http://www.french-property.com/guides/france/mobile-homes/caravans/> (last accessed Feb. 22, 2013).

<sup>159</sup> *Caravans in France*, *supra* note 158.

<sup>160</sup> *Id.*

<sup>161</sup> *Comm’r Memorandum Following 2008 Visit to France*, *supra* note 54, at 20.

France's Budget Act created a special tax for mobile homes, although the actual implementation has not yet occurred.<sup>162</sup> Therefore, a "caravan is now legally recognised as accommodation, but still not as a housing unit, meaning that it does not confer access to the same rights."<sup>163</sup> Since many government programs will not supply services to those without a permanent, fixed address, many individuals cannot even open a bank account or secure a loan.<sup>164</sup> Therefore, without building permits, rights associated with special housing, and a limit on the legal status to remain of no more than three months at a time, the question rests upon whether housing that was illegally constructed or illegally placed on a halting site or other site can be afforded any protection under any law.

Even with a private land exception for caravans for three months and some unilateral and disingenuous tax recognition of the nature of the use of the caravans as homes, many Roma are living in illegal housing simply because they have no alternative and because certain laws create additional hardship when dealing with surrounding cities and towns.<sup>165</sup> In France, the Second Besson Law created housing difficulties for Roma while, on its face, promoting better living circumstances. This law states that cities with more than five thousand residents must provide halting sites with amenities for travellers, land for the Roma to be able to park their caravans.<sup>166</sup> If such sites exist, Roma are not allowed to park anywhere but government-established sites,<sup>167</sup> otherwise eviction is a legal means available to city officials.<sup>168</sup> But an exception was added in 2003 where cities with over twenty thousand residents can gain an exemption, making it even more difficult for the Roma to find legal halting sites and made eviction more imminent.<sup>169</sup>

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<sup>162</sup> Loi de finances 35-05 pour l'année budgétaire 2006 [Budget Law 35-05 for the 2006 Financial Year], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 29, 2005, p. 997.

<sup>163</sup> *Comm'r Memorandum Following 2008 Visit to France*, *supra* note 54.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 25–29.

<sup>166</sup> Loi 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage [Law 2000-614 of July 5, 2000 on Housing of Travelers] art. 1, JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 6, 2000, p. 10189.

<sup>167</sup> Loi 2000-614 art 8.

<sup>168</sup> *Id.* art. 9.

<sup>169</sup> Loi 2003-710 du 1er août 2003 d'orientation et de programmation pour la ville et la rénovation urbaine [Law 2003-710 of August 1, 2003 on Guidance and Planning for Cities and Urban Renewal] art. 15, JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 2, 2003, p. 13281.

Furthermore, France even makes it difficult for their own nationals to use a caravan as their home. In addition to their government-issued identity cards, which should be sufficient since it is sufficient for their French compatriots, the Roma who subscribe to a nomadic lifestyle are required to carry additional paperwork that must be stamped either every three months (if working) or every year (if not currently working).<sup>170</sup> Failures to comply hold hefty fines and possible jail time.<sup>171</sup> By creating an additional burden for Roma to be in compliance, and criminal penalties if non-compliant, this reinforces a system where Roma have difficulty remaining within the legal boundaries established.<sup>172</sup>

## 2. *United Kingdom*

This Comment first began with the story of Dale Farm, where caravans on private property were eventually bulldozed following a final decision by the courts regarding their status.<sup>173</sup> Additionally, in *Clarke v. Secretary of State for Transportation, Local Government & Regions*, the English government refused to give a planning permit to a Roma man who had rejected an offer for public assistance in obtaining conventional living arrangements.<sup>174</sup> As a Roma, “his cultural aversion to living in ‘bricks and mortar accommodation’ was reason enough to reject the [government’s] offer for traditional housing.”<sup>175</sup> This case is an example of the difficult laws that discriminate against the Roma culture by creating additional hoops for individuals to jump through in order to preserve their way of life.<sup>176</sup> Essentially, the government is demonstrating that if you choose an alternative lifestyle, the law and government will not support you.

## 3. *Greece*

While France and England have shown a disregard for illegally built structures, Greece has demonstrated that certain illegal structures, if of a

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<sup>170</sup> Loi 2000-614 art. 3.

<sup>171</sup> CODE PÉNAL [C. PÉN.] art. 322-4-1 (Fr.) (six months imprisonment and a fine of €3,750).

<sup>172</sup> See *supra* Part I.C.

<sup>173</sup> See *supra* Introduction; *supra* Part I.C.4.

<sup>174</sup> *Clarke v. Sec’y of State for Transp., Local Gov’t & Regions & Tunbridge Wells BC*, [2001] EWHC (Admin) 800 (Q.B.), [2002] J.P.L. 552 (U.K.); Home, *supra* note 154, at 539.

<sup>175</sup> Home, *supra* note 153, at 539 (2009) (citing *Clarke*, [2001] EWHC (Admin) 800).

<sup>176</sup> “Only when uncertainty over the right to stay has been resolved, usually at considerable cost and delay, can the owner-occupiers invest in facilities, within the licensing requirements for caravan sites, usually against the continuing resistance of the local council.” Home, *supra* note 153, at 549.

palatable kind, can be protected in the courts under human rights standards. In *Holy Monasteries v. Greece*, the European Court of Human Rights analyzed whether Article 1 of the European Convention on Human Rights (ECHR) protected illegally built monasteries.<sup>177</sup> Even though they did not comply with proper titling and other Greek domestic law,<sup>178</sup> the Court ruled that Greek authorities could not evict them or interfere with their peaceful enjoyment.<sup>179</sup> Though there are many distinctions between this case and the circumstances of Romani caravans and shanty homes, this case does demonstrate that there is some legal protection afforded to housing that is not legally built.<sup>180</sup>

#### *E. The Detrimental Impact of Destruction of Romani Personal Property on Roma People*

Minority rights are part of internal and international discussions for every state. The plight of the Roma is not unfamiliar, though it is wrought with its own unique characteristics based on their history and their culture.<sup>181</sup> As discussed, the Roma need additional rights that reflect their customs, culture, and situation, such as being able to legally consider their caravans as homes (regardless of their mobile status). Even a simple legal classification of their mobile homes as equivalent to non-Romani permanent homes would improve access to the courts and establish the ability to actually demonstrate the value of their assets. A permanent address is of tantamount importance to secure legal status and residency in a state since “[t]he disqualification of mobile homes makes it very difficult for Travellers to gain access to some

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<sup>177</sup> *Holy Monasteries v. Greece*, 301 Eur. Ct. H.R. (ser. A) at 8–9 (1994).

<sup>178</sup> Nomos (1988:1811) Σύμβαση παραχώρησης στο Δημόσιο της δασικής και αγροτολιβαδικής περιουσίας των Ιερών Μονών της Εκκλησίας της Ελλάδος που συμβάλλονται στη σύμβαση αυτή [Ratifying the Agreement to Transfer to the State the Agricultural and Forest Property of the Holy Monasteries of the Greek Church Which are Parties to It], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 1988, A:231 (Greece); Nomos (1987:1700) Ρύθμιση θεμάτων Εκκλησιαστικής Περιουσίας [Regulating Matters of Church Property], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 1987, A:61, arts. 1–3 (Greece); Nomos (1930:4684) Περὶ διοικήσεως καὶ διαχειρίσεως τῆς Εκκλησιαστικῆς περιουσίας καὶ περὶ Συγχώνευση τῶν μικρῶν Μονῶν [The Administration and Management of Ecclesiastical Property and the Merger of Small Monasteries], EPHEMERIS TES KYVERNESEOS TΟΥ VASILEIOU TES HELLADOS [E.K.B.E.] 1930, A:150 (Greece) (setting up the Ministry of Education and Religious Affairs).

<sup>179</sup> *Id.* at 41–42.

<sup>180</sup> *Id.*

<sup>181</sup> For example, the Bedouins, a historically nomadic group, have been subject to continuous systematic destruction of their settlements in the Middle East without sufficient legal remedies. See Yehunda Gruenberg, *Not All Who Wander Should Be Lost: The Rights of Indigenous Bedouins in the Modern State of Israel*, 34 BROOK. J. INT’L L. 185 (2009) (discussing the rights of the Bedouins in Israel). The Roma and Bedouins share similar forced sedentarism and segregation that have no current clear solution.

administrative services, [including] . . . opening a bank account, securing a bank loan or concluding an insurance contract.”<sup>182</sup> Without a permanent fixed address and the ability to begin obtaining residency in a new country, countries such as France will consistently have a legal excuse for their repatriation efforts and, in turn, the destruction of Romani property.

Destruction of Roma personal property, which currently includes their homes because they are not considered real property in most cases, rises to the level of a violation of the human rights to family life, property, and tenure. Since many Roma cannot afford to purchase a home, or are ineligible for government housing as non-residents, they become homeless and worse off than when they were living in lower-standard housing. But the legal status and the associated administrative aspects of the home make it near impossible for the Roma to reclaim their property’s value.

An illustrative case of the issues that arise when trying to determine the compensation needed after the destruction of Romani homes is *Moldovan v. Romania*.<sup>183</sup> Though this case was not a result of a government eviction, which is the situation at issue in this Comment, it does discuss the importance of recognizing that mobile homes and the personal property within are usually all that the Roma have. To discount compensation leaves the Roma in even worse poverty and worse living conditions than those discussed earlier. In this case, conflicts between Roma and local citizens of Romania escalated, and many Roma homes were burned down and destroyed, with the assistance of local police officers.<sup>184</sup> The Romanian government funded the reconstruction of about half of the homes, leaving many still homeless and living in deplorable conditions.<sup>185</sup> The government did not provide any additional restitution.<sup>186</sup> In the civil case, the Roma requested pecuniary damages for the contents within their homes but the Romanian government declined.<sup>187</sup> The government reasoned the Roma did not have any documentation for their belongings and were not registered as taxpayers, proving that they had the means to have these assets.<sup>188</sup> The lack of status required to pursue claims demonstrates the large

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<sup>182</sup> *Comm'r Memorandum Following 2008 Visit to France*, *supra* note 56, at 26; *ERRC v. France*, No. 51/2008, Decision on the Merits (Oct 19, 2009) at 18 (Eur. Comm. on Soc. Rights).

<sup>183</sup> *Moldovan v. Romania* (No. 2), 2005-VII Eur. Ct. H.R. 167.

<sup>184</sup> *Id.* at 174–83.

<sup>185</sup> *Id.* at 183–85. In this matter, the court was heavily swayed by the living conditions resulting from the destruction of the homes. *See id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 185.

<sup>188</sup> *Id.*

impediment to the success of claims made by the Roma. The Roma have difficulty obtaining restitution for claims that do not amount to egregious human rights violations due to their inability to become a taxpayer, the large amount of discrimination against the Roma, and the absence of a nation or international coalition that will truly support their claims on the international stage.<sup>189</sup>

One way to begin to solve the Roma property issues would be to legalize the mobile homes in all countries. Such an endeavor would be difficult because all countries would have to change their internal laws and all laws associated with property changes, such as taxation. The option of designating these mobile homes as real property will not be discussed in this comment. But, if countries continue to make residency in their own states difficult, perhaps a different model of representation of the Roma may improve their access to the court system, specifically in regards to violations that are not deemed egregious human rights violations such as destruction of property.

### III. ACCESS TO COURTS AND COMPENSATION: ARE THERE SOLUTIONS FOR THE ROMA?

The task is to balance the Romani culture with the various rights afforded to EU citizens and determine the legal means by which to enforce these rights. The Roma maintain a steadfast adherence to their culture of travelling and mobile home living. Though many of these homes are in violation of local ordinances, the Roma suffer unambiguous discrimination, making the procurement of legal status to live as travellers nearly impossible. Also, with blatant efforts to single out the Roma in evictions and law enforcement, the Roma likely have legal claims to pursue in relation to housing and human rights. Unfortunately, many Roma lack international standing to pursue their claims because their home country will not represent them or, simply, because they are stateless.

#### A. *Solutions and Criticisms*

As described above, international organizations and scholars have put forward some potential solutions for solving the many human rights violations

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<sup>189</sup> In this case, the plaintiffs received damages that were stated to be both pecuniary and non-pecuniary. It is unclear whether the court decided the numbers based on the stated amounts lost or the emotional damages and damages for those individuals living in squalor as a result of the destruction. *Id.* ¶ 141–52.

and improving the Roma's quality of life. Many possible structures exist, but unfortunately, the solutions are imperfect and wrought with barriers to success. Additionally, these solutions do not address the unique cultural aspects of the Roma and do not concern themselves with the day-to-day problems associated with repatriation, such as loss of personal property.

### 1. A Roma "Nation"?

The root of the word "repatriation" signifies a return to a place of citizenship.<sup>190</sup> Though many Roma, as citizens of a member state, do use the right to free movement, the history of mistreatment of the Roma demonstrates that they are likely unwanted by their own countries. Also, some are stateless. For those stateless Roma, perhaps joining those who are connected into a state by culture, history, and plight, could solve some of the problems of representation and add more international legal backing to their claims of mistreatment. This end goal is in line with the public policy expressed above, as many officials have recommended protecting this minority's culture and way of life by giving them a semblance of a choice to be nomadic, sedentary, or a hybrid of the two lifestyles.<sup>191</sup> Additionally, the United Nations has recognized the right to self-determination as a right held by all peoples.<sup>192</sup> Given the general aversion to the Roma and their multi-national group members, it seems that a Roma nation could provide political, legal, and international standing. With their own government and nation representing their interests, Romani interests could be better protected, and compensation for wrongs committed, no matter how small, would be more achievable.

For many years, there have been small efforts to afford the Roma self-determination under the umbrella of the United Nations.<sup>193</sup> Self-determination efforts have been widely successful in Europe since the fall of the Iron Curtain, with countries finding independence based on their right to self-determination.<sup>194</sup> The UN's General Assembly issued a Declaration on the Rights of Indigenous Peoples in 2007 which affirmed the "general right to self-

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<sup>190</sup> 8 OXFORD ENGLISH DICTIONARY 460 (1970).

<sup>191</sup> See Jérémie Gilbert, *Still No Place to Go: Nomadic Peoples' Territorial Rights in Europe*, 4 EUR. Y.B. MINORITY ISSUES 141, 145, 157 (2005).

<sup>192</sup> G.A. Res. 1514 (XV), U.N. Doc. A/RES/1514(XV) (Dec. 14, 1960) ("All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.").

<sup>193</sup> Langford, *supra* note 126, at 169.

<sup>194</sup> See generally, e.g., Wolfgang Danspeckgruber, *Self-Determination and Regionalization in Contemporary Europe*, in THE SELF-DETERMINATION OF PEOPLES 165 (Wolfgang Danspeckgruber ed., 2002).

determination, [the] specific right to autonomy or self-government in matters relating to [the] internal and local affairs, and [the] right to maintain and strengthen [the] distinct political, legal, economic, social, and cultural institutions . . . .”<sup>195</sup> It seems that another solution to the Roma housing rights issues would be to afford them a nomadic legal status, a solution that could be made possible by the already-accepted open borders of the EU and the right to free movement. Thus, stateless Roma could find a “home country” through their cultural lifestyles in addition to their genealogical roots.

The word and status of “nation” will likely not be legally possible for the Roma. International rules and norms govern national sovereignty status, and the Roma will likely never meet the Montevideo requirements for nationhood.<sup>196</sup> The most obvious requirement not met by the Roma is to have a defined territory. The Roma do not own land anywhere in Europe other than individually purchased land plots. The Roma also do not have any ancestral lands because they originated from India thousands of years ago.<sup>197</sup> Though this may seem like an absolute bar on their nationhood, minority groups around the world have found ways to gain some autonomy without internationally drawn borders, such as the Native Americans in the United States, and by the creation of new recognized states, such as the Jewish people with the state of Israel.

*a. Roma Reservations Using the United States’ Native American Model*

In the United States, Native Americans live on reservations on U.S. federal land and retain some sovereignty and autonomy.<sup>198</sup> They are dependent sovereigns. For example, the Plains Indians in the United States were semi-nomadic and were forced to relocate to limited land parcels that were not necessarily a part of their ancestral land.<sup>199</sup> However, this model of land redistribution is an unlikely resolution in Europe since nations will be opposed

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<sup>195</sup> *Id.*

<sup>196</sup> Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19 [hereinafter Montevideo Convention]. Article 1 has become customary international law as to the four criteria required for recognizable statehood: “The state as a person of international law should possess the following qualifications : (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States.” *Id.*

<sup>197</sup> Parra, *supra* note 6, at 1670; *see supra* Part I.A.

<sup>198</sup> Gary D. Sandefur, *American Indian Reservations: The First Underclass Areas?*, 12 FOCUS 37, 38 (1989).

<sup>199</sup> *Id.* at 37.

to releasing land to the Roma beyond a situation like halting sites, especially given the discrimination against them.

Also, the “Native American Nation” model does not create a sovereign entity under the Montevideo requirements. Native American tribes, though they have some tribal sovereignty, are not recognized as sovereign by any international organizations.<sup>200</sup> They maintain domestic rights only in their home country.<sup>201</sup> Therefore, such a solution would not help the Roma in their battles against eviction or aid them in recovery of destroyed personal property.

*b. Israel and the Zionist Model*

If creating autonomous zones within countries such as Native American reservations is not a feasible solution, perhaps a separated autonomous state could at least afford the Roma some additional rights and represent them on the international stage. The Zionist movement and subsequent creation of Israel lends itself as an example of how a scattered people can achieve an autonomous state that is recognized by the international community. The Jewish people also did not hold land before the creation of the state of Israel, but significant historical and religious ties to the “Land of Israel” sufficed for the land to connect to their nationhood.<sup>202</sup> Though the Roma have lived in Europe for hundreds of years, their nomadism does not link them to any ancestral lands, except perhaps India in 250 BCE.<sup>203</sup>

The multi-national, worldwide Zionist movement also transcended national borders and language barriers. Unlike the Jewish people, the Roma have a greater disconnect as they are significantly spread out and do not have a common language because of the many years they have been separated. Therefore, creating such a union would require larger international support and greater organization among the Roma: the requirements for a “government” under the Montevideo factors.<sup>204</sup>

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<sup>200</sup> John Howard Clinebell & Jim Thomson, *Sovereignty and Self-Determination: The Rights of Native Americans Under International Law*, 27 *BUFF. L. REV.* 669, 682–83 (1978).

<sup>201</sup> *Id.* at 671.

<sup>202</sup> Aviel Roshwald, *Jewish Identity and the Paradox of Nationalism*, in *NATIONALISM, ZIONISM AND ETHNIC MOBILIZATION OF THE JEWS IN 1900 AND BEYOND* 11, 13 (Michael Berkowitz ed., 2003).

<sup>203</sup> Warnke, *supra* note 5, at 338.

<sup>204</sup> Montevideo Convention, *supra* note 196, art. 1.

c. *A Unique Migratory Solution?*

States have already established laws for legal halting sites, supplying some of the need for land for the Roma.<sup>205</sup> Repurposing the halting sites as legal stopping sites for those choosing to live a nomadic lifestyle throughout the EU may be an option as long as the land remains under the ultimate control of the host nation. “The Declaration on the Rights of Indigenous Peoples [DRIP] is structured much like a treaty and includes rights to ancestral lands, improvement of housing conditions, and protection from forcible eviction and population transfer.”<sup>206</sup> If the Roma were to fall under the category of indigenous people, this declaration would afford them rights to financial and administrative help from States.<sup>207</sup> By creating multi-nationally supported stopping sites throughout Europe where registered Roma would have to right to move between sites and sites in different countries, the Roma could live a traveller lifestyle and not be under the threat of eviction everywhere they go. Clearly this is a complex solution that requires the agreement of many nations, funding, and more available land. Still, having multi-national sites would allow for more consistency and higher standards of living for the Roma.

However, it is unlikely that enough states, if any, will agree to pass land to the Roma for this to be a feasible solution. It seems to this author that the halting sites are merely a desperate attempt by nations to both segregate the Roma from the rest of the population and to have some leverage in regards to human rights claims through the semblance of a good faith effort to protect the Roma. Even if states were willing to give some sort of autonomy to the Roma on small plots of land, this still might not address their nomadic lifestyle concerns. The right to freedom of movement within the European Union could allow Roma to move from halting site to halting site within several countries. But many States may not agree to the burden of groups of consistently travelling Roma, especially since certain countries may become more popular destinations than others. Therefore, such a situation, even if implemented, would not likely work as a practical matter.

d. *Host State*

If a Roma nation is not a feasible option and the international organizations are insufficient, perhaps an existing state could become the *de facto* host for

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<sup>205</sup> HOUSING CONDITIONS OF ROMA, *supra* note 34, at 62–63.

<sup>206</sup> Langford, *supra* note 126, at 169.

<sup>207</sup> See G.A. Res. 61/295 art. 39, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

the Roma. Romania would be a logical choice because of the large Roma population there and its present efforts at accepting Roma from elsewhere. If Romania becomes the de facto host for the Roma, it might exacerbate the problem because countries would have even more reason to evict Roma and destroy property. Romania would need to find a way to support factions outside of its borders, instead of simply retaining all the Roma.

Romania has consistently maintained the highest population of Roma and was inducted into the EU in 2007.<sup>208</sup> In light of the recent deal with France increasing the repatriation effort, Romania has indirectly claimed its Roma by accepting the responsibility of their integration back into Romania.<sup>209</sup> The Romanian Prime Minister wanted to “send a message to the public that . . . our joint efforts should be focussed [sic] on a solution in which the Roma settle in their country of origin, Romania.”<sup>210</sup> Also, Romania did stipulate that they still required the support of the European Union and France to successfully accomplish this integration.<sup>211</sup>

In September 2012, the French and Romanian governments agreed to jointly address the issues surrounding Roma repatriation efforts.<sup>212</sup> This two-year deal aims to facilitate the movement of the Roma living in camps found in France back to Romania.<sup>213</sup> This deal is meant to find a solution for the illegal camps in the Roma’s “home” state.<sup>214</sup> Though officials state that these repatriation efforts are based on health grounds and with Romania opening its arms to its returning citizens, critics state that this program discriminates further against Roma and does not truly solve the root of the problem.<sup>215</sup> The head of the NGO coalition the Civic Alliance of Roma in Romania stated that the “pilot programme is a bad joke which shows neither of the two governments wants to assume finding real solutions for this problem.”<sup>216</sup> In

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<sup>208</sup> See generally LIÉGEOSIS, *supra* note 35, at 31 tbl.

<sup>209</sup> Luiza Ilie, *France, Romania Sign Pilot Deal on Roma Repatriation*, REUTERS, Sept. 12, 2012, available at <http://uk.reuters.com/article/2012/09/12/uk-romania-france-roma-idUKBRE88B1GF20120912>.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *France, Romania Sign Roma Repatriation Deal*, *supra* note 80.

<sup>213</sup> Alex Ward, *France Will Continue to Evict Gypsies from Illegal Camps, Says Minister During Romania Visit*, DAILY MAIL (Sept. 23, 2012, 1:09 PM), <http://www.dailymail.co.uk/news/article-2202826/Manuel-Valls-France-continue-raids-illegal-Roma-gypsy-camps.html>

<sup>214</sup> See *France, Romania Sign Roma Repatriation Deal*, *supra* note 80.

<sup>215</sup> See Ilie, *supra* note 209.

<sup>216</sup> Paul Ciocoiu, *Romanian Roma Unhappy with France Deal*, SE. EUR. TIMES (Sept. 29, 2012), [http://setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2012/09/29/feature-01](http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/09/29/feature-01).

addition, there are certain Roma who are stateless and have no “home” country following repatriation efforts.

Is the recent deal between Romania and France then the model for others? And are there additional hurdles for other countries? Critics of the new program have argued that it actually reinforces discrimination and repression of the Roma because Roma representatives were not at the discussion table regarding these new procedures.<sup>217</sup> Even though Roma representatives agree that serious efforts must be made in the country of origin, in this case Romania, it still “does not entitle France to do whatever it pleases.”<sup>218</sup> Therefore, this would increase evictions and property destructions while simultaneously legitimizing such violations of right to property, tenure, and privacy of family.

Though Romania stated an interest in reintegrating displaced Roma, it is still unclear whether this will solve the problem of the Roma simply turning around and returning to France after taking advantage of the repatriation charter flight and compensation.<sup>219</sup> The lack of opportunities in Romania is a major factor for the Roma leaving for the West. France may be “dealing” with certain issues legally (repatriating those who are in the country illegally), but are the resulting issues being swept under the rug? After repatriation and the destruction of their homes, the Roma could no longer enjoy the use of their homes and had to live in worse conditions in Romania or simply returned to the same conditions in France. Article 8 of the European Convention on Human Rights is violated when homes are destroyed because the right to family life and private life is disturbed greatly.<sup>220</sup> But politics may also impede them from wanting to pursue claims against countries with which it is clearly trying to create a stronger relationship. Also, having Romania as a host state ignores the fact that many Roma are not Romanian.

#### *i. Statelessness*

An additional problem when dealing with the enforcement of Roma rights is statelessness.<sup>221</sup> Certain Roma do not have any of the legal rights afforded to

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<sup>217</sup> Ciocoiu, *supra* note 216.

<sup>218</sup> *Id.*

<sup>219</sup> *See id.*

<sup>220</sup> *Moldovan v. Romania* (No. 2), 2005-VII Eur. Ct. H.R. 167 (citing European Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, E.T.S. No. 5).

<sup>221</sup> There are two types of statelessness: *de jure* and *de facto*: *De jure* statelessness results from an inability to present a basis for citizenship to any country, is usually a result of operation of law, and can result

EU citizens because they are not citizens of any member state or any other internationally recognized state. According to the Universal Declaration, “[e]veryone has the right to a nationality” and “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”<sup>222</sup> But many Roma are stateless not as a nomadic choice or as renunciation in response to their state’s discrimination, but because member states will not acknowledge their nationality.<sup>223</sup> Many Roma lack nationalities either due to racial or ethnic discrimination or simply because they do not have access to services or administration that would confer status.<sup>224</sup>

Some member states of the EU, recognizing the problems associated with stateless individuals, have signed many agreements to combat statelessness within their borders.<sup>225</sup> As early as 1954, the United Nations began addressing the issues of statelessness through the Status of Stateless Persons in the September 1954 Convention.<sup>226</sup> The United Nations also adopted the Convention on the Reduction of Statelessness in 1961, which heavily incorporated the 1954 Convention.<sup>227</sup> Subsequently, many conventions and organizations have attempted to deal with the issues of statelessness in Europe and around the globe.<sup>228</sup>

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from being born without citizenship. Warnke, *supra* note 5, at 352 (stating statelessness at birth is called “original” or “absolute” statelessness). A person may also become stateless by losing his or her statehood and then failing to acquire a subsequent new one. *See id.* at 352 (discussing Czech Republic citizens’ loss of citizenship after the fall of Communism and failure to reacquire a citizenship after). De facto statelessness, on the other hand, “occurs where a person is effectively denied the rights conferred on them by their nationality due to discrimination and often a lack of means to prove their nationality in the form of denial of access to documentation.” Parra, *supra* note 33, at 1678–79. With situations such as the fall of communism and the Soviet Union, many successor states did not confer citizenship to Roma, simply because of their ethnicity. *Id.* at 1671–72. Blood-based and ethnic nationality laws have prevented certain Roma from obtaining nationality, making a group stateless and without recourse. *Id.* at 1669. This has been especially true in post-war and post-Iron Curtain territorial transfers and realignment. *See* Warnke, *supra* note 5, at 353–54, for a description of issues of statelessness caused by war.

<sup>222</sup> Universal Declaration, *supra* note 147, art. 15.

<sup>223</sup> Parra, *supra* note 6, at 1668.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 1681. There are several international agreements that many EU Member States are signatories too, however, none of them have been ratified by all twenty-eight Member States, which would make them part of the. European Convention on Nationality arts. 4, 6, *opened for signature* Nov. 11, 1997, E.T.S. No. 166; Convention on the Reduction of Statelessness, *opened for signature* Aug. 30, 1961, 989 U.N.T.S. 175; Convention Relating to the Status of Stateless Persons, *opened for signature* Sept. 28, 1954, 360 U.N.T.S. 117.

<sup>226</sup> Convention Relating to the Status of Stateless Persons, *supra* note 225.

<sup>227</sup> Convention on the Reduction of Statelessness, *supra* note 225.

<sup>228</sup> *See* David Weissbrodt & Clay Collins, *The Human Rights of Stateless Persons*, 28 HUM. RTS. Q. 245 (2006) (discussing the many conventions and organizations that have dealt with various issues of statelessness).

But, since member states of any international organization still retain sovereignty regarding their domestic laws, including those of citizenship, “[t]his perpetuates the existence of laws that prevent many Roma from becoming Member State nationals, and thereby EU citizens.”<sup>229</sup> Citizenship is not being awarded to Roma at birth (*jus soli*) either.<sup>230</sup> Similarly, many Roma advocates claim that the solution stipulated in the 1961 Convention on the Reduction of Statelessness is being ignored.<sup>231</sup> Many states may have laws for gaining citizenship that, on the surface, allow displaced Roma an opportunity to gain citizenship.<sup>232</sup> But it is virtually impossible for the Roma to meet the requirements of citizenship that are incongruent with their culture and lifestyles,<sup>233</sup> much like the laws making it near impossible to gain residency<sup>234</sup> or a legal home.<sup>235</sup>

France also proposed a law that could even take away earned citizenship. If a naturalized citizen commits violent crimes against the police or the government, the French government could strip the individual of their citizenship.<sup>236</sup> Since many Roma live in destitute circumstances, the crime level is quite high in camps and, having such a long time period from which to take instances of criminal behavior, it would strip many Roma of their earned citizenship, a citizenship that was hard to gain originally. The law also would create new detention centers that could make repatriating individuals more streamlined.<sup>237</sup> This new law created substantial limits on the right to free movement under EU law and would make it even more difficult for individuals to remain in France lawfully.<sup>238</sup>

Therefore, without nationality status, and subsequently no right to EU citizenship, stateless Roma do not have any of the special rights afforded to members of the European Union.<sup>239</sup> These rights include the right to housing

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<sup>229</sup> Parra, *supra* note 6, at 1682.

<sup>230</sup> Guidelines on Statelessness No. 1, UNHCR, para. 28, HCR/GS/12/01 (Feb. 20, 2012).

<sup>231</sup> *Id.* para. 30.

<sup>232</sup> See Warnke, *supra* note 5, at 356–58 (discussing Czech Law on Acquisition and Loss of Citizenship).

<sup>233</sup> *Id.* Warnke examines the three criteria for gaining citizenship in the Czech Republic (at least five years of permanent residence in the Czech Republic, a clean criminal record for those five years, and the ability to speak the Czech language). But, given the non-legal status of Romani homes and various socio-economic reasons, the Romani are rarely able gain citizenship, even though it is available.

<sup>234</sup> See *supra* Part I(B).

<sup>235</sup> See *supra* Part I (C)(a)–(b).

<sup>236</sup> Faiola, *supra* note 18.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*; Loi 2011-672 du 16 juin 2011 relative à l’immigration, à l’intégration et à la nationalité.

<sup>239</sup> Treaty of Lisbon, *supra* note 113; Universal Declaration, *supra* note 146.

and the right to free movement between member states. Without rights such as those mentioned, stateless Roma have no legal basis on which to prevent evictions. Therefore, the Roma are forced to accept their deportations and cannot fight for their homes and property.

## 2. *Representation by International Organizations*

Thus, with several options being either unfeasible or impractical, we must look to alternative and realistic options to protect Roma rights. The Roma clearly need to be at the table for the discussions regarding their rights. However, encouraging collective action through a political medium without imposing a forced election would be difficult. A Roma nation would require empowering the Roma to feel like an organized and joint nation with solidarity for collective action. An international organization dedicated to Roma rights may be the best option for the Roma.

Activists have already made efforts to create a unified organization to oversee and fight for Romani rights.<sup>240</sup> The ERRC “is an international public interest law organization working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education.”<sup>241</sup> Recognized as a group cognizant of the laws of Europe and of Roma issues, the ERRC also has Consultative Status with the Council of Europe and the Economic and Social Council of the United Nations.<sup>242</sup> The ERRC is able to submit collective complaints to the European Committee of Social Rights and pursue these claims, under any state’s jurisdiction, irrespective of whether organizations are under the jurisdiction of any of the state parties.<sup>243</sup> As such, the Roma are enabled to pursue claims on the international stage.

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<sup>240</sup> INT’L ROMANI UNION, <http://www.internationalromaniunion.org/index.php/en/about-us> (last visited June 23, 2014).

The declared objective of the Organization is to represent all Roma policy in the world . . . and act for the best interests of the Roma nation. [The] Organization also aims to promote cultural traditions, customs and language of the Roma, and at the same time to cooperate with the authorities to solve the social, economic and cultural problems of the Roma in each of the countries they live increases [sic].

*Id.*

<sup>241</sup> *About Us*, EUR. ROMA RTS. CTR., <http://www.errc.org/about-us-overview> (last visited Feb. 16, 2013).

<sup>242</sup> Eur. Parl. Ass., *Implementation of Comm. of Ministers Resolution (93) 38 on Relations Between the Council of Europe and International Non-governmental Organisations*, Doc. No. 8354 (1999).

<sup>243</sup> Additional Protocol to the European Social Charter Providing for a System of Collective Complaints arts. 1(b), 3, Nov. 9, 1995, E.T.S. No. 158; *see* Collective Complaint, *The European Roma Rights Center v.*

The ERRC listed “housing” and “movement and migration” as two of their priorities for 2013 to 2017.<sup>244</sup> Even though they have “set in motion more than 500 court cases in fifteen countries to bring to justice state and non-state actors who have discriminated against Romani individuals or have committed violence against them,”<sup>245</sup> like any other public interest group, they cannot help all of those in need and prioritize cases which will have the most widespread effect. Most cases listed on the ERRC website deal with police mistreatment of the Roma or housing issues.<sup>246</sup>

Like any other non-profit organization, the ERRC deals with issues of funding and manpower. These issues affect whether they deal with smaller cases and cases where destruction of personal property is a by-product of egregious human rights violations. The ERRC recognizes that it cannot pursue all of the necessary claims itself since it recommended to Greece that it “[e]nsure that adequate legal assistance is available to victims of discrimination and human rights abuse by providing free legal services to indigents and members of weak groups, including Roma.”<sup>247</sup> Instead of paying for the displacement of the Roma, perhaps money could be placed in a fund for each country to help with the efforts. Combined funding would be a large step towards providing public defenders for the Romani.

### *B. No Satisfactory Solution?*

We are left to determine if, by making a legal nomadic lifestyle near impossible to achieve and destroying property that is used as real property but not recognized as such, the Roma are discriminated against without any clear solution. If we cannot find the solution in property law or nationhood, perhaps anti-discrimination laws would help. But is a nomadic lifestyle an enforceable right? It is not entirely clear but non-discrimination laws do in fact protect minority rights. “[T]here is a large body of jurisprudence relating to nomadic peoples’ right to exercise their nomadic way of life stemming from the ECtHR under Article 8 of the ECHR,” even though there is no specific law or article

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Greece, Eur. Ct. H.R. Complaint No. 15/2003, at 2 (Apr. 4, 2003). See EUR. ROMA RTS. CTR., <http://www.errc.org> (last visited Feb. 15, 2013), for additional information on the ERRC’s standing to submit complaints to international courts.

<sup>244</sup> *About Us*, EUR. ROMA RTS. CTR., <http://www.errc.org/about-us-overview> (last visited Feb. 15, 2013).

<sup>245</sup> *Strategic-Litigation*, EUR. ROMA RTS. CTR., <http://www.errc.org/about-us-overview> (last visited Feb. 14, 2014).

<sup>246</sup> *Id.*

<sup>247</sup> Collective Complaint, *supra* note 243, at 18.

that protects culturally-based minority rights.<sup>248</sup> Also, certain countries have already recognized the importance that nomadism holds for Roma.<sup>249</sup> Certain countries in Europe have also started to expand their definition of housing to include encampments.<sup>250</sup>

Even though France enjoys certain laws that allow it to eject individuals from dangerous and illegal camps,<sup>251</sup> it must also ensure that it follows the procedural safeguards that are in place to protect individuals' human rights. It is imperative that no countries create further homelessness as a result of eviction.<sup>252</sup> It is imperative that there be clear and enforceable guidelines for expelling individuals without the destruction of property and with the assurance that the individuals will have compensation and alternate housing.

With the freedom to travel as a part of the economic and social policies of the EU and changes to discriminatory laws, it is likely that linguistic, cultural, and educational limitations may prevent individuals from understanding their options under the law.<sup>253</sup> "Low self-esteem, lack of information and knowledge, economic resources and social skills, psychological and socio-cultural issues and limited social contacts (including with NGOs), must be addressed in developing access to housing rights."<sup>254</sup> In addition to proper notice, there should be a push for better education and communication of local laws so that Roma may have a chance at living lawfully in EU Member States.

With a proto-Roma nation within the borders of other states, the Roma could have additional legal standing to pursue claims against states that have violated their rights. At this time, many Roma do not have legal standing to address these violations. Even though France has adopted law in the last

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<sup>248</sup> Gilbert, *supra* note 191, at 148.

<sup>249</sup> "In its review of Ireland's policy under Article 5 [of the Framework Convention], the ACFC affirmed that the government and the courts should bear 'in mind that nomadism is one of the essential elements of the culture and identity of persons belonging to the Traveller community.'" *Id.* at 146 (quoting Advisory Comm. on the Framework Convention on National Minorities, *Opinion on Ireland* para. 56, Doc. No. ACFC/INF/OP/I(2004)003 (May 22, 2003)).

<sup>250</sup> *Id.* at 156 (citing CERD, General Recommendation XXVII, Discrimination Against Roma, 57th Sess., Aug. 16, 2000; CERD, U.N. Doc. CERD/C/63/CO/11, para. 22 (Aug. 18, 2003); Recommendation Rec (2005)4 of the Committee of Ministers to member States on Improving the Housing Conditions of Roma and Travellers in Europe)).

<sup>251</sup> See *supra* Part II.A.

<sup>252</sup> Parallel Report by the ERRC, *supra* note 83, at 6.

<sup>253</sup> U.N. High Comm'r for Refugees, *Guidelines on Statelessness No. 1: The Definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Person*, at para. 2.2, HCR/GS/12/01 (Apr. 25, 2008).

<sup>254</sup> *Id.*

decade that allows those whose rights to housing have been violated as a result of public authorities to present their cases in front of an administrative tribunal,<sup>255</sup> the Roma housing problem is far from being solved. Until the Roma have true legal standing to pursue their cases in international courts, they will not be able to seek redress for violations. Perhaps the true solution is a Roma nation, one respecting the special cultural considerations of nomadism and one that can help battle continent-wide discrimination. Perhaps under such a nation, Roma will finally find a true home within a host country. But as discussed, this idea is fraught with problems.

There is no perfect solution to the Romani property situation in Europe. The Roma are severely disadvantaged, and simply moving them around Europe is not a solution. The Roma need to be at the discussion table, they need to have a voice. Specifically, the Romani problems cannot be swept under the rug. Problems that seem relatively small in comparison to international matters and major human rights violations, for example compensation for destruction of personal property, still need a means to be addressed in courts. For the disadvantaged and marginalized Roma, their personal property represents the only assets they have, the only home they have, making compensation for those items imperative.

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<sup>255</sup> Loi 2007-290 du 5 mars 2007 de instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale [Law 2007-290 of March 5, 2007 on Establishing the Enforceable Right to Housing and Various Measures for Social Cohesion] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], March 5, 2007, p. 4190; Kyra Olds, Comment, *The Role of Courts in Making the Right to Housing a Reality Throughout Europe: Lessons from France and the Netherlands*, 28 WIS. INT'L L.J. 170, 170 (2011).

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