



# **YOU ARE DISPLACED, YOUR RIGHTS ARE NOT**

COMPENDIUM ON SUSTAINABLE PROPERTY RESTITUTION AND SOLUTIONS  
TO DISPLACEMENT IN KOSOVO DURING TRANSITION



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## SECTION 1

### **PREFACE FROM THE HEAD OF MISSION, OSCE MISSION IN KOSOVO**

Eight years after the conflict, property restitution and the return and reintegration of displaced persons from Kosovo continue to be one of the major challenges for the protection of human rights in Kosovo. As reflected in the OSCE Mission in Kosovo (OSCE) report “Eight Years After: Minority Returns and Housing and Property Restitution in Kosovo (June 2007)” a low number of minority returns have taken place since 1999. Thousands remain displaced and often live in dire conditions in their areas of displacement. They are displaced, but their rights are not, and the Kosovo institutions need to make all necessary efforts to protect them.

In November 2007 the OSCE, in co-operation with the Ministry for Environment and Spatial Planning in Kosovo and the Spanish non-governmental organization “Movement for Peace” convened a conference to follow up on the “Eight years after Minority returns and housing and property restitution in Kosovo” report. Representatives from central and local authorities in Kosovo, non-governmental organizations based in Kosovo and Serbia, the Ministry of Kosovo of the Republic of Serbia as well as the Serbian government Coordination Center for Kosovo and Metohija and international institutions based in Kosovo, that deal with property restitution and issues concerning displaced persons attended the conference: “You are Displaced: Your Rights are Not: Conference on Sustainable Property Restitution and Solutions to Displacement in Kosovo during Transition”.

Based on the outcomes of that conference and the perspectives of participants, this publication points out the outstanding challenges to be met in the property restitution and returns, and reintegration processes and provides policy and legal recommendations to tackle those challenges.

The Mission hopes that these recommendations do not remain on paper but rather are implemented and help improve the lives of the displaced.

Tim Guldemann,  
Head of Mission,  
OSCE Mission in Kosovo



## INTRODUCTION

The inspiration for this compendium<sup>1</sup> arose from a conference held in Kosovo in November 2007 entitled “You are Displaced: Your Rights Are Not: Conference on Sustainable Property Restitution and Returns in Kosovo during Transition”. The compendium opens with the conference recommendations for the way forward, based on the work of the participants at the November 2007 conference. What follows is a collection of articles and documents that illuminate the challenges to the property restitution and returns process in Kosovo as well as inspiration for the way forward.

The compendium is divided into two sections. In the first section the challenges from the perspective of different actors working on property issues in Kosovo are set out. The Ministry for Environment and Spatial Planning, the Kosovo Property Agency, the United Nations High Commissioner for Refugees in collaboration with the Civil Rights Project in Kosovo, MPDL - Movement for Peace, a Spanish Non-Governmental Organization working in Kosovo, the Ombudsperson Institution in Kosovo and the OSCE each set out their view on the issues to be addressed in the property restitution and returns process.

The second section covers key information for how to implement the conference recommendations. The OSCE report “Eight years after minority returns and housing and property restitution in Kosovo”<sup>2</sup> illustrates the specific challenges to be addressed in Kosovo. A follow-up to that OSCE report sets out progress so far on the recommendations made by the report. The Pinheiro Principles develop existing international standards for the protection of the rights of the displaced and serve as important guidance to all relevant actors in addressing the legal and technical issues surrounding efforts to protect the displaced in Kosovo.

Throughout the compendium photographs by Christopher Quirion serve to illustrate the urgency of the property restitution and returns issues we are tackling in Kosovo.

We are hopeful that this publication provides context and inspiration for tackling these fundamental human rights issues in Kosovo.

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<sup>1</sup> The views expressed in this book do not necessarily represent the views of the OSCE Mission in Kosovo

<sup>2</sup> The report was issued in June 2007.



## CONFERENCE RECOMMENDATIONS

### ***You are displaced: Your rights are not***

#### ***Conference on Sustainable Property Restitution and Solutions to Displacement in Kosovo during Transition***

##### ***Final Conference Document and Recommendations***

November 26 - 27, 2007. Grand Hotel, Prishtinë/Priština

*Eight years after the war, the restitution of property rights continues to be one of the mayor challenges for Kosovo. Approximately 17,000 minority returns have taken place since 1999. Thousands remain displaced and their rights are not adequately protected. On 26-27 November 2007, the OSCE Mission in Kosovo, in cooperation with the Spanish Non Governmental Organization 'Movement for Peace' and the Ministry of Environment and Spatial Planning organized a conference in Prishtinë/Priština entitled "You are displaced, your rights are not" building upon the ideas and recommendations highlighted in the "Eight Year After" report published in June 2007. The purpose of the conference was to address the unresolved property restitution issues of concern as well as to asses ways to find durable solutions to displacement through a broadly inclusive and consultative process.*

The conference highlighted a number of key issues which contribute to weaken the protection of the rights of displaced persons. Moreover, it facilitated the development of policy and legal recommendations:

- Lack of funding and instances of obstruction by local authorities make property restitution through the Kosovo Property Agency a challenging process.
- The legal and institutional framework is not prepared to accommodate the special needs of displaced persons. Municipalities and courts cannot notify them adequately, the legal framework in place is inadequate.
- Cadastral and judicial records pertinent to Kosovo remain displaced in Serbia. Moreover, there is no adequate public notice and review procedure to protect displaced persons when changes in the immovable property rights register take place due to technical work or property transfers. In this sense, there is a clear need to improve the technical institutional co-operation between Republic of Serbia and the institutions of Kosovo in the area of justice, immovable property rights registration and other public services.
- Conflict related destruction of informal settlements should in no case lead to further segregation of Kosovo Roma, Ashkaeli and Egyptian communities. Displaced persons who lived in informal settlements need special measures of land regularization in order to protect their housing rights. There is a need for a coordination and oversight body -including displaced persons' representatives, civil society organizations and other key stakeholders- to review and regularly address the numerous technical and policy challenges which remain unresolved in the area of property restitution and displacement.
- Returns are not the only solution for displacement, a clear framework for local integration and resettlement (including land allocation schemes) are pending. This is a particularly pressing issue as thousands of displaced persons, those displaced in March 2004, continue to live in grossly inadequate conditions.
- Similarly, restitution in kind is not the only remedy available for loss of the enjoyment of property rights as a consequence of a conflict. Compensation as a remedy should also be given due consideration, in line with international principles on housing and property restitution.
- More effective outreach activities to displaced persons on the part of municipalities, courts, the Kosovo Property Agency, legal aid non-governmental organizations and other interested institutions are required in order to provide accurate information.

#### **Background: international standards**

Within European standards, the right to return can be seen as a derivate, constructed right made principally of the right to freedom of movement (Article 2, Protocol 4, European Convention for Human Rights), the right to property (Article 1, Protocol 1) and the right to respect for family and private life (Article 8). The right to an effective remedy for victims of human rights violations (i.e., Article 13) has been recently developed in the UN Reparation Principles, which list restitution as a type of reparation due to victims of 'gross violations of international human rights law and serious violations of international humanitarian law.'<sup>3</sup> Displaced persons and refugees, have the right to return to their homes and recover their possessions. The UN has recently developed a set of standards for the protection of housing, land and property rights in the post-conflict situation and integrated them into a set of

<sup>3</sup> 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', UN Doc. A/RES/60/147 (March 21, 2006).

Principles on Housing and Property Restitution for Refugees and Displaced Persons, (the 'Pinheiro Principles').<sup>4</sup> Of particular importance are the right to housing and property restitution and the right to voluntary return.

Governments have the responsibility to establish institutions that protect property rights and ensure remedial mechanisms to its citizens. Kosovo has institutions mandated to resolve property disputes and to protect the rights of all individuals to the peaceful enjoyment of their possessions, as established by European standards. The effective use and functioning of these institutions is crucial for strengthening rule of law, economic development and the sustainable return of those displaced during the conflict. Effective property rights protection requires that all actors help strengthen and respect the legal and institutional framework that is set up to address the issue of property restitution. The municipalities, the courts, the Police, the Kosovo Property Agency, the civil society and the international community must work together to ensure that these institutions are respected and able to carry out their mandate.

### **Conference on Sustainable Property Restitution and Solutions to Displacement during Transition**

The conference was attended by approximately 200 individuals representing a wide variety of stakeholders, including the Ministry of Environment and Spatial Planning; the Ministry of Communities and Returns; municipal returns officers; municipal cadastre offices; municipal court judges; UNMIK's Office of Communities, Returns and Minorities; the United Nations High Commission for Refugees; the United Nations Development Programme; the International Office of Migration; the Office of the Ombudsperson Institution; the Kosovo Property Agency; the Kosovo Police Service and non-governmental organization legal assistance providers. Notably, many displaced persons and their representatives were present during the conference. The Republic of Serbia institutions were represented by the Ministry of Kosovo and Metohija and the Center for Co-ordination for Kosovo and Metohija.

This report provides a brief background to the issue of property rights and restitution for displaced persons from Kosovo, summarizes the key points which came out of the conference discussions and details the specific recommendations upon which conference participants agreed.

### **Working Groups**

During the conference, the participants were divided into five working groups, each led by one facilitator. Each working group was tasked with discussing specific issues of concern and identifying recommendations to address them:

Working Group I. Access to adequate housing and returns assistance for the displaced. The group assessed ways to address inadequate housing conditions of persons in displacement. Returns and reconstruction assistance is not always available and there are no clear venues to access housing and other services in the areas where the displaced currently live. The group also discussed the protection of housing and property rights of Kosovo Roma, Ashkali and Egyptians. They belong to the most vulnerable communities in Kosovo and face intersecting problems which impede their access to property restitution and return. Their housing conditions are generally inadequate. Often they have been living in conditions of informality: lacking registered property title and/or documentary evidence to proof their rights over their homes.

Working Group II. Protection of right to housing and property restitution through the Kosovo Property Agency. The Kosovo Property Agency (former Housing and Property Directorate) has the competence to resolve all outstanding conflict related claims on private immovable property. It is the key institution in the property restitution process. An adequate institutional co-ordination with the judiciary and other Kosovo institutions is essential to ensure sustainability. A fair process through a mechanism that counts with all necessary resources is a condition sine qua non for an effective restitution process. This working group discussed the status of affairs and current challenges faced by the institution.

Working Group III: Roles and responsibilities for the protection of property rights of the displaced of other Kosovo institutions (courts, cadastre, municipalities, police). The Kosovo Property Agency is not the only institution with responsibilities for the protection of the rights of displaced persons. The courts, the Immoveable Property Rights Register, the Municipalities and the Police have their roles in ensuring adequate protection and a sustainable property restitution process. This working group assessed, in this context, current legal and institutional challenges to the protection of the rights of the displaced to housing and property restitution and to return home in safety and dignity.

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<sup>4</sup> These principles were formally endorsed by the United Nations Sub-commission on the Promotion and Protection of Human Rights on the 11 August 2005. (Principles on Housing and Property Restitution for Refugees and Displaced Persons. E/CN.4/Sub.2/2005/17).



Working Group 4: Legal reform needs to ensure effective rights protection. Adequate rights protection in times of transition requires substantial legal reforms. Kosovo's legal framework is in transition and gaps in the legislation can adversely affect the rights of the displaced. This working group assessed gaps in the legislation and sought ways forward to ensure more effective rights protection.

Working Group 5: Effective participation and rights protection of Kosovo Roma/Ashkaeli and Egyptian communities. Kosovo Roma, Ashkali and Egyptians continue to live in displacement in or outside of Kosovo eight years after the conflict and belong to the most marginalized. The capacities for self-organization among Roma, Ashkali and Egyptian displaced communities are very limited, they are lacking a strong and effective representation to make their voice heard in return co-ordination bodies and mechanisms. The municipal institutions in Kosovo have little information where these communities are currently living and in which conditions, and how many of them consider returning to Kosovo. There are very few activities to reach out to these displaced communities and to include them in organized return projects. The uncertain political situation in Kosovo is aggravating the situation of Roma, Ashkali and Egyptian displaced persons and is creating additional threats of statelessness

## RECOMMENDATIONS

### **To the Prime Minister of the Republic of Serbia**

Ensure, as a priority, the return and/or access to cadastral and judicial records pertinent to Kosovo and currently displaced in Serbia proper.

Implement, in co-operation with the Government of Kosovo, the provisions of the 2006 UNMIK/PISG/Republic of Serbia 'Protocol on Voluntary and Sustainable Return'.

Transform the 'Protocol on Voluntary and Sustainable Return' from a policy guide document to a legally binding instrument.

Take steps to improve technical co-operation in the area of justice, immovable property rights registration and other public services with the Kosovo institutions to improve the protection of the rights of displaced persons.

### **To the Government of Kosovo:**

Implement, in co-operation with the Republic of Serbia, the provisions of the 2006 UNMIK/PISG/Republic of Serbia 'Protocol on Voluntary and Sustainable Return'.

Transform the 'Protocol on Voluntary and Sustainable Return' and the 'Revised Manual on Sustainable Return' from a policy guide document to a legally binding instrument.

Take steps to improve technical co-operation in the area of justice, immovable property rights registration and other public services with the Republic of Serbia institutions in order to better protect the rights of displaced persons.

In line with the 'Standards for Kosovo', continue to publicly speak out against illegal occupation and use of property and promote enforcement of relevant laws.

Develop and implement measures to temporarily exempt displaced persons from court, cadastre and other administrative fees.

Ensure, in accordance with the 'Standards for Kosovo' the continuous functioning of the 'Stakeholders Group on Informal Settlements', tasked with developing and implement Kosovo-wide medium and long-term strategy and action plan (including implementing legislation) on regularizing informal settlements and prevention of new ones.

Ensure through the Stakeholders Group an adequate oversight of municipalities' compliance with the requirements on informal settlements contained in the European Partnership Action Plan and the Standards for Kosovo.

Inform Roma, Ashkali and Egyptian displaced communities outside of Kosovo of the development of the Strategy for the Integration of Roma, Ashkaeli and Egyptian communities by the Government.

Publicly commit to support the return of Roma, Ashkali and Egyptian displaced persons and refugees.

Assist efforts of the Roma, Ashkali and Egyptian displaced and refugee communities to build a regional information network.

### **To the Ministry of Justice**

Assess in co-operation with the Ministry of Communities and Return, the Serbian Ministry for Kosovo and the United Nations High Commissioner for Refugees possibilities for the development of a data-base of displaced persons that will be used in local courts and other relevant institutions.

### **To the Ministry of Communities**

Explore possibilities for improving displaced persons access to justice to and communication with Kosovo institutions.

### **To the Ministry of Justice**

Organize an awareness campaigns for potential buyers of immovable property to prevent fraudulent transactions.

### **To the Ministry of Public Services**

Develop a procedure to inform displaced property right holders about changes and technical works conducted in the Immovable Property Rights Register and revise existing deadlines to provide access to effective administrative and judicial remedies. Public notices should be published in Republic of Serbia –based newspapers.

### **To the Municipalities and Ministries of Kosovo**

Apply the existing Law on Expropriation consistently and with due regard to the need to notify displaced property right holders and compensate adequately.

### **To the Kosovo Assembly**

Assess possible legal reform or other measures to ensure adequate notification, publicity, representation, and access to remedies by displaced persons and minority community members in administrative proceedings.

*Law on Courts:* The issuance of new legal provisions that would supersede the applicable ones from the Law on Courts (1978), would help to better define the applicable law in the areas of competence of the Courts, as currently there exists some ambiguity and legal uncertainty.

Revise the applicable law on obligations (Law on Contracts and Torts, Article 180) to ensure legal clarity in the determination of the body responsible for providing compensation.

Revise the applicable law on civil procedure to ensure an adequate notification system for displaced individuals who do not live in Kosovo.

Address de-nationalisation through adequate legislation.

The legislator should amend the procedure to appoint a temporary representative. For example, the Law on Contested Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia, 4/1977 (37)) should explicitly state the exceptional character of this provision, require that judges should use all available means to locate the respondents before the appointment of a temporary representative (including the use of the Central Civil Registry), as well as required that the announcement of the appointment is published in all official languages.

### **To the Municipalities**

Under the guidance of the Ministry of Communities and Returns and with UNMIK's approval, allocate land for housing programmes aimed at the local integration of persons in displacement.

Integrate Municipal Returns Strategies into Municipal Development Plans with due regard to budgetary implications.

Recognise the needs of persons in displacement within their territory and include them in the municipal budget specific programmes to alleviate inadequate housing conditions.

Integrate long standing informal settlements – including those destroyed during the conflict- into spatial and urban development plans. Refrain from using this land for other purposes. Conflict related destruction of informal settlements should not lead to further segregation of Kosovo Roma, Ashkaeli and Egyptian communities.

Ensure compliance with the requirements of the Property Standard (Goal 6.8) and the European Partnership Action Plan (Goal 31) and cease unjustified attempts to develop public lands that have long-established informal settlements by minority communities or other vulnerable groups for purposes other than residential use by its former inhabitants. If redevelopment is necessary, compensation or alternative housing should be provided to the displaced.

In cases where informal settlements occupy public, state or socially owned land, legalise their situation, in co-operation with the other governmental institutions and relevant international actors.

If necessary, facilitate re-parcelations, land use allocations, land swaps with the Kosovo Trust Agency, integration into spatial and urban plans and *de facto* recognitions of long standing occupation of socially owned land.

In line with the 'Pinheiro Principles', take all appropriate administrative, legislative and judicial measures to support and facilitate returns and property restitution. Thus, where technical impediments related to informal property tenure compound returns, the individual right of displaced persons to return home should be given priority over other public interest considerations, such as commercial, recreational or cultural heritage.

Provide to the best extent of its resources social housing to persons evicted from residential properties and meeting social vulnerability criteria.

Take special measures to prevent illegal construction on displaced persons properties.

Secure sufficient funding for implementation of Municipal Return Strategies.

Ensure implementation of the Law on Languages, particularly in regards to Romani language in municipalities where applicable.

Involve community representatives in outreach activities such as Go-and-Inform Visits.

Include proposals and recommendations made by Roma, Ashkali and Egyptian representatives in the planning processes such as in the development of Municipal Return Strategies and municipal spatial and urban plans.

Ensure more effective outreach activities of municipal institutions to Roma, Ashkali and Egyptian displaced persons and refugees.

#### **To the Kosovo Police Service and municipal authorities**

Comply with the legal requirements to remove unlawful occupants in cases of re-occupation of residential properties after evictions.

#### **To the Courts of Kosovo:**

Respect the final and enforceable character of final Housing and Property Claims Commission decisions.

To avoid parallel proceedings and contradictory decisions on the same property, the courts should contact the Kosovo Property Agency in property proceedings whenever there is an indication that the property has been claimed through the Kosovo Property Agency.

The Presidents of the courts should ensure that all civil judges are aware of the exceptional character of the appointment of temporary representatives and of the need to utilize the competent administrative body or, when necessary, reasonable alternative means to locate the parties before resorting to appointing temporary representatives.

To this end, the court Presidents should ensure that all judges are aware of the possibility under UNMIK Administrative Direction No. 2002/16 for UNMIK judicial authorities to request the disclosure of personal data from the Central Civil Registry. Judges should be required to use the services the Central Civil Registry in their attempt to locate the respondents.

When appointing a temporary representative for Kosovo Serb respondents, the Presidents of the courts should establish a practice by which the pertinent announcements are also published in Serbian language newspapers, in order to strengthen their outreach efforts.

#### **To free legal assistance providers**

Develop programmes to assist displaced persons living in conditions of informal property tenure to regularise their situation through registration of transfers, inheritances, claims based on adverse possession and other methods.

#### **To the Kosovo Property Agency**

Extend the deadline for submission of claims to the KPA (3 December 2007) for an additional six months.

Ensure procedural transparency and access to information of all parties on contested claims.

Administer, in coordination with the municipalities, empty reconstructed houses financed by donor organizations.

Ensure, in co-operation with relevant authorities, the effective implementation of its mandate in all the territory of

Kosovo, including the northern part of Mitrovicë/Mitrovica.

#### **To the Kosovo Judicial Institute**

Provide intensive training on the scope of review of the courts in cases where 'A' claims have been referred to the regular courts by the Housing and Property Claims Commission.

Provide intensive training to all municipal courts regarding the competences and jurisdiction of the Kosovo Property Agency and the Property Claims Commission.

#### **To the UNMIK Special Representative of the Secretary General**

Promulgate the Kosovo Assembly Law on Expropriation to ensure legal certainty and rights protection when public authorities deprive individuals of their possessions in the public interest.

Assess the expropriation decisions taken by municipalities in Kosovo since the establishment of UNMIK in order to intervene using reserved powers when necessary to protect property rights.

#### **To UNMIK Office of the Legal Adviser**

Expedite the development of the legislation necessary for the full implementation of the Kosovo Property Agency mandate, including outstanding legislation regulating compensation for the implementation of residential property claims.

#### **To UNMIK Office of Communities, Returns and Minorities and Ministry of Communities and Returns**

Reduce the recommended requirements related to the size of the houses to encourage the reconstruction of houses smaller than 75m<sup>2</sup>, particularly in informal settlements. Otherwise, regularly update the Revised Manual for Sustainable Return based on lessons learned through field implementation.

#### **To the UNMIK Department of Justice**

Develop a proposal together with other stakeholders to expeditiously adjudicate the property related cases filed by Kosovo Serbs against KFOR, UNMIK, Municipalities and individuals suspended in 2004 (and related cases), including assistance to courts and judges and elimination of legal impediments.

Revise and streamline procedures for the prevention of fraudulent transfers, such as the verification of letters of authorization issued in Serbia proper.

#### **To international donors**

Fund local government projects aimed at alleviating inadequate housing conditions of persons in displacement parallel to the process of returns. Inadequate temporary accommodation (barracks, containers) should not become permanent solutions.

#### **To the United Nations High Commissioner for Refugees**

Ensure a more transparent preparation and selection process for Go-and-See Visit participants Ensure more involvement of IDP representatives in all stages of the Go-and-See Visit preparation process.

#### **To Roma, Ashkali and Egyptian communities in Kosovo and displaced and refugee communities outside of Kosovo:**

Participate in outreach activities to displaced communities such as Go-and-Inform Visits.

Ensure greater involvement of displaced women in Go-and-See Visits and in the returns structures.

Contribute to strengthen a Roma/Ashkaeli and Egyptian Information Network for displaced persons and refugees (including Inicijativa 6 (Roma & Ashkali NGO from Prizren), Informativni Centar - Association of Roma and Egyptians in Montenegro and the Humanitarian Association of National and Ethnic Minorities "Bratstvo" Belgrade).

Identify responsible and legitimate representatives to address the genuine interests and needs of their communities and to more pro-actively engage with municipal institutions

#### **To international actors (Danish Refugee Council, United Nations High Commissioner for Refugees, OSCE Missions in Kosovo, Serbia, Montenegro and Former Yugoslav Republic of Macedonia)**

Assist efforts of displaced and refugee community to build a regional network. Help build the capacity, promote the objectives and activities of the network; Provide technical & financial support.

## MINISTRY OF ENVIRONMENT AND SPATIAL PLANNING

### THE RETURN OF PROPERTY: A CHALLENGE AND PRIORITY

Kosovo institutions supported by the international community are progressing towards a sustainable democracy, under the rule of law and aiming towards the advancement of citizens' rights, where all communities are equal before the law. Kosovo institutions have been committed to the application of Standard VI concerning property rights. Although there have been some considerable difficulties when applying this standard, the results have been obvious and real.

The property right as a legal right, the return of properties to legal citizens enabling them to exercise this right and recover property that they lost, has for some time been Ministry of Environment and Spatial Planning's main challenge. The Ministry of Environment and Spatial Planning has endeavoured to ensure active policies and institutional strategies for a sustainable return of property rights and the return of the displaced people to their legal properties. Being aware of the importance of this issue the Ministry of Environment and Spatial Planning has been engaged in the protection of the right to property by identifying as the main challenges: effective application of the law, institutional coordination and cooperation, as well as the creation of a strategy for legal clarity and the completion of legislation concerning property rights. The establishment of the Kosovo Property Agency is one of the results of this effort. Its immediate and urgent concern is the realization of property rights by and the return of the property to legal owners. Fulfilling this task will also meet one of the eight standards for Kosovo.

In all of the Ministry of Environment and Spatial Planning's activities to meet this standard OSCE and UNMIK have helped a lot with their support, and we hope and believe that this cooperation will still continue in the future to enable us to make further progress.

The Kosovo Property Agency has made important progress in some fields during the past year. One of the main achievements that should be emphasized is the agreement between the Kosovo Government and the Kosovo Property Agency on the modalities of the rental scheme. The fact that this agreement has immediately been applied and we are able to present obvious results from the appliance of this agreement, is proof of successful work. The Kosovo Property Agency has completed over 29000 solved cases of the return of property to legal owners.

The courts' ability to solve civil property disputes regarding property has improved, as well as the active participation of police in applying these court decisions. The other achievement is in the field of application of law, where the document on Operating Standards Procedure has been compiled, a document which is already in the hands of all relevant people in the Kosovo Police Service in the regions of Kosovo. This will encourage and guide more active interventions by the police in cases of illegal usurpations. There are some other achievements related to the application of Standard VI, such as the treatment of informal residences, return to properties and the solution of residential problems for the Roma community, who, since the ending of the 1999 conflict have lived in camps, in social residence buildings, Plemetina I and II, Magure etc. Our institutions have made progress with building the cadastre. In order to make the cadastre accessible to all Kosovo citizens, the Register of Real Estate Property Rights is digitalised, as well as the establishment of cadastral registers of residences.

The return of property is a complex task and faced with numerous challenges for the sustainable return of property the Kosovo institutions brought into effect many institutional factors for the realization of this right. Apart from the Kosovo Property Agency which has resulted as a product of this problem i.e. the realization of judicial property right and the Ministry of Environment and Spatial Planning as the main factor in charge, there are some other factors of mutual cooperation whose contribution to this issue needs to be mentioned: Kosovo Cadastre Agency, Kosovo Judicial Council, UN-HABITAT, Kosovo Trust Agency, United Nations High Commission for Refugees, Department for Property and Housing, Department for BN, Kosovo Police Service, Ministry of Justice, Ministry of Local Public Administration, etc.

The creation of effective legislation and effective mechanisms for the solution of judicial property disputes, by institutionally realising property rights, is considered a basic element for the encouragement of returns and equal treatment of all ethnic communities in Kosovo.



## OFFICE OF THE OMBUDSPERSON

### THE RIGHT OF DISPLACED PERSONS TO RETURN TO THEIR PROPERTIES AND PROPERTY RIGHTS

In the majority of democratic countries, the right to property is considered a fundamental right and respect of this right presents a precondition for the functioning of the rule of law and order in a country. For centuries, many philosophers and various scientists have analyzed and developed the theory and concept of property as a crucial issue for the development of an individual on the one hand and the development of society on the other hand. The concept of property may be construed as having two meanings – a narrow and a broad meaning. Within the broad meaning, property includes a broad range of human aspirations and interests, whilst within the narrow meaning; property is identified as material goods. As a result of this concept of property, property is perceived as a natural right generating from labour.

In the majority of western countries where consolidated democracies prevail, the right to private property usually precedes the demands of a public authority. Property may be limited for certain valid reasons, but the authority as such cannot arbitrarily possess private property. Kosovo, a territory governed and administrated by the United Nations Interim Administration Mission in Kosovo (UNMIK), is still under the process of building its democratic institutions.

In the past and today, uncertainties and difficulties in applying the law in Kosovo bear on the proper protection of this right. As a result of the conflict in Kosovo in the nineties, many Kosovans lost their lives and many others were displaced internally and outside the territory of Kosovo. At the same time, privately, socially and publicly owned property suffered considerable damage or arbitrary repossession.

The right of displaced persons to return to their properties presents a fundamental right generating from the nature of this right itself. No one may be denied this right to return or may keep displaced persons from accessing their properties, since property as such is considered an essential element or an indispensable condition for the existence of man and society as a whole. The restitution of property and the return of displaced persons to their properties should be treated interdependently or as two parts of the same issue.

During and after the conflict, a number of displaced persons, due to the lack of shelters, illegally occupied abandoned properties. Although the United Nations Housing and Property Directorate, which has now been transformed into the Kosovo Property Agency has by now evicted the majority of illegal occupants, the confusing post-conflict situation has created various obstacles of an objective, technical and even political nature. This impacts on the majority of displaced persons facing different natural challenges related to their incontestable right to return to their properties. The fact is reinforced even more by the uncertainty related to Kosovo's future status and the unstable economy, health care and educational system. Returnees of minority communities, in particular Kosovo Serbs and Roma, have even greater difficulties returning and leading sustainable lives due to the inter-ethnic tensions left behind after the end of the 1999 armed conflict. Their inability to access their properties and live lives as before is aggravated by the fact that criminal acts such as illegal occupation of property and theft of livestock and machinery is seldom followed by the apprehension of suspected perpetrators.



In order to enhance returns, especially of minority communities, central and local institutions, in co-operation with UNMIK, have set up joint returns strategies. The riots of March 2004 slowed down the establishment of adequate conditions for sustainable return and have shown once again that the mere reconstruction or restitution of property is not sufficient if other measures to ensure safety and integration are not taken. As a consequence, many potential returnees, in particular Kosovo Serbs and Roma, hesitate to return to what they fear for their safety.

In order to overcome these difficulties and fears, the Ministry of Community and Returns has to engage more, as do co-ordinators on the municipal level who need to work on making returns sustainable and more inclusive. This includes setting up a functional system for the protection of property rights. The above-mentioned institutions need to form a broad and well-structured alliance to this end. In relation to returns, the reconstruction of destroyed houses presents another challenge to public authorities in Kosovo. The majority of houses destroyed right before or in 1999 were reconstructed by international donations by 2002. Afterwards, municipalities committed themselves to undertaking action in this matter, but have so far not been very successful, mainly due to lack of funds. As stated in the Ombudsperson Institution's Special Report No. 12, most municipalities in Kosovo (with the notable exception of Prizren Municipality) have not taken any action towards rebuilding those houses that had not been rebuilt by 2002. In the above report, the Acting Ombudsperson thus recommended that municipal authorities, in collaboration with the Kosovo government, prepare strategies on how to reconstruct these houses, most of which were seriously or completely damaged. The Acting Ombudsperson suggested that such action could include procuring funds from donors or special funds from the Kosovo Consolidated Budget. So far, no measures have been taken in response to this report, neither by the respective municipal authorities nor by the central authorities.

Uncertainty in the field of law as well as a lack of a substantial legal infrastructure have so far contributed to the chaotic situation of property rights in Kosovo today. As always with human rights, the right to property and in particular returnees' right to property are dependent on and interrelated with security and the respect of economical, social and cultural rights.

Guaranteeing the invulnerability of property rights in Kosovo is still a great challenge due to variety of sources of laws and mechanisms for the functioning and protection of property rights. In this context, human resources engaging in these fields are also either insufficient or not managed efficiently.

In this sense, Kosovan society, public institutions, specialized institutions, different non-governmental organizations and other international bodies should consolidate and set up a joint strategy to create adequate conditions for implementing the rule of law in the field of property rights, in particular as they relate to the rights of displaced persons and these persons' rights to return to their homes and properties.



## UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES KOSOVO

### THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AND PROPERTY, LAND AND HOUSING RIGHTS

The involvement of the United Nations High Commissioner for Refugees with the voluntary repatriation of refugees is a core function derived from our mandate for the international protection of refugees and the search for a durable solution for each refugee. Over the years, the United Nations High Commissioner for Refugees has also been empowered by various United Nations General Assembly resolutions to engage in the protection of Internally Displaced Persons. Main challenges of the United Nations High Commissioner for Refugees with respect to return, whether by refugees or Internally Displaced Persons, are to promote conditions for voluntary return, to ensure the exercise of a free and informed choice and to mobilize support to underpin successful return. Successful return requires immediate access to basic services as well as the means to make the return sustainable. For every returnee, access to their land, houses and property is a priority.

Natural and legal persons are entitled to own, possess, dispose, and use all types of property, including residential and commercial property as well as agricultural land. A property rights holder can transfer all or one of these rights to others. Authorities can interfere, deprive or control the use of a person's property rights if the interference is provided by law, serves a legitimate aim or is in the common interest and strikes a fair balance between the interests of the community and the protection of the individual rights concerned.<sup>5</sup> Property rights are closely related to other human rights such as among others the "Right to adequate housing", the "Right to the city"<sup>6</sup>, "Freedom of movement", the "Right to security" and "Non-discrimination".

The right of refugees and displaced persons to return to their homes is increasingly recognized by the international community as a free-standing, autonomous right in and of itself. While the enjoyment of property rights are an important human right that plays a prominent role in the returns process there are other factors such as security, freedom of movement, access to services and access to income generating activities that will be ultimately decisive as to whether a displaced person opts for return (with or without property rights confirmed).

In Kosovo, according to the Security Council Resolution 1244/99, the United Nations High Commissioner for Refugees is mandated to supervise the safe and dignified return of refugees and displaced persons. "Safety" means among other things "material security", which includes access to property and shelter, and "legal safety" which includes security of tenure and confirmation of property rights. In line with this role, the United Nations High Commissioner for Refugees conducts the following activities in the field of property rights in Kosovo:

- The United Nations High Commissioner for Refugees advocates and monitors that property legislation and its implementation by the competent authorities complies with human rights law and standards and permits the safe and dignified return of displaced populations;
- The United Nations High Commissioner for Refugees advocates for an efficient and effective institutional framework in the field of property rights;
- The United Nations High Commissioner for Refugees provides through its implementing partner "Civil Rights Project-Kosovo" legal advice and assistance to persons of concern to the United Nations High Commissioner for Refugees related to property. In addition, the United Nations High Commissioner for Refugees funds legal aid providers in Serbia (Praxis) and in Montenegro (Legal Centre/Catholic Relief Services);
- The capacity building activities of the United Nations High Commissioner for Refugees for the benefit of municipal authorities in the context of voluntary and sustainable return include the protection of property rights.
- The United Nations High Commissioner for Refugees proactively contributes - *inter alia* through the assignment of staff specialized in property issues and the exercise of co-ordinating functions, to creating conditions for return for specific return projects whose successful implementation may, due to the number of returnees involved and/or given the (political) importance of the project, bolster the overall return process. The Return to Roma Mahalla and the Legal/Protection Unit of the Co-ordination Mechanism is an example of this.

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<sup>5</sup> See *inter alia* Article 1, Protocol 1 of the European Convention on Human Rights.

<sup>6</sup> By virtue of the "Right to the city" every person in the city or community has the right to be an equal member of the community.

In exercising its supervisory mandate, the United Nations High Commissioner for Refugees has made the following observations on the restitution process in relation to return:

Conducive to return:

- Special mechanisms (the Housing and Property Claims Commission/the Kosovo Property Claims Commission) are in place for decisions on property claims and implementation (the Housing and Property Directorate/the Kosovo Property Agency).
- Housing and Property Directorate and the Kosovo Property Agency respectively work in close cooperation with the United Nations High Commissioner for Refugees (e.g. co-ordination/participation in Go and Inform Visit/Go and See Visit, priority given to property claims of Internally Displaced Persons, allocation of abandoned houses/apartments to persons of United Nations High Commissioner for Refugees concern, general information sharing).

Obstacles to return

- Decision-making may take several years and is perceived as “slow” by Internally Displaced Persons.
- Implementation of decisions is not always sustainable (e.g. post-eviction incidents, re-occupations).
- The restitution process is perceived by Internally Displaced Persons as highly politicized.
- Housing, property and land issues are not addressed in a comprehensive/systematic manner. Housing and Property Directorate and Kosovo Property Agency are legal, specialized, technical bodies and were not given an overall policy setting/advisory or co-ordination role both due to its restricted mandate and resources.
- Humanitarian and social aspects related to property rights in the return process such as homelessness or landlessness have not been addressed in a systematic manner regarding allocation of land or housing, but rather on an ad hoc basis in relation to specific return projects. Examples of this is the Return to Roma Mahalla in Mitrovicë/Mitrovica and social housing for Roma, Ashkali and Egyptian Internally Displaced Persons in Plemetinë/Plementina, Obiliq/Obilić Municipality.

A coherent systematic response is thus required to cover all issues related to housing, property and land (e.g. access to adequate accommodation; effective response to post-eviction security incidents; reconstruction policies; social housing; residential, agricultural and commercial property claims are efficiently/fairly adjudicated). Currently, a wide range of different international and local actors deal with different property issues in Kosovo based on international human rights instruments, UNMIK regulations, Kosovo Standards Implementation Plan (previously) and now the European Partnership Action Plan. With the ongoing hand-over of competencies from international to local authorities, the need for a central co-ordinating and policy-making body is even greater in order to address inconsistencies and short-comings.



## **KOSOVO PROPERTY AGENCY**

### **IMPLEMENTATION OF THE KOSOVO PROPERTY AGENCY MANDATE – CHALLENGES FOR THE FUTURE**

Since its creation the Kosovo Property Agency has had to face many challenges, which up until recently, were the responsibilities it inherited from its forerunner, the former Housing and Property Claims Commission as well as the development and consolidation of new routines and procedures for the resolution of private immovable property. While some of these still remain, new challenges have emerged. These will likely increase, particularly as the resolution process gains momentum. The present article seeks to briefly address some of the current and future challenges for the Kosovo Property Agency.

#### **Involvement and the Role of the Supreme Court of Kosovo**

UNMIK Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property provides for a right of appeal of decisions of the Property Claims Commission to the Supreme Court. This in of itself requires development of communicative links between the respective institutions as well as a procedure whereby cases can be referred to the Supreme Court by the Kosovo Property Agency.

It is imperative that the Supreme Court be fully equipped to deal with the complexity and potential number of cases that will come before it. Given that decisions of the Property Claims Commission, which are the subject of an appeal, cannot be implemented until confirmed by the Supreme Court, the speed in which it adjudicates is of the utmost importance and critical to the successful completion of the Kosovo Property Agency mandate.

#### **Implementation of Kosovo Property Claims Commission decisions**

Section 15 of UNMIK Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property lists the type of remedies available to successful claimants, specifically, eviction; placing the property under administration, a lease agreement, seizure and demolition of unlawful structures and auction. The list is by no means exhaustive and will have to be further developed in order to provide guidance for the remedies available and how they are to be applied.

The lessons learned from implementation of decisions of the Housing and Property Claims Commission provide sufficient insight into the potential response to the implementation of Property Claims Commission decisions, specifically from the local community and governmental institutions. While the overwhelming majority of Housing and Property Claims Commission decisions were implemented with relative ease, political stand-offs were common-place with respect to cases which were politically sensitive, due either for example, to the parties involved in the adjudicated dispute or the location of the properties. This had an impact on the Housing and Property Directorate's ability to enforce decisions, an impact which was also felt by the Kosovo Property Agency, which inherited its outstanding responsibilities with respect to implementation and enforcement of decisions of the Housing and Property Claims Commission. Before the Kosovo Property Agency commences the implementation of decisions of the Property Claims Commission/Supreme Court, it is imperative that a unity of purpose is achieved with all the stakeholders engaged. In addition publicly stated support from international and local institutions is required.

#### **Co-operation with External Agencies**

A lack of access to digital cadastre maps and records available with the Kosovo Cadastre Agency has hampered the Kosovo Property Agency's ability to locate properties that are the subject of a claim. This has been exasperated by the Kosovo Cadastre Agency conditioning its co-operation with the payment of fees at a commercial rate. The latter, as well as being an infringement of Section 4.2 of Annex II of Administrative Direction No. 2007/5, impacts negatively on Kosovo Property Agency's ability to physically place a notice of the claim on the property in question. This is an integral part of the Kosovo Property Agency process, which can only progress if and until the property has been identified. This issue, therefore, diminishes the efficiency of the claims process and prolongs the timelines of the Kosovo Property Agency.

#### **Maintaining Communication with Claimants**

In keeping claimants and respondents abreast of all developments in the progress of a claim, the Kosovo Property Agency is reliant on the contact information provided to the respective office in order to do so. The overwhelming majority of the Kosovo Property Agency's claimants, however, are internally displaced persons located outside of Kosovo (approximately 91%) and are in some cases of no fixed abode. This has invariably meant that contact details provided at the time the claim is submitted are inadequate or subject to change without further notification.



The Kosovo Property Agency is therefore reliant on Claimants visiting Kosovo Property Agency's offices, such as that located in Belgrade, in order to be updated. For those claimants who are unable to be contacted by mail or telephone, the Kosovo Property Agency will have to maintain its operations outside of Kosovo, with obvious additional budgetary implications.

### **Funding**

When the Kosovo Property Agency was established it was done so as an entity independent of the Provisional Institutions of Self Government and UNMIK. As a result it is wholly dependant on locating its own funding for its operations, a feat which has been achieved with the assistance of the international community and the Kosovo consolidated budget.

At the time of writing there remains a shortfall of some 6 million Euros in the Kosovo Property Agency's budget for the remainder of this year and the next. This more than anything else mentioned remains the biggest challenge to the Kosovo Property Agency, with the other challenges effectively moot should this not be resolved in the near future. Without adequate resources, the Kosovo Property Agency will be forced to stop operating. As the primary actor responsible for addressing property rights in Kosovo, the consequences of this would be severe for claimants' and the returns process, as well as enforcement of the rule of law. In addition it would create a lack of confidence with respect to economic investment, for which certainty of property title is crucial.

Kosovo's stability, politically and otherwise and the successful implementation of the Kosovo Property Agency mandate are inextricably linked. The Kosovo Property Agency's ability to operate effectively, particularly with regard to the implementation of decisions, depends on whether or not the political climate in Kosovo remains stable and progressive. Given the importance of property rights in Kosovo, the success or failure of the Kosovo Property Agency to meet the challenges mentioned above can influence the political environment and have an impact on the maintenance of stability.



## OSCE PROPERTY SECTION

### YOU ARE DISPLACED, YOUR RIGHTS ARE NOT: KOSOVO EXPERIENCES IN OPERATIONALIZING THE RIGHTS OF THE DISPLACED TO RETURN HOME AND TO PROPERTY RESTITUTION

Displacement places individuals in an extremely vulnerable situation.<sup>7</sup> Assisting the displaced to recover their possessions, to return home or, if necessary, to resettle are necessary processes to restore human dignity and promote peace. However, property restitution and returns are costly and complex tasks which require substantive political support, careful strategic planning, availability of resources, engagement of the displaced communities and perhaps most importantly an adequate normative and operational framework that allows on the one hand for the provision of an effective remedy through the massive processing and implementation of property claims and on the other the timely provision of housing and reconstruction assistance.

Comparing the results of property restitution, returns and resettlement programmes with the appalling massive scale of displacement at the global level does not lead to much optimism. However, encouraging recent developments in international human rights standards – i.e. the 2005 United Nations Sub-Commission on Human Rights "Pinheiro Principles" and the United Nations General Assembly "Reparation Principles", as well as relatively successful international interventions in the Balkans reflect a positive trend.<sup>8</sup> This opens the questions first as to *what extent* the specific instruments applied in the Balkans have been successful in achieving their objectives and second whether they are a feasible option for other conflicts, especially when in these other scenarios the executive power and the broad powers the international community has had in the Balkans is lacking.

During the last two decades, different formulas have been put in place in the Balkan region to fulfil the right of displaced persons to return home and to recover their possessions. Leaving the specific case of Croatia aside, Bosnia and Herzegovina and Kosovo are the most relevant examples. In the aftermath of both wars, *ad hoc* quasi-judicial bodies were established to ensure the resolution of a mass of property claims that arose out of each conflict. Moreover, project development and implementation structures were set in place at municipal and central levels to allow the displaced access to returns and reconstruction assistance. In both places, however, the institutional framework was characterised by the exceptional presence of an international authority with special powers (the Office of the High Representative in Bosnia and Herzegovina, the UNMIK Special Representative of the Secretary General in Kosovo). Both actors had powers to help ensure return of the displaced and recovery of their possessions, as established by both the 1995 Dayton Agreements in Bosnia and Herzegovina and the 1999 United Nations Security Council Resolution 1244 in Kosovo.<sup>9</sup>

While in the Bosnian example, the Commission for Real Property Claims and the Property Law Implementation Plan are usually presented as overall successes, the case of Kosovo and the Housing and Property Directorate/Housing and Property Claims Commission (now Kosovo Property Agency) continues to present challenges.<sup>10</sup> Thus, the protection of the rights of displaced persons to housing and property restitution and to return home has only partially been fulfilled for minority communities (Kosovo Serb and Roma, Ashkali and Egyptians).

Thus, thousands remain displaced inside and outside Kosovo, often in inadequate conditions in collective shelters or occupying unfinished buildings with poor infrastructure and unhealthy sanitary conditions. Surprisingly, assistance for resettlement is almost non-existent. Eight years after the conflict, and due to both fear and lack of

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<sup>7</sup> By Jose Maria Arraiza, Chief of the Property Section, OSCE Mission in Kosovo.

<sup>8</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", UN Doc. A/RES/60/147 (March 21, 2006). See the UN Sub-Commission on Human Rights "Housing and property restitution in the context of the return of refugees and internally displaced persons" (the Pinheiro Principles) E/CN.4/Sub.2/2005/17, 28 June 2005: "The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution."

<sup>9</sup> Article 1, Annex VII of the Dayton Agreements states that: 'All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them'. United Nations Security Council Resolution 1244 reaffirms 'the right of all refugees and displaced persons to return to their homes in safety'. The unimpeded return of refugees and displaced persons are a responsibility of both international civil and military presences.

<sup>10</sup> See UNMIK Regulation No. 2000/60 On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission and UNMIK Regulation No. 2006/50 On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, both available at [www.unmikonline.org](http://www.unmikonline.org).



opportunities, the displaced have not returned. A large portion of the Housing and Property Claims Commission decisions have not resulted in the repossession of the home by the displaced property right holder (generally non-willing to return due to security and other concerns) but either in the sale of the property or in its temporary administration pending a better solution.<sup>11</sup> This fact questions to a certain extent the substantive effectiveness of the remedy offered –repossession and/or temporary administration. The reasons for the Housing and Property Directorate/the Housing and Property Claims Commission process not leading to returns are manifold. First of all, an initial lack of resources considerably delayed the processing of claims in the earlier stages thus losing a critical momentum. Secondly, a third of the claims implemented resulted in declaratory statements over destroyed property, offering no other possible remedy. In this sense, the repossession is not an adequate remedy when freedom of movement is lacking. This, in turn, opens the question of compensation as possible alternative. In Kosovo, this has not been offered. Almost twenty thousand claims for compensation remain currently suspended at the request of UNMIK. Most importantly, due to an initial decision prioritising residential claims over land claims, claims over agricultural and commercial property were not addressed until 2006, when the mandate of the Housing and Property Directorate/the Housing and Property Claims Commission was expanded through its transformation into the Kosovo Property Agency. The Kosovo Property Agency is a similar structure to the Housing and Property Directorate/the Housing and Property Claims Commission. It has a broader mandate as well as the possibility of judicial review by the Supreme Court. Moreover a Supervisory Board with administrative and policy guidance ensures the participation of the local government (without interference with the work of the Property Claims Commission). The main challenge to the institution so far has been its financing. Budgetary constraints have affected the functioning of the Housing and Property Directorate/the Housing and Property Claims Commission (and today the Kosovo Property Agency) since its creation. In the meantime, the caseload continues to grow and is now close to 30,000 cases, doubling the expectations.<sup>12</sup>

Other areas of concern affecting the protection of the rights of the displaced are the displacement and loss of cadastral and judicial records, the forgery of property related documents (including identity cards used in fraudulent transactions) and the conduct of expropriations by local authorities without due regards to the requirements to verify, notify and compensate property right holders (sometimes displaced persons).<sup>13</sup>

### **Minority returns**

The returns process in Kosovo was a considerable success for the majority Kosovo Albanian population. Kosovo Albanian refugees and displaced persons returned in high numbers after the entry of Kosovo Force troops in 1999 and with great international assistance for reconstruction. However, the return of the displaced minority communities (primarily Kosovo Serb, and in lower numbers Roma, Ashkali and Egyptians) was compounded by security concerns, lack of economic opportunities, political pressure from the Belgrade authorities and, in the case of the Roma, Ashkali and Egyptian communities - who lived in informal settlements before the war - lack of registered title, documents or otherwise secure property tenure. Efforts to operationalise housing rights obligations and ensure the allocation of land title and housing to property-less Roma, Ashkali and Egyptians were not generally successful, with the relative punctual exception of the "Roma Mahala" in the divided city of Mitrovicë/ Mitrovica.<sup>14</sup>

### **Conclusions**

While it is difficult to identify lessons learnt from the Kosovo example of property restitution which could be valid for other scenarios, clearly a mass claims mechanism coupled with a return and reconstruction structure has most chances of successfully benefiting the displaced if all factors are adequately considered in its early conception and planning. Finding the most effective remedy to the disturbance created by conflict is the greatest challenge. In doing that, all options for alternative dispute mechanisms (including mediation), remedies (including compensation schemes) and provision of land and housing (including new title whenever necessary) should be thoroughly considered.

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<sup>11</sup> See OSCE Mission in Kosovo June 2007 report 'Eight Years After: Minority Returns and Housing and Property Restitution', available at [www.osce.org/kosovo](http://www.osce.org/kosovo).

<sup>12</sup> See the Housing and Property Directorate and the Housing and Property Claims Commission website ([www.hpdkosovo.org](http://www.hpdkosovo.org)) and the Kosovo Property Agency website ([www.kpaonline.org](http://www.kpaonline.org)).

<sup>13</sup> See OSCE Mission in Kosovo report on 'Expropriations in Kosovo' (December 2006).

<sup>14</sup> The reconstruction of the neighbourhood implied the allocation of 3.5 Hectares of socially owned land to house the former inhabitants without registered title, the redefinition of urban plans and a special housing scheme with limited user rights.

The minority returns structure of project development and implementation failed to produce the expected results, despite efforts. A transfer of competencies from international to domestic authorities, in line with the overall transfer of competencies from the United Nations Interim Administration Mission in Kosovo to the Kosovo institutions, did not improve the situation. A positive move has taken place, however, towards progressively engaging displaced persons in the process. Integrated returns and restitution possibilities, such as the mass implementation of decisions in a particular location can be useful. The participation of displaced persons in the strategic planning and implementation of such programmes is always of outmost importance. They are most aware that although they are displaced, their rights are not.



## OSCE COMMUNITIES DIVISION

### **DURABLE SOLUTIONS ARE STILL PENDING: UNSOLVED CHALLENGES IMPEDING PROPERTY RESTITUTION AND SUSTAINABLE RETURN OF ROMA, ASHKALI AND EGYPTIANS**

Not enough has been done: the right of displaced Roma, Ashkali and Egyptians to return and to recover their possessions has not been protected.<sup>15</sup> The intersection of various factors such as lack of registered property title and/or evidence to prove it (due to previous residence in informal settlements), lack of personal documents, security concerns, lack of economic opportunities, low attention by donors and lack of effective representation in return-related bodies have led to a vicious circle. Displaced Roma, Ashkali and Egyptians have generally not returned or recovered their possessions. The majority of them continue to live in displacement and in inadequate housing conditions lacking proper access to services.

Plans to upgrade informal settlements and to ensure return of the displaced have been reflected in the programmes contained in the 'Standards for Kosovo' and the European Partnership Action Plan. However, with punctual exceptions (described below), these efforts have not yet produced satisfactory results or a coherent and efficient scheme for the allocation of land. Eight years after the conflict local and international authorities still need to develop a credible policy to ensure that Roma, Ashkali and Egyptians are provided with returns and reintegration assistance, including whenever necessary the allocation of property title, the integration of old informal settlements in urban plans and provision of services. Legal and institutional reforms are necessary to make this happen.

Displacement and migration have reduced the population of Roma, Ashkali and Egyptians in Kosovo to less than a third of the pre-war population. It is estimated that out of the 150,000 who lived in Kosovo prior to 1999 only 30,000-35,000 reside in Kosovo today. Many of these persons who have left since 1998 are still asylum seekers or under "toleration status" in Western Europe, under temporary admission status in Bosnia and Herzegovina or refugees and displaced within the region.<sup>16</sup>

In addition, a number of these communities still face displacement in Kosovo. While a substantial part of these communities left along with Kosovo Albanians during the violent phase of the conflict in the period from 1998 to June 1999, whole settlements of these communities were burnt down and their inhabitants expelled in the aftermath of the conflict and in the March 2004 riots. Relevant examples of these acts of violence are the destruction of the Roma Mahala "Fabricka" in South Mitrovicë/Mitrovica, formerly inhabited by about 8,000 Roma, or the displacement of the inhabitants of the mahalas in Prishtinë/Priština<sup>17</sup> town known as "Moravska" or "Dalmatinksa". Return and reconstruction has not produced substantial results. Only 6,765 community members have voluntarily returned to Kosovo as of 31 August 2007.<sup>18</sup>

Lack of personal, property records or registered title have exacerbated the problem. According to the United Nations High Commissioner for Refugees, about 20 - 40% of the Roma, Ashkali and Egyptians in Kosovo lack habitual resident registration.<sup>19</sup> Many of them also lack civil registration status and thus are unable to exercise basic rights such as access to courts. Those displaced in Serbia face the same problem. Half of them are not even registered as internally displaced persons. Out of 42,000, only 22,000 are registered with the Commissariat for Refugees. Their lack of documents puts them at risk of becoming stateless.<sup>20</sup>

The majority of these persons live or used to live in informal settlements which lacked basic criteria for legal recognition, such as urban permits or registered title. In some cases, the residences occupied private and/or socially owned land. This added factor has complicated the return process and the restoration of their properties.

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<sup>15</sup> By Jose Maria Arraiza, Chief of the Property Section, and Mirjam Karoly, Communities Protection Adviser, OSCE Mission in Kosovo.

<sup>16</sup> 30,000 Roma Ashkali and Egyptian community members left Kosovo prior to the conflict. 40,000 Roma, Ashkali and Egyptians are currently hosted by Western European countries, mostly in Germany. Macedonia, Montenegro and Bosnia and Herzegovina host up to 10,000. 40,000 are displaced in Serbia.

<sup>17</sup> According to the Serbian census in 1991, Pristinë/Priština municipality had 6,625 Roma inhabitants. Other sources estimate up to 15,000 Roma, Ashkali and Egyptians in Pristinë/Priština town.

<sup>18</sup> See United Nations High Commissioner for Refugees Kosovo: Minority Voluntary Return to Kosovo as of 31 August 2007.

<sup>19</sup> United Nations High Commissioner for Refugees Kosovo, Protection Unit, Civil Registration Campaign Targeting Roma, Ashkali and Egyptian Community in Kosovo - Action Plan, July 2006. p.1

<sup>20</sup> See United Nations High Commissioner for Refugees, March 2007: Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia: Law and Practice

Under international human rights standards, public authorities have an obligation to take steps to confer legal security of tenure to persons living in informal settlements.<sup>21</sup> Therefore, return of the displaced requires the provision of secure tenure and the allocation of new title. Thus, in order to lawfully reconstruct these homes, the responsible bodies (municipalities and the Kosovo Trust Agency) need to formally allocate the use of land, which requires permission of UNMIK. These land allocations depend largely on the political will of the municipalities and international authorities. Roma, Ashkali and Egyptians are therefore dependent on the diligence of public authorities to facilitate their return and the regularisation of their neighbourhoods.

On the other hand, arguments can be made based on the fact that individuals can acquire rights through long term occupation of land if this meets the requirements of adverse possession. In practice, displaced persons have little chances to succeed in court, as adverse possession is not possible on public or socially owned land.<sup>22</sup> There are a few practical examples of returns including the provision of secure tenure. The most important example is the Roma Mahala in South Mitrovicë/Mitrovica, inhabited by 462 Roma as of October 2007. The reconstruction of the neighbourhood implied the allocation of 3.5 Hectars of socially owned land to house the former inhabitants without registered title, the redefinition of urban plans and a special housing scheme with limited user rights. Under this scheme, however, displaced persons who had no registered title and do not return effectively lose their former homes without any form of compensation or new housing.<sup>23</sup> In Dy Korriku/Sitničko Naselje, the Municipality of Mitrovicë/Mitrovica allowed reconstruction in the socially owned parcels to facilitate return. In Rudesh/Rudeš (Istog/Istok) the Municipality and the Kosovo Trust Agency agreed in December 2006 on a land swap to enable the return of Roma, Ashkali and Egyptians. The approval of the land swap by the Special Representative of the Secretary General has been delayed due to the inclusion of the neighbourhood in a future “Protective Zone” surrounding the Serb Orthodox Monastery of Gorioq / Gorioć. A recent Administrative Instruction<sup>24</sup> prohibiting construction in this area may affect the return process.

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<sup>21</sup> See General Comment 4 of the United Nations Committee on Economic Social and Cultural Rights (the right to adequate housing), para 8 (a).

<sup>22</sup> See Law on Basic Property Relations Official Gazette of Socialist Federal Republic of Yugoslavia 6/80, Art. 28 to 32. The set conditions and timelines for adverse possession do not apply for public land.

<sup>23</sup> The European Convention for Protection of Human Rights and Fundamental Freedoms, applicable in Kosovo, protects the peaceful enjoyment of possessions (Article 1, Protocol 1) as well as the right to home (Article 8).

<sup>24</sup> See Governmental Administrative Instruction Nr. 11/2007 on Temporary Interdiction of Object Construction within the Protection Zones.



## MPDL – MOVEMENT FOR PEACE

### FROM DISPLACEMENT TO PLACES OF ORIGIN: TRACKING DOWN THE RIGHTS OF CITIZENS.

El Movimiento por la Paz, el Desarme y la Libertad (MPDL - Movement for Peace)<sup>25</sup> hereby presents six legal case studies within the framework of the joint initiative developed with the OSCE Mission in Kosovo (OSCE) under the name “*You are displaced but your rights are not*”.

Both organizations play a different role and combine different approaches towards the problems that affect the access to rights in the areas of property restitution and access to adequate housing, to citizens in general and displaced persons in particular. Indeed, the OSCE may better use its capacity to influence more on the diligence performance of central and local governments, while the MPDL -Movement for Peace should guarantee through the provision of legal aid free of charge, direct assistance to vulnerable groups of citizens which are prevented from exercising the rights they are entitled to.

The legal cases that better represent the concerns expressed and recommendations contained in the various reports made by relevant actors (among others, the Ombudsperson Institution in Kosovo, the United Nations Interim Administration Mission in Kosovo and the OSCE), have been selected by the MPDL - Movement for Peace.

Cases 1, 2, 3 and 4 hereby presented and commented concern legal demands of people living in displacement, and were given response thanks to a co-ordinated action of our offices in Belgrade, Niš, Prishtinë/Priština and Podgorica<sup>26</sup> which form a permanent network of offices called “Kosovo Working Group”. These cases point out several problems related to (i) restricted freedom of movement, (ii) existence of unresolved backlog of cases, (iii) fraudulent transactions, (iv) notification on judicial proceedings, (v) expropriation and privatization processes or (vi) effectiveness of the claims mechanisms, all of which are in fact hindering the access to rights of the displaced persons.

Case 5 concerns a non-displaced person whose property was transferred as a result of alleged discriminatory practices in the period between March 1989 - March 1999, and one of the issues at stake is the performance of the Kosovo Property Agency. This case leads to the additional conclusion that even though the problems related to property issues may affect mostly and in a particular way people living in displacement, non-displaced citizens should not be left out of the discussions.

Finally, Case 6 provides a good picture about how the issue of the property restitution was dealt with in Bosnia and Herzegovina. The compulsory reflection to be made is that the relevant stakeholders of the “international community” dedicated in a specific moment sufficient resources and efforts in order to establish an effective system, in which the Commission for Real Property Claims for Refugees and Displaced Persons was the key institution. It should be remarked that specific laws were adopted by the Office of the High Representative<sup>27</sup> in order to enable the indicated administrative body to issue binding and enforceable decisions, but especially that, according to its mandate, the Office of the High Representative decided to dismiss those public officials that, being abide by the decisions of the cited commission, were not implementing them.

With a particular view to contribute to the implementation of the Recommendations reflected in the OSCE's Report

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<sup>25</sup> El Movimiento por la Paz, el Desarme y la Libertad (MPDL - Movement for Peace) was created in 1983, in order to work in Development, Social Action and Humanitarian Aid, and is currently working in more than 100 projects in around 30 countries. The MPDL - Movement for Peace has maintained a continuous and active presence in South Eastern Europe since 1992, and specifically in the territory of Kosovo since 2001. The MPDL - Movement for Peace is currently executing the “Consolidation of the Return and Stabilization of the Balkans Program”, supported by the Spanish Agency for International Co-operation, which is formed by the Free Legal Assistance Project, the Social Project and the Agricultural Project for the Development of Rural Communities in Eastern Herzegovina.

<sup>26</sup> The Movement for Peace created the “Kosovo Working Group” in order to address properly all the requests made by the refugees and displaced people from Kosovo. The mentioned group, formed by a team of 15 lawyers and legal assistants, including external barrister, has initiated 5,633 legal procedures referred to property and housing issues, including free legal representation before the courts in Kosovo (period 01.10.2001 – 31.08.2007). This group is one part of the cross border network of 10 offices set out by the Movement for Peace in Croatia, Bosnia and Herzegovina, Montenegro and Serbia, including Kosovo.

<sup>27</sup> The Office of the High Representative is an *ad hoc* international institution responsible for overseeing implementation of civilian aspects of the accord ending the war in Bosnia and Herzegovina. It was created under the General Framework Agreement for Peace in said country (“Dayton Peace Agreement”).

“Eight years after Minority returns and housing and property restitution in Kosovo”, the MPDL - Movement for Peace highlights in the following case studies a non-exhaustive list of problems that urges an active involvement of all the relevant stakeholders in order to boost the development of sustainable property restitution and return processes in Kosovo:

**Case 1: Lack of effective responses to alleged fraudulent transactions<sup>28</sup>:**

**Main actors involved:** The Municipal Cadastre Office (Pejë/Peć), the Public Prosecutors Office (Pejë/Peć)

**Introduction:** A.A residing in Serbia proper addressed to the MPDL - Movement for Peace legal aid office on 15 December 2006 with a request to obtain restitution of an immovable private property allegedly lost as a result of a fraudulent transaction.

**Overview of the facts:** A.A. found out that in the Municipal Cadastre Office of Pejë/Peć, a third person had been registered as the owner of an immovable private property which he was entitled to inherit. Reportedly the person who concluded the alleged fraudulent transaction forged an authorization and verified it on 7 November 2003 before the competent District Court in Bar (former State Union of Serbia and Montenegro). The verification of the authorization in this area was confirmed by MPDL - Movement for Peace office in Montenegro while doing research on the case.

**Legal proceedings initiated:** A lawsuit was instituted in January 2007 before the Municipal Court in Pejë/Peć, with a request to declare the allegedly forged contract null and void. However, up to the date hereof it has not received any response which exceeds the 180 days period foreseen in the applicable law.

A criminal charge against the person who allegedly forged the authorization was instituted also in January 2007 before the Public Prosecutors Office in Pejë/Peć.

On a notification dated 28 February 2007, the Public Prosecutors Office invited on 12 March 2007 the claimant to give his statement related to the criminal charge and to submit relevant documents to prove ownership rights. Due to security concerns the claimant preferred to send a memo on 9 March 2007.

The Public Prosecutors Office later notified the claimant by letter dated 14 February 2007 that investigations over the case would not continue, it made no reference to the statement sent by memo and failed to provide the reasons that justified the decision.

**Current status of the case:** All domestic legal remedies to defend the ownership rights of the claimant over the property in dispute were exhausted and the case was brought to the attention of the Ombudsperson Institution and the Kosovo Judicial Inspection Unit, where the investigation on possible lack of diligence or misconduct of the Public Prosecutor Office in Pejë/Peć is currently being carried out.

**Concluding remarks:** At the time when the authorization was verified, pursuant to the Instructions given by UNMIK Department of Justice in the Circular 2003/3 to all Municipal Courts in Kosovo, *“the authorizations and powers of attorneys given for the purpose of concluding property transactions that appear to have been forged and verified by Courts in former State Union of Serbia and Montenegro”*, were subject to request for authentication to UNMIK Department of Justice.

By not following the Instructions aimed at preventing persons from selling properties *“on behalf of owners who no longer live in Kosovo and have not consented to the transaction”*, the Municipal Court in Pejë/Peć may have failed in protecting ownership rights of A.A.

Concerning to the criminal charge instituted, the Public Prosecutors Office failed to explain the reasons why the investigations would not continue and did not make any reference to the memo sent on 9 March 2007.

The omission of relevant information and the lack of consistency that appeared on the dates of the notifications, the interruption of the investigations dated 14 February 2007 while the invitation to give the statement dated 28 February 2007, led to confusion and showed what may be an irregularity in the judicial proceeding.

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<sup>28</sup> It shall be noted that the information and references to other documents contained in the case studies have been obtained directly from the people to whom legal assistance has been rendered by MPDL - Movement for Peace.



## **Case 2: Lack of adequate notice and compensation in expropriations and privatizations processes.**

**Main actors involved:** The Kosovo Trust Agency, the Municipal Court and Special Chamber of Supreme Court for Kosovo Trust Agency related matters.

**Introduction:** X coming from Pejë/Peć Municipality and currently displaced in Serbia proper, addressed MPDL - Movement for Peace legal aid office on 9 December 2005 with a request to obtain restitution of a land.

**Overview of the facts:** The land disputed by X and the Socially Owned Enterprise “Bujqësia” is located in Cadastral Zone Jabllanicë/Jablanica in Pejë/Peć Municipality. It belonged to the former before it was nationalized during the 50's by the Yugoslav State without providing any kind of compensation in return.

In the period Post-Yugoslavia even though the claimant obtained its restitution after a decision of the competent Court was issued in 1998, the land remained under the property of the socially owned enterprise “Bujqësia”.

On date 18 July 2007 the privatization of the socially owned enterprise was announced in the wave 28 and the land in question was included in the assets despite the existence of previous judicial decision recognizing X as lawful owner.

**Legal proceedings initiated:** In the year 1996 X initiated a court proceeding to obtain the restitution of the property that was owned by the socially owned enterprise “Bujqësia” and was recognized as lawful owner in a decision of the Municipal Court in Pejë/Peć issued on 25 June 1997. An appeal was submitted by “Bujqësia” before the District Court with no success and X was declared again legal owner in a decision issued on 16 March 1998.

On September 2006 X initiated a new court proceeding before the Municipal Court to execute the above mentioned decision and the MPDL - Movement for Peace external barrister attended the court hearings. The Kosovo Trust Agency was notified by the MPDL - Movement for Peace in a letter submitted on 23 May 2007 about the existence of previous judicial decisions that acknowledged the property rights of the claimant and was proposed an agreement, but it did not receive any response.

On 27 September 2007 a new lawsuit was submitted to the Special Chamber of the Supreme Court for the Kosovo Trust Agency related matters with a request to reconstitute the property of the land to the claimant.

**Current status of the case:** The Kosovo Trust Agency privatized the socially owned enterprise and invited investors to buy through public tender the New Company that was created with assets that included the land in dispute.

To date it remains unknown whether it will be possible for the claimant to obtain after decision of the Special Chamber of the Supreme Court the restitution of the land or compensation through the process of liquidation of the liabilities of the socially owned enterprise.

The case was brought to the attention of the Ombudsperson Institution.

**Concluding remarks:** The Kosovo Trust Agency included the land in the assets of the socially owned enterprise “Bujqësia”, announced for bidding in the wave 28, despite of being fully aware of the existence of a court proceeding opened with a request to execute previous judicial decisions that recognized the claimant as the lawful owner.

In the absence of preventive measures aimed at postponing the inclusion of the land in the assets to be transformed into new companies, the lack of due respect for the judicial proceeding initiated and the ignorance of previous judicial decisions issued in 1997 and 1998 may result in a violation of the property rights.

It also must be pointed out that in accordance with the Administrative Direction 2006/17 article 22 paragraph 7 all pleadings and documents must be submitted in English language and at the party's expenses to the Special Chamber of the Supreme Court.

This request often results for citizens in an illogical and unbearable financial burden that hinders their access to justice system.

### **Case 3: Lack of adequate notice on judicial proceedings initiated for the purpose of concluding property transactions.**

**Main actors involved:** The Municipal Court in Pejë/Peć.

**Introduction:** Y, displaced person from Pejë/Peć, currently living in Belgrade, addressed the MPDL - Movement for Peace free legal aid office in Belgrade on 11 December 2006, with a request to obtain restitution of immovable private property after alleged fraudulent transaction.

**Overview of the facts:** Y and his family fled the region in June 1999 and abandoned a house and the parcel where the house was built in Pejë/Peć. The house was destroyed shortly after they left. The immovable private property was registered in the Municipal Cadastre Office under his name.

The parcel was occupied by his neighbour Z., who later registered himself as the legal owner of the property in the cadastre.

**Legal proceedings initiated:** Z instituted a lawsuit against Y in the Municipal Court in Pejë/Peć, on the basis of the alleged existence of a real-estate purchase agreement which reportedly never existed, so he used as evidence the perjury of witnesses. Based on the applicable Law for Civil Procedure, the court can make decision using as evidence the perjury of the witnesses even when in a property dispute.

The Municipal Court in Pejë/Peć reached its final decision on 7 June 2006, recognizing Z as the legitimate owner of the property in absence of Y. This decision allowed the claimant to register the property under his name in the cadastral books.

Y did not even know that the above mentioned legal proceeding had been initiated, which it may constitute a serious infringement of the Law on Civil Procedure, article 86 in connection with article 332, paragraphs 1) and 6). It is the understanding of MPDL - Movement for Peace that these articles establish the court's obligation to try to inform the defendant through a "proper way", as it could be through the relevant actors or through announcement in a newspaper which it could be reasonably expected to be read by Y, all taking into account, necessarily, his condition of displaced person.

The defendant informally found out about the court decision against him and filed a request to restart the court procedure on 26 December 2006 to the Municipal Court of Pejë/Peć.

The defendant attended the first Court hearing on 22 May 2007 in Pejë/Peć with his attorney N.H., but it was postponed to the 10 July 2007. Informally the defendant was told by the presiding judge that he would not succeed in the proceeding.

On July 25, 2007, the Municipal Court in Pejë/Peć adjudicated a decision (398/03 25/07/2007) refusing the submission for reinitiating the court procedure. This decision was delivered to Y through their barrister in Albanian language, which he does not know. Nevertheless, Y made an unofficial translation and found out that (i) the court argued that a provisional attorney had been appointed to him and (ii) he was informed on the pending court proceeding through the Courts notice-board and the Kosovo daily newspaper "Koha Ditore". However, none of them were accessible to the defendant living in displacement.

The defendant also instituted a criminal charge for unlawful occupation of immovable property against Z before the Public Prosecutors Office. It was rejected on the basis of a valid court decision which declared Z the rightful owner of the property in dispute.

**Current status of the case:** The defendant filed an appeal in due time to the second instance court and is currently waiting for reply. It has also been brought to the attention of the Ombudsperson Institution and the Kosovo Judicial Inspection Unit, where the investigation on possible lack of diligence or misconduct of the Public Prosecutor Office in Pejë/Peć is currently being carried out.

**Concluding remarks:** The defendant was never properly informed that any lawsuit had been instituted against him until the decision over his property was made, because the means used by the Municipal Court to inform the defendant were not accessible for him. It is the belief of MPDL - Movement for Peace that the clear infringement of the procedural laws left him defenceless.

#### **Case 4: Lack of (i) access to claims mechanisms and (ii) effectiveness of the existing Mechanisms.**

**Main actors involved:** The Municipal Court in Prishtinë/Priština and the Kosovo Property Agency.

**Introduction:** A, a displaced person from Prishtinë/Priština, currently living in Belgrade, addressed MPDL - Movement for Peace free legal aid office in Belgrade on 1 August 2007 with a request for restitution of immovable private property and compensation for damage.

**Overview of the facts:** A is the legal owner of a house in Prishtinë/Priština that was occupied after 1999, when he left Kosovo.

**Legal proceedings initiated:** A lodged a lawsuit to the Municipal Court in Prishtinë/Priština asking for restitution of property and compensation for damage that he suffered because his flat was occupied in Prishtinë/Priština since 1999. He sued the Municipality of Prishtinë/Priština and the Provisional Institutions of Self -Government of Kosovo.

In August 2004, the Director of UNMIK Department of Justice instructed Presidents of the Supreme, District and Municipal courts not to process the claims against UNMIK, KFOR, PISG and individuals involving compensation related matters.

The claims were suspended *sine die* pending an adequate solution. Following new instructions given by Department of Justice in November 2005 the courts were requested to process only those cases related to claims for compensation for damages committed by identified natural persons after October 2000.

On February 22, 2007 the Municipal court in Prishtinë/Priština, as a first instance court, issued its decision. The claimant received the decision through the Kosovo Property Agency office, with the following content: (i) it proclaims the Court incompetent and (ii) refers the case to the Kosovo Property Agency alleging that they are competent for these kinds of legal claims.

However, the Kosovo Property Agency is, under no circumstances, competent of awarding compensation claims for illegal use of property. Based on Regulation 2006/50, article 3.1, the Kosovo Property Agency is responsible to deal with claims referred to ownership and/or property use rights, related to private, agricultural and commercial property.

In article 3.2 of said regulation, it is stated that in all other claims that do not fall under art. 3.1, claimants can pursue their rights before the courts of competent jurisdiction.

Instructions given in 2006 by the UNMIK Department of Justice requesting the courts to transfer to KPA a list of 920 disputed properties seems to be at the origin of the conflict of jurisdiction between KPA and the courts. Reportedly, the reason for this request was that the cases were dealing with restitution of property or repossession, but inexplicably also the part of the claim related to compensation was referred to KPA even though it falls outside the scope of its mandate.

Therefore, Municipal Court in Prishtinë/Priština should have referred to KPA the repossession issue, but could not declare itself incompetent for the compensation element of the claim.

**Current status of the case:** A lodged an appeal to the District court in Prishtinë/Priština as a second instance court within the 15 day time limit.

Moreover, these kinds of court decisions with exactly the same argumentation and almost identical content have been widely distributed to many people who instituted this kind of proceeding. Courts have been able to reach this people through the Kosovo Property Agency, but the Kosovo Property Agency is not undertaking the task to circulate the appeals to the competent second instance courts in Kosovo. So, ultimately, they are being denied access to justice. Also, some of the people changed their addresses or phone numbers and there is no way the Kosovo Property Agency can reach them.

**Concluding remarks:** The lack of compliance of Municipal Court with applicable law (mainly Regulation 2006/50). Furthermore, the Kosovo Property Agency assists courts in delivering decisions, while fails on assisting claimants to deliver the appeals.

### **Case 5: Existence of alleged discriminatory practices in the period between March 1989 and March 1999.**

**Main actors involved:** The Kosovo Property Agency, the Municipal Cadastre Office in Prishtinë/Priština, and the Municipal Court in Prishtinë/Priština.

**Introduction:** B, currently residing in Prishtinë/Priština, addressed the MPDL - Movement for Peace legal aid office in Prishtinë/Priština on 27 February 2007 with a request to obtain restitution of an immovable private property allegedly lost as a result of discriminatory practices in the period between March 1989 and March 1999.

**Overview of the facts:** B, enjoyed the possession of the apartment that originally belonged to the Municipality of Prishtinë/Priština from 1959 until 12 August 1968, the date on which it was bought and legally transferred to private property.

In the year 1994 S.F. was unlawfully evicted by the Municipal Inspectors from his property upon request of a third person who allegedly had forged all necessary documents to claim ownership rights over the property.

**Legal proceedings initiated:** B, shortly after the eviction returned back to the apartment and instituted a lawsuit before the Municipal Court in Prishtinë/Priština. On 5 November 1998 the Municipal Court declared the claimant lawful owner of the apartment but the irruption of the war prevented the competent tribunal from bringing the decision and entering it into force.

Even though the decision above mentioned was finally issued on 19 February 2002, there is no further evidence of the property because the Municipal Cadastre Office failed to register it. On 12 June 2007 a possession list was requested but the Municipal Cadastre Office did not have any entry in the registry under the name of the claimant.

**Current status of the case:** The property is still in dispute after the Housing and Property Claims Commission approved on 16 November 2006 a property claim submitted by the same person who allegedly had forged the documents in the past and in fact never entered and lived in the apartment.

Even though B keeps all necessary evidence to prove his ownership over the property currently faces the risk of being evicted following the above mentioned decision.

The case was brought to the attention of the Ombudsperson Institution and the OSCE.

**Concluding remarks:** The cadastre offices often lack proper documentation from the Yugoslav period because the documents have been destroyed or registers are dislocated. This is why in the absence of more flexible guidelines allowing for other forms of evidence to prove that property transactions took place; the lack of entry into the registry involves a major obstacle in the verification of the property rights.

However, regardless the registry if we take into account that the decision issued by the Housing and Property Claims Commission overturns a previous final judgment of the Municipal Court in Prishtinë/Priština declaring B lawful owner of the property, the diligence of the former in performing its duties constitutes a serious matter of concern.

### **Case 6: Property Restitution in Bosnia and Herzegovina. Case for comparison.**

**Main actors involved:** The Commission for Real Property Claims for Refugees and Displaced Persons (Commission for Real Property Claims), the Ministry for Refugees and Displaced Persons.

**Introduction:** C, a Bosnia and Herzegovina citizen, initiated a restitution of property procedure while being a refugee in Denmark, through the Commission for Real Property Claims.

**Overview of the facts:** C, with permanent residence in Banja Luka, Bosnia and Herzegovina, was forced to leave his city in 1993, seeking refugee status in Denmark, where he stayed with his family until he returned.

C, owned a land with a family house in Banja Luka at the same address. J.M. was registered as the owner in land books in the cadastre municipality Banja Luka with a 1/1 property of 1500 m<sup>2</sup> of land and a two-storey house

built on the same land. C. was also registered in the Banja Luka municipality cadastre as a possessor of a real property for the aforementioned land and two-storey house and regularly paid property tax.

C lived with a wife and two minor children until 1992, when a war broke out in Bosnia and Herzegovina. As a Bosniak, member of a minority people in the Banja Luka region, which was under control of the Bosnian Serb police and army during the war, he was under constant pressure and threats of local authorities and informal groups aiming to implement cleansing of non-Serb population.

In 1992, he was fired from the local company for not having answered to the military mobilization as a Bosniak. After his freedom of movement had been limited because he was not issued a pass for free movement within the Banja Luka region, C decided to leave Banja Luka with his family.

He applied for emigration with the local authorities and asked for assistance from the International Committee of the Red Cross delegation in Banja Luka. He and his family were granted permission to emigrate by the local authorities on 22 April 1993. C terminated his residence for his family and himself with the local police station. He had to submit evidence that he had paid all taxes and fees for local services, following which he signed a statement on voluntary departure from the Republic of Srpska. He also signed that he was leaving his real property to the Republic of Srpska. Prior to his departure on 22 April 1993, he gave the keys of his house to the local authorities and left Bosnia and Herzegovina through the International Committee of the Red Cross.

As a refugee, C settled with his family in Denmark, where he stayed until the end of war in Bosnia and Herzegovina.

During 1994, C received a phone call from D. from Banja Luka, who informed him that as a displaced Serb from Sarajevo he was given C's house by the local authorities to use it. Given the circumstances, D proposed that C takes his house in Sarajevo, controlled by Bosniaks. C. refused this proposal under the excuse that he wanted to return to Banja Luka, and that he did not want to exchange his real property in Banja Luka for real property in Sarajevo. Several days later, D. informed C that pursuant to the 'war laws', he registered C's land and house to his name, and that C could do the same with D's real property in Sarajevo.

**Legal proceedings initiated:** Right after the end of the war in 1996, C inquired about possibility to return to Bosnia and Herzegovina from Denmark and to repossess his real property in Banja Luka. He learned that the lawyer Z. from Banja Luka was filing property claims. The lawyer advised him over a telephone conversation that he could file a complaint with the Municipal Court in Banja Luka, but for the time being, judges were not ruling on these complaints out of political reasons. Additionally, the lawyer informed C about the Law on the Cancelled Implementation of the War Law on the Abandoned Property, meaning that C could file a property claim with the competent administrative body in Banja Luka to repossess his real property. In May 1999, C authorized Z. to file an official complaint with the Municipal Court in Banja Luka for repossession of this real property, and to file a claim in an administrative procedure with the Republic of Srpska Ministry for Refugees, Banja Luka Department, for repossession of his real property.

At the same time, he learned that the Commission for Real Property Claims, established in compliance with Annex 7 of the Dayton Peace Agreement, opened its office in Copenhagen, Denmark, receiving claims for Commission for Real Property Claims decisions.

Although he filed a complaint with the Municipal Court in Banja Luka through his lawyer Z. and instigated an administrative procedure with the competent Ministry for repossession of his real property, C personally filed a claim for the Commission for Real Property Claims decision in its office in Copenhagen.

Following the rules of procedure, the Commission for Real Property Claims determined that C. was the owner of real property in Banja Luka on the day of 1 April 1992 and decided upon this fact on 12 May 2000. As he was instructed by the Commission, C filed a claim with the Ministry for Refugees and Displaced Persons in Banja Luka for execution of the Commission for Real Property Claims decision pursuant to the Articles 3 and 4 of the Law on the Execution of the Commission for Real Property Claims decisions (It has to be noted that this law was directly approved by the Office of the High Representative). Within 30 days, the Ministry made a decision on the execution of the Commission for Real Property Claims decision and ordered to the temporary owner to free the real property by 1 June 2000. Temporary owner filed an appeal on the decision, but his appeal did not postpone the execution of the decision, neither the statement of reasons listed in the appeal could have an impact on the legal status and facts guaranteed by the decision.

Since he did not want to free the real property voluntarily, the temporary user was evicted on 15 June 2000 by the local police, and C was enabled to repossess his real property on the same day.

**Concluding remarks:** Execution of the Commission for Real Property Claims decision always proved to be more efficient and quicker compared to the administrative and court proceedings for repossession of real property in Bosnia and Herzegovina, which were usually followed with numerous obstacles and impediments. The plan to set out the Commission for Real Property Claims with wide faculties resulted to be in an effective measure to reconstitute properties in Bosnia and Herzegovina.





## SECTION 2

### PINHEIRO PRINCIPLES COMMISSION ON HUMAN RIGHTS

*Sub-Commission on the Promotion and Protection of Human Rights  
Fifty-sixth session*

#### **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

***Housing and property restitution in the context of the return of refugees and internally displaced persons.  
Final report of the Special Rapporteur, Paulo Sérgio Pinheiro***

**Principles on housing and property restitution for refugees and displaced persons**

#### **Summary**

At its fifty-sixth session the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2004/2, welcomed the progress report of the Special Rapporteur and requested the Office of the United Nations High Commissioner for Human Rights to circulate the draft principles on housing and property restitution for refugees and displaced persons contained therein widely among non-governmental organizations, Governments, specialized agencies and other interested parties for comment, and requested the Special Rapporteur to take those comments into account in the preparation of his final report to be considered by the Sub-Commission at its fifty-seventh session. This final report submitted by the Special Rapporteur reflects the results of this intensive consultation process and presents the Principles on housing and property restitution for refugees and displaced persons in their final version.

#### **PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS**

##### **Preamble**

*Recognizing* that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands,

*Underscoring* that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin,

*Reaffirming* the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed,

*Welcoming* the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution,

*Convinced* that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on the part of international organizations and affected States, is indispensable to ensuring their effective implementation,

*Convinced also* that the implementation of successful housing, land and property restitution programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.

## **SECTION I. SCOPE AND APPLICATIO**

### **Principle 1. Scope and Application**

1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter “refugees and displaced persons”) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

## **SECTION II. THE RIGHT TO HOUSING AND PROPERTY RESTITUTION**

### **Principle 2. The right to housing and property restitution**

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

## **SECTION III. OVERARCHING PRINCIPLES**

### **Principle 3. The right to non-discrimination**

3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.

3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

#### **Principle 4.**

##### **The right to equality between men and women**

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.

4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.

4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

#### **Principle 5.**

##### **The right to be protected from displacement**

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

#### **Principle 6.**

##### **The right to privacy and respect for the home**

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

#### **Principle 7.**

##### **The right to peaceful enjoyment of possessions**

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

#### **Principle 8.**

##### **The right to adequate housing**

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

**Principle 9.**

**The right to freedom of movement**

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

**SECTION IV.**

**THE RIGHT TO VOLUNTARY RETURN IN SAFETY AND DIGNITY**

**Principle 10.**

**The right to voluntary return in safety and dignity**

10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.

10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.

10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

**SECTION V.**

**LEGAL, POLICY, PROCEDURAL AND INSTITUTIONAL IMPLEMENTATION MECHANISMS**

**Principle 11.**

**Compatibility with international human rights, refugee and humanitarian law and related standards**

11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

**Principle 12.**

**National procedures, institutions and mechanisms**

12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In

cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.

12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and co-operation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

### **Principle 13.**

#### **Accessibility of restitution claims procedures**

13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.

13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.

13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.

13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.

13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

#### **Principle 14.**

##### **Adequate consultation and participation in decision-making**

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

#### **Principle 15.**

##### **Housing, land and property records and documentation**

15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the rights of



possession of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format), transferring them securely and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

#### **Principle 16.**

##### **The rights of tenants and other non-owners**

16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

#### **Principle 17.**

##### **Secondary occupants**

17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

17.3 In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.

17.4 In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, States may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

#### **Principle 18.**

##### **Legislative measures**

18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

#### **Principle 19.**

##### **Prohibition of arbitrary and discriminatory laws**

19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

#### **Principle 20.**

##### **Enforcement of restitution decisions and judgements**

20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgements.

20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgements made by relevant bodies regarding housing, land and property restitution.

20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgements. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.

20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to

inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgements, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

#### **Principle 21. Compensation**

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

### **SECTION VI. THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS**

#### **Principle 22. Responsibility of the international community**

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national Governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.

22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgements. Members of the Security Council should consider including this role in the mandate of peace operations.

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

## **SECTION VII. INTERPRETATION**

### **Principle 23. Interpretation**

23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.



**THE OSCE REPORT “EIGHT YEARS AFTER MINORITY RETURNS AND HOUSING AND PROPERTY  
RESTITUTION IN KOSOVO”**

**Eight years after  
Minority returns and housing and property restitution in Kosovo**

*June 2007*

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## **GLOSSARY OF ABBREVIATIONS**

<b>ASB</b>	Arbeiter-Samariter-Bund
<b>CCK</b>	Coordination Center for Kosovo
<b>CEO</b>	Chief Executive Officer
<b>CIMC</b>	Central Inter-ministerial Commission for Reconstruction
<b>COCG</b>	Communities' Outreach and Communication Group
<b>CRM</b>	Central Review Mechanism
<b>DoJ</b>	Department of Justice
<b>ECHR</b>	European Convention on Human Rights
<b>EUPT</b>	European Union Planning Team
<b>HPCC</b>	Housing & Property Claims Commission
<b>HPD</b>	Housing and Property Directorate
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IDP</b>	Internally Displaced Persons
<b>KFOR</b>	Kosovo Force
<b>KPA</b>	Kosovo Property Agency
<b>KPC</b>	Kosovo Protection Corps
<b>KPCC</b>	Kosovo Property Claims Commission
<b>MAP</b>	Municipal Assembly President
<b>MCR</b>	Ministry of Communities and Returns
<b>MDP</b>	Municipal Development Plans
<b>MHC</b>	Municipal Housing Committees
<b>MR</b>	Municipal Representative
<b>MRO</b>	Municipal Returns Officer
<b>MRS</b>	Municipal Return Strategies
<b>MWG</b>	Municipal Working Group
<b>NATO</b>	North Atlantic Treaty Organization
<b>NGO</b>	Non Governmental Organization
<b>UNMIK OCRM</b>	UNMIK Office of Communities, Return and Minority Affairs
<b>UNMIK OLA</b>	UNMIK Office of Legal Adviser
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PISG</b>	Provisional Institutions of Self-Government
<b>SRSG</b>	Special Representative of the Secretary-General
<b>TPA</b>	Tri-Partite Agreement
<b>TF</b>	Task Force
<b>UDHR</b>	Universal Declaration on Human Rights
<b>UNDP</b>	United Nations Development Program
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>UNOSEK</b>	United Nations Office of the Special Envoy to Kosovo

## EXECUTIVE SUMMARY

Housing and property restitution and returns of displaced persons after a conflict are separate but interrelated and interdependent processes that require a strategic planning, involving all stakeholders in order to be successful. Housing and property restitution, combined with security safeguards and providing socio-economic development opportunities are pre-requisite for the sustainable return and reintegration of displaced persons and refugees.

The rights of refugees and displaced persons to return and to housing and property restitution are internationally recognized standards. The right of displaced persons and refugees to return and its implications with regard to the right to property and to an effective remedy have been most recently articulated in the “Principles on Housing and Property Restitution for Refugees and Displaced Persons”, adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights in 2005. These principles were developed in order to consolidate the existing standards and to ensure consistency of the response of the international community to housing and property restitution challenges in post-conflict societies.

In Kosovo, minority returns have been scarce despite the development of comprehensive returns mechanisms and strategies by the international community and the PISG. The fact that returns remain a priority eight years after the conflict reflects the reality that all mechanisms and strategies developed were not successful in providing adequate protection of the rights of returnees.

The commitment to ensure voluntary minority returns is therefore reaffirmed in the recent comprehensive proposal for a status settlement in Kosovo. Most recently, the Council of Europe has highlighted the importance of this objective to the UNMIK Special Representative of the Secretary General.

The reasons for the insufficient number of minority returns in Kosovo are manifold. Some of the main findings in this report that show the scale of the problem are as follows:

- In June 2007, 10,405 residential properties belonging to currently displaced persons remain destroyed;<sup>29</sup>
- As of June 2007, the Kosovo Property Agency (KPA), successor of the Housing and Property Directorate (HPD), has received more than 23,629 claims over residential, agricultural and commercial private property;
- More than 20,000 claims requesting compensation for war related damage are currently suspended and pending an adequate solution;
- Thousands of individuals remain displaced since the 1999 conflict within and outside of Kosovo - some as a result of the March 2004 riots- and have not, for various reasons, chosen to return to their homes and to recover their possessions.<sup>30</sup>

Many displaced persons and refugees have began a new life elsewhere and do not intend to return to their places of origin. Some have sold their properties. Many live in poor housing conditions in other areas of Kosovo or in Serbia proper.

Through its monitoring activities and field presence in Kosovo, the Organization for Security and Co-operation in Europe (OSCE) has assessed the practical realization of the housing and property restitution and return process in Kosovo.

This report analyzes in depth the development of the new returns structures, the housing and property restitution process, the resolution of claims related to conflict damage and other relevant challenges to the protection of displaced persons' rights. The March 2004 Riots Reconstruction Program, responding to the crisis which temporarily halted returns and housing and property restitution, is also analyzed.

The assessment focuses on voluntary returns and reintegration and does not assess in depth the challenges resulting from the increased numbers of forced repatriations to Kosovo, nor the situation of asylum seekers and

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<sup>29</sup> Source: Housing and Property Directorate Website. This figure leads to estimates of remaining displaced population lower than the CCK and UNHCR estimates and closer to the calculations of the European Stability Initiative.

<sup>30</sup> The Co-ordination Centre for Kosovo and Metohija sources list up to 242,381 persons belonging to Kosovo Serb and Kosovo RAE communities who are displaced within and outside Kosovo. Source CCK Website (<http://www.kc.gov.yu/D-ENGLISH/dokumenti-eng/program-povratka-eng.html>) accessed on 31 January 2007. The NGO European Stability Initiative (ESI) considers that two thirds of the pre-war Kosovo Serb population remain in Kosovo and estimates the displacement figures outside Kosovo to be 65,000 and the figures of Kosovo Serbs living in Kosovo to be 130,000.

refugees. It also does not comprehensively address all challenges to the protection of the rights of displaced persons and refugees and does not fully address the issues of interference with human rights of the persons currently occupying the housing, land or property of displaced persons and refugees.

For the purposes of this report, the OSCE uses the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the "Pinheiro Principles") as an analytical tool.<sup>31</sup>

The OSCE has identified various areas that need further attention. As for the implementation of the structural reforms in the returns process, the areas of concern are as follows:

- Funding of returns projects;
- property rights safeguards in returns projects;
- guidance on procedures for housing and land allocation;
- integration of returns and displaced persons protection in the municipal development plans;
- effective displaced persons' participation; and
- measures to improve housing of displaced persons where they currently live.

Furthermore, the OSCE has identified a number of concerns with regards to the protection of displaced persons and refugees' rights such as:

- Existence of an unresolved caseload of compensation claims;
- Lack of effective responses to fraudulent transactions;
- Irregular use of temporary representatives in courts;
- Lack of effective protection of empty reconstructed properties.

With regard to the Kosovo Property Agency's (KPA) mandate, the main challenges are related to the implementation of the decisions of the Kosovo Property Claims Commission (KPCC). It is important, thus, to ensure that subsidiary legislation is adopted and that important ongoing initiatives, such as the rental scheme, are adequately implemented. Providing the possibility of land administration as a remedy for successful claimants creates opportunities for both local rural economic development and regular income to displaced persons' provision. Co-ordination of the activities of KPA and return structures would help the return process in practice (for example through mass implementation of decisions related to specific areas).<sup>32</sup>

The OSCE believes that the housing, land and property rights aspects of the comprehensive strategy developed by UN and the PISG need to be strengthened and prioritised in the context of the status transition and to become an integral part of the status implementation process. This will help prevent future displacement and allow for better living conditions for displaced persons.

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<sup>31</sup> These principles were formally endorsed by the United Nations Sub-commission on the Promotion and Protection of Human Rights on the 11 August 2005. (Principles on Housing and Property Restitution for Refugees and Displaced Persons. E/CN.4/Sub.2/2005/17)

<sup>32</sup> See "An Evaluation of the Housing and Property Directorate in Kosovo", by Bjorn Vagle and Fernando de Medina, Nordem Report 12/2006, page 107.

## **RECOMMENDATIONS**

### **To the Government of Kosovo**

Develop a Strategy and an Action Plan on Returns, Reintegration, Housing and Property Restitution consistent with its overall Human Rights Strategy.

Implement, as appropriate, the Protocol on Voluntary and Sustainable Returns, in co-operation with UNMIK and the Republic of Serbia.

Ensure the functioning and access to the March 2004 Reconstruction Programme claims panel.

### **To the Ministry of Communities and Returns**

Guide the Municipalities in the development and implementation of effective Municipal Returns Strategies and their incorporation in Municipal Development Plans.

Assess possibilities for the protection of empty reconstructed properties, including administration by relevant bodies.

Finalise the establishment of the IDP database and produce regular statistic reports on displacement.

### **To the Kosovo Cadastre Agency**

Establish, through a Memorandum of Understanding with the Kosovo Property Agency, an efficient mechanism to register titles whenever appropriate after decisions of the Property Claims Commission.

### **To the Kosovo Property Agency**

Increase outreach efforts to explain the remedies offered by the KPA to displaced property right holders in co-operation with all relevant stakeholders.

Ensure that the implementation of the rental scheme is effectively expanded to all properties under its administration.

Ensure, in co-operation with UNHCR and the OSCE, that Municipal Return Officers are fully informed of the KPA process in order to support returns and reintegration.

### **To the Municipalities**

Ensure that displaced persons are adequately notified of any administrative action affecting their property rights and provided with effective remedial venues against them.

Ensure the development of effective Municipal Returns Strategies that take into account the needs of displaced persons within the Municipality as well as possible forced repatriations and integrate them in the Municipal Development Plans.

Assess land and housing needs of displaced persons within the Municipality and incorporate them into municipal housing strategies.

In co-operation with UNMIK or successor body, facilitate access to land when necessary for the implementation of returns and reintegration projects.

Co-ordinate through Municipal Returns Officers with the KPA at the local level to ensure that displaced persons and returnees are aware of the remedies provided by the agency.

### **To the Kosovo Police Service**

Strengthen, in co-ordination with UNHCR, KPA and Municipal authorities, existing mechanisms to ensure that empty reconstructed properties, residential properties subject to lawful evictions and other immovable property belonging to vulnerable groups is adequately protected from damage and unlawful occupation.

**To the Kosovo Judicial Institute**

Ensure regular training to the courts on the different aspects of the mandate of the Kosovo Property Agency over conflict-related property claims, including on the implications of the final binding force of HPCC decisions.

**To the Serbian Ministry for Kosovo**

Participate in the returns structure so as to ensure that all projects funded by the Coordination Center for Kosovo (CCK) follow the guidelines and principles reflected in the revised Manual for Sustainable Returns.

Help ensure the return of cadastral and judicial records originating or pertaining to Kosovo which are currently located in Serbia proper.

**To UNHCR**

Integrate housing and property rights protection considerations, such as transparent and non-discriminatory beneficiary selection and property rights verification procedures, into its capacity building program on returns.

Ensure municipal authorities access to statistics on displacement and returns.

**To the UNMIK Department of Justice**

Develop a proposal together with other stakeholders to expeditiously adjudicate the property related cases filed by Kosovo Serbs against KFOR, UNMIK, Municipalities and individuals suspended in 2004 (and related cases), including assistance to courts and judges and elimination of legal impediments.

Revise and streamline procedures for the prevention of fraudulent transfers, such as the verification of letters of authorisation issued in Serbia proper.

**To the UNMIK/Office of Communities, Returns and Minorities**

In co-operation with the Ministry on Communities and Returns guide the MWGs on procedures for the allocation of land and housing to displaced persons in return and reintegration projects.

**To the UNMIK Office of the Legal Adviser**

Expedite the development of the legislation necessary for the full implementation of the Kosovo Property Agency mandate, including outstanding legislation regulating compensation for the implementation of residential property claims.

**To the European Union Planning Team**

Take into account the need for a co-ordinated strategy on housing and property restitution and return and reintegration into the EU plans for a Mission in Kosovo.

**To international donors**

Assess possibilities for funding reconstruction of the outstanding minority destroyed properties as well as opportunities for integration in connexion with the implementation of the KPA mandate (i.e., land administration).

## 1. Introduction: the rights of displaced persons and refugees to return and to housing and property restitution.

The rights of displaced persons' and refugees<sup>33</sup> to return home and to housing and property restitution<sup>34</sup> are recognised international human rights standards, implicit in the European Convention for Human Rights and Fundamental Freedoms (ECHR) and promoted by the UN in all post-conflict settings.<sup>35</sup> More recently, these rights have been articulated in the "principles on housing and property restitution for refugees and displaced persons", also known as the "Pinheiro Principles", adopted in August 2005.<sup>36</sup> This assessment primarily focuses on principle 2, or "the right to housing and property restitution", and Principle 10, or "the right to voluntary return in safety and dignity".

The housing and property restitution principle provides that refugees and displaced persons "have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land/or property that is factually impossible to restore as determined by an independent, impartial tribunal". Principle 10, or the "right to voluntary return in safety and dignity", states that "all refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity (...)". It is important to note that the "Pinheiro Principles" contain a much broader elaboration of housing and property restitution rights for refugees and displaced persons, which include legal policy on procedural and institutional implementation mechanisms as well as considerations related to the rights of secondary occupants (against arbitrary or unlawful forced eviction). In all, the "Pinheiro Principles" can be summarized in the rights to:

- Housing and property restitution;
- Protection from displacement;
- Peaceful enjoyment of possessions;
- Adequate housing;
- Respect for home and privacy;
- Freedom of movement; and
- Voluntary return in safety and dignity.

It is important to note that the right of displaced persons to return and to housing and property restitution has a dual character: it implies both the need for measures to promote returns and the need for available effective remedies against a human rights violation.<sup>37</sup> Measures to promote the right to return imply that there should be in place:

- a) effective, transparent and accountable structures for the allocation of reconstruction, land and housing assistance and the implementation of comprehensive and balanced returns projects; and
- b) remedial venues against the unlawful occupation of housing, land and other property; against harassment, threats and forced departure and from coercion and/or fraud in the conduct of immovable property transfers.

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<sup>33</sup> The term 'refugees and displaced persons' includes those persons displaced across borders, for example due to conflict or disaster, who may not meet the legal definition of a refugee under international refugee law. See Explanatory Notes on the Principles on Housing and Property Restitution for Refugees and Displaced Persons. E/CN.4/Sub.2/2005/17/Add.1, 8 July 2005, para. 2 and 3.

<sup>34</sup> Throughout this text, the term 'restitution' refers to 'an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position'. See *supra* nota.

<sup>35</sup> See Article 8 (Right to Respect for Private and Family Life), Article 14 (Prohibition of Discrimination), Article 1, Protocol 1 (Right to Property) and Article 2, Protocol 4 (Freedom of Movement) of the ECHR. See UN Security Council Resolutions 1287 (2000), 1036 (1996), 971 (1995) and 876 (1993) on Abkhazia and the Republic of Georgia; UN SC Resolution 820 (1993) on Bosnia and Herzegovina and UN SC Resolution 1244 (1999) on Kosovo. Regarding the right to return to one's country, see Article 13(2) of the Universal Declaration of Human Rights (UDHR); Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR); Articles 45, 127, 132, 134 and 135 of the Geneva Convention on the Protection of Civilian Persons in Time of War; and article 12 (2) of the African Charter on Human and Peoples' Rights.

<sup>36</sup> After years of discussion and input from experts involved in property restitution programmes in such places as Kosovo and Guatemala the 'Pinheiro Principles' were formally endorsed by the UN Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. See Principles on Housing and Property Restitution for Refugees and Displaced Persons, E/CN.4/Sub.2/2005/17.

<sup>37</sup> Williams C. Rhodri, 'Post-conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for Standard-Setting and Practice', *New York University Journal of International Law and Politics*, Volume 37, Number 3, Spring 2005, page 451.

The basic principles that guide the return process can be summarized by the need for returns to be voluntary, safe and sustainable.<sup>38</sup> Return should take place in dignity and should be based on the free and informed choice of the displaced person. In this respect, the mechanisms for the protection of the right to housing and property restitution need to be accessible, efficient and respect international human rights standards. In addition state authorities are obliged to ensure that displaced persons enjoy adequate housing conditions and are protected from forced evictions.<sup>39</sup>

These standards are also reflected in the UN Guiding Principles on Internal Displacement,<sup>40</sup> which reflect an earlier effort to enhance the protection of internally displaced persons by the UN Human Rights Commission. The “Guiding Principles” emphasize the obligations of the state towards internally displaced persons. In addition, considering their vulnerability to be forcibly evicted by local authorities due to their situation of displacement, principle 21 provides that “properties shall in all circumstances be protected; property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use”.

In Kosovo, the primary source of the rights of displaced persons and refugees to return and to housing and property restitution is UN Security Council Resolution 1244. In line with Annex VII of the Dayton Agreements, which settled the conflict in Bosnia and Herzegovina, this resolution reaffirms the right of all refugees and displaced persons to return to their homes in safety as one of the responsibilities of the international civil and security presence in Kosovo.<sup>41</sup> Moreover, the Constitutional Framework for Provisional Self-Government in Kosovo guarantees the right of all refugees and displaced persons from Kosovo “to return to their homes, and to recover their property and personal possessions” and states that “the competent institutions and organs in Kosovo shall take all measures necessary to facilitate the safe return of refugees and displaced persons to Kosovo, and shall cooperate fully with all efforts by the UNHCR and other international and non-governmental organizations concerning the return of refugees and displaced persons”.<sup>42</sup>

Despite this framework and the different strategies and programs developed in the last eight years (see Chapter 2), returns in Kosovo have been scarce with regard to minority communities (Kosovo Serb, Roma, Ashkali, Egyptians and Kosovo Albanians in municipalities where they constitute a relative minority).<sup>43</sup> Returns have therefore remained a high political priority for both UNMIK and the PISG, as well as for human rights organisations. Thus, the Parliamentary Assembly of the Council of Europe, for example, recently transmitted the need to protect the right to return to the UNMIK SRSG.<sup>44</sup>

Most importantly, the proposal of the United Nations Office of the Special Envoy to Kosovo (UNOSEK) for a status settlement in Kosovo reaffirms the need to promote the right to return. Article 4 of the proposal states that “all refugees and internally displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions in accordance with domestic and international law”. Moreover, Kosovo is expected to “take all measures necessary to facilitate and to create an atmosphere conducive to the safe and dignified return of refugees and displaced persons, based upon their free and informed decisions”. The terms of the proposal are to be supervised by a double hatted International Civilian Representative and European Union Special Representative.

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<sup>38</sup> See 27 May 2002, UNMIK concept paper on “The Right to Sustainable Return”.

<sup>39</sup> The UN Committee on Economic, Social and Cultural Rights (CESC), in its General Comment 7 (The Right to Adequate Housing: Forced Evictions) defines ‘forced evictions’ as the ‘permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection’. The Committee states that evictions ‘should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available’.

<sup>40</sup> Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2

<sup>41</sup> UNSC Resolution 1244 (1999), Preamble, section 9 c, 11 k, 13 and Annexes.

<sup>42</sup> UNMIK Reg. 2001/9, 15 May 2001, preamble and section 3.4.

<sup>43</sup> 16,117 persons as of December 2006, according to UNHCR. This figure does not take into account departures.

<sup>44</sup> See Council of Europe Parliamentary Assembly Resolution 1533 (2007) and Recommendation 1780 (2007) on the Current Situation in Kosovo.



The proposal gives the UNHCR the lead role in assisting the competent authorities in extending protection and assistance to returnees, as well as in reporting publicly on these issues.<sup>45</sup> In this regard, UNHCR has recently signed a Memorandum of Understanding with the Government of Kosovo for the implementation of a capacity building and monitoring program on returns and reintegration, including the creation of an internal protection capacity at the municipal level.

## 2. Return process structures and procedures

The returns process is organised through a multi-stakeholder structure which is separate from the mechanism set up to ensure housing and property restitution. The return process structure aims to ensure effective, transparent and accountable structures for the allocation of reconstruction, land and housing assistance and the implementation of comprehensive and balanced returns projects for displaced persons, refugees and their receiving communities (see Fig.1). This involves a considerable number of actors with different roles and responsibilities. UNMIK and the PISG have jointly defined the roles and responsibilities of each actor in the “Revised Manual for Sustainable Return”, published in 2006. The Manual, thus, provides a policy framework and a structure for inter-institutional co-ordination in the development, funding and implementation of returns and reintegration projects.

Actors directly involved in the returns process range from the PISG Ministry of Communities and the UNMIK Office of Communities, Returns and Minorities to the municipalities, civil society organisations and the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) –with an increasing role in institutional capacity building on returns matters, UNMIK, and OSCE representatives. Also Republic of Serbia governmental bodies continue to take part in the process, including the Serbian Commissariat for Refugees (Commissariat)<sup>46</sup> and the Coordination Centre for Kosovo (CCK).<sup>47</sup>

The most fundamental components of the returns structure are:

- a) the Municipal Working Group on Return (MWG) the local coordination and implementation forum for all return related activities, chaired by the Municipal Assembly President;
- b) the Central Review Mechanism, chaired by the Ministry of Communities and Returns (MCR) and in charge of revising proposed return projects;
- c) the Steering Group, a policy guidance body co-chaired by the UNMIK SRSG and the Prime Minister; and
- d) the Communities Outreach and Communication Group (COCG), chaired by the Ministry of Communities and Returns and responsible to ensure outreach to displaced persons and the general public.<sup>48</sup>

The main characteristics of the transformed returns structure reflect the increased ownership of the municipalities and central government in taking the lead of return-related issues as well as the strengthened role of civil society organisations. They also reflect the importance of the participation of the CCK in the process.<sup>49</sup> The returns operational framework aims also to be more flexible in order to provide guidance and respond to every scenario.

The MWG continues to be the “engine” of the returns process and the most important local co-ordination and implementation forum for all return-related issues, projects and activities. The MWG chair has been transferred from the UNMIK Municipal Representative to the Municipal Assembly President. Participants in the MWG are local municipal authorities, NGOs, Kosovo Police Service, displaced persons representatives, UNMIK, UNHCR and the OSCE. In addition, the new Manual incorporates a “Protocol on Voluntary and Sustainable Returns”

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<sup>45</sup> UNOSEK Comprehensive Proposal for a Status Settlement in Kosovo. Article 4. Rights of Refugees and Internally Displaced Persons.

<sup>46</sup> The Commissariat for Refugees is a state administration body that performs tasks related to identifying refugee status, caring for refugees, keeping records, coordinating humanitarian aid provided by other agencies and organization as well as monitoring the equal and timely provision of such aid. The Commissariat works to provide favorable conditions for returns. For more information in the Commissariat, visit: [www.kirs.sr.gov.yu](http://www.kirs.sr.gov.yu).

<sup>47</sup> See: [www.kc.gov.yu](http://www.kc.gov.yu); The key purpose of the Program for Return is to create conditions that would encourage permanent development of interethnic relations that would prevent Serbs from leaving Kosovo. In Kosovo, the Commissariat performs the following tasks related to IDPs: registering IDPs and issuing ID-cards to the displaced; accommodates and supports IDPs in collective centers in Serbia as well as 17 collective centers in Kosovo; and provide individual humanitarian support to IDPs as well as their associations. For more information on the CCK

<sup>48</sup> See Revised Manual for Sustainable Returns, Operational Guidelines, page 13.

<sup>49</sup> UNMIK and PISG Revised Manual for Sustainable Returns, July 2006.

signed by UNMIK, PISG and the Government of Serbia. The Protocol establishes a mechanism for the provision of reconstruction assistance to voluntary returnees at the municipal level within 60 days from the date displaced persons stating their intention to return. This mechanism has, however, not been implemented yet.

The emphasis of return process structures on inter-institutional co-ordination is a result of the lessons learned showing non sustainability of the projects. For example, the Kosovo Serb return project to Osojane/Osojan<sup>50</sup> was the first ever to be implemented Kosovo-wide in 2001. However, there continues to be virtually no interaction between the returnees and the neighbouring communities due to the failure to implement a co-ordinated project supported by all actors.<sup>51</sup> The first “Manual on Sustainable Returns”, issued in 2002, reflects this lesson and places a strong emphasis on sustainability. The returns process to the village of Videjë/Vidanje (Klinë/Klina Municipality), represents a good example of constructive co-ordination between the CCK and other actors implementing the return project.

In its assessment of the functioning of the returns structure, the OSCE has identified various areas that need further attention:

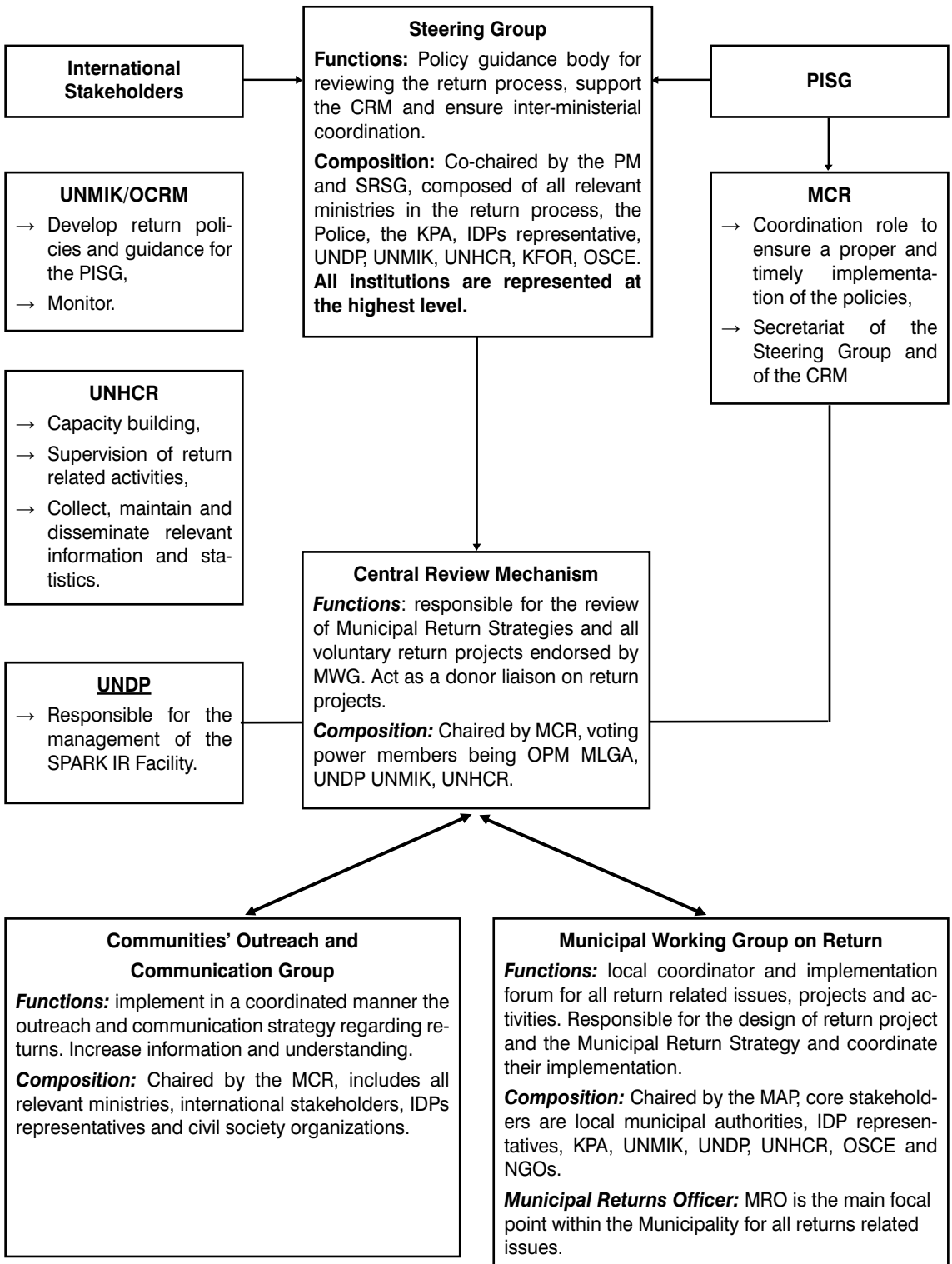
- a) lack of funding;
- b) need for property rights verification;
- c) need for procedural guidance on housing and land allocation;
- d) integration of Municipal Returns Strategies in Municipal Development Plans;
- e) displaced persons’ participation; and
- f) measures to improve access to housing of displaced persons where they live.

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<sup>50</sup> In 2004 Kosovo Serb returnees in Osojan/Osojane received prefabricated houses with the assistance of CCK. CCK donated funds to build 64 prefabricated houses in the Osojan/Osojane valley as agreed with UNMIK.

<sup>51</sup> For an analysis on sustainability elements of returns in Kosovo see International Crisis Group ‘Return to Uncertainty’ report, 13 December 2002. Available at <http://www.crisisweb.org>.

**Fig. 1. Return and reintegration process structure.**



### **a) Funding of return and reintegration projects**

The costs estimates of return projects in Kosovo are amongst the highest worldwide. At the same time the quality of project planning and implementation process needs to be improved in order to respond to real needs and to make projects cost-effective. As an example, in 2006, the MCR spent considerable funds on returns projects, which did not result in any physical return. Thus, a shortfall of 13 million Euros affected 15 out of the 17 projects approved by the Central Review Mechanism in 2006. All of them are being re-evaluated to bring down the costs.<sup>52</sup>

In order to address oversight of the MCR spending, UNMIK established an internationally supervised Budget Authorisation Committee in 2006. Moreover, on the initiative of the MCR, a “Community Development and Stabilization Policy Framework” was approved in January 2007 to ensure an operational framework for municipalities to access funds for returns and reintegration.

### **b) Property Rights Verification**

The process of verifying property rights over destroyed property is necessary to avoid interferences with property rights. While the Revised Manual for Sustainable Returns does not contain a set of property rights verification procedures, the enclosed Tri-Partite Agreement (TPA) places the responsibility of proving his/her rights before the implementing agency Non-Governmental Organization (NGO).<sup>53</sup> The TPA also ensures the consent of the property right holder to the conduct of the construction works, a legal requirement for them to take place. The Revised Manual does not provide additional guidance to MWGs on property rights verification. Thus, municipalities are implementing the procedures in an *ad hoc* way. Some municipal authorities are taking care of the property rights verification themselves, independently of the MWG process and following unclear procedures (i.e. Directorate on Geodesy and Cadastre Podujevë/Podujevo and Obiliq/Obilić, or Municipal Community Officer and/or Municipal Returns Officer in Prishtinë/Priština). In other instances, property verification is directly undertaken by the implementing agencies.<sup>54</sup> In Pejë/Peć, for example, the verification of property rights largely follows the guidelines from Section 2.3.3 of the UNMIK 2002 Housing and Reconstruction Guidelines and the Housing Reconstruction Manual 2004 (for March 2004 Riots related cases).<sup>55</sup>

The OSCE has monitored a case in which property rights verification did not take place, nor TPAs were signed prior to construction. This is the case of the returns project in the village of Zoqishtë/Zočište (Rahovec/Orahovac). In May 2005, the MWG was informed that the MCR had issued a tender for the reconstruction of 44 houses in Zoqishtë/Zočište. This action by the MCR completely disregarded the work conducted by MWG during the previous years, as well as property rights verification considerations.<sup>56</sup>

### **c) Beneficiary Selection**

A transparent and accountable beneficiary selection process is necessary to ensure that the right to return of all those displaced is equally protected. Adequate models for property rights verification and beneficiary selection are spelled out in the 2002 UNMIK Housing and Reconstruction guidelines.<sup>57</sup> These criteria, formerly used by Municipal Housing Reconstruction Committees (MHC) were used since 2003 by some of the MWGs, although not consistently. Some municipalities such as Pejë/Peć, continue to implement the MHC for the provision of housing reconstruction assistance to non-minority reconstruction projects.

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<sup>52</sup> UNMIK Office of Communities Returns and Minority Affairs, End of Year Activity Report, 2006.

<sup>53</sup> See Article 5, Tri-Partite Agreement.

<sup>54</sup> NGOs are also involved in legal aid support apparently like in Prishtinë/Priština where it provides support in case of court dispute or HPD/HPCC procedure.

<sup>55</sup> In Pejë/Peć municipality, according to EAR figures, 8,147 houses were damaged and 5,080 were reconstructed by the end of 2005, both minority and majority owned.

<sup>56</sup> In December 2004 Arbeiter-Samariter-Bund (ASB) presented to the MWGR a return project that envisaged the reconstruction of 40 houses for Kosovo Serbs IDPs from the village of Zoqishtë/Zočište. The project was the outcome of two years of G&S visits, G&I visits coupled with meeting between IDPs and receiving community. Local authorities, including MWGR members as well as local representative of Kosovo Serbian community were highly supportive of the process. The ASB project was primarily designed to ensure long-term sustainability to returns, including social services provisions, education, interethnic dialogue. Goals which would go far beyond the mere physical reconstruction of the houses.

<sup>57</sup> Section 3.3 of the 2002 UNMIK Housing Reconstruction Guidelines prioritise for assistance ‘vulnerable families of all ethnic origin with a clear right of ownership or occupancy of houses damaged or destroyed by conflict act before, during or after the war in 1998-99. Moreover, it is suggested that the MHC should not include on their priority list the families which have not an intention to live permanently in the village, neither the ones who left the village on a voluntary basis before the conflict’.

The Revised Manual on Sustainable Returns contains a set of recommendations regarding beneficiary selection criteria.<sup>58</sup> These amendments now allow the provision of assistance for the reconstruction of a pre-1999 secondary residential properties. According to the Revised Manual on Sustainable Return, housing construction assistance should not be granted if a member of the household owns a residential property in Kosovo which the members of the household can freely access.

In practice, beneficiary selection takes place in an ad hoc manner, and does not always respect the principles of transparency and non-discrimination. In this regard, the OSCE has observed instances in which beneficiary selection is undertaken by the Municipal Returns Officer in an ad hoc manner and then discussed with village leaders who then decide which of the potential returnees is eligible, allegedly based on whether the villagers consider that the person has committed crimes during the conflict.<sup>59</sup>

For example, in Klinë/Klina Municipality, a displaced person complained to the UNMIK SRSG against the rejection of his request to return by the Municipal Returns Officer due to the fact that the villagers of Shtupel/Štupelj associated him and other members of his family to the crimes committed in the area during the conflict. This is however not an acceptable practice, as it leads to arbitrariness and possible discrimination. Moreover, it undermines the awareness of the inhabitants on the rule of law and the authority of the judiciary to determine responsibility for crimes.

In other instances, the OSCE has observed direct influences by donors on the elaboration of beneficiary lists. In Prizren, for example, the CCK provided the list of potential beneficiaries to ASB NGO for the reconstruction project of 60 houses in the Župa/Zhupa valley.<sup>60</sup>

In all, guidance to the MWG on beneficiary selection procedures is necessary to avoid arbitrariness in the selection process and protection of the right to return without discrimination.

#### **d) Housing and land allocation**

While return to place of origin is always the primary goal of return projects, the new Manual foresees the possibility of local integration (in the area where the displaced person lives) and/or resettlement (in a location different than their site of displacement and previous home) if obstacles against return to the place of origin cannot be overcome.<sup>61</sup> The Manual states that “all efforts (...) must be made to remove existing obstacles with regard to the return to the places of origin (...)”. However, “if such obstacles (...) can not be removed through feasible and reasonable efforts”, the internally displaced persons “will be enabled to settle or locally integrate in freely chosen alternative places”.<sup>62</sup>

The Manual does not contain, however, concrete procedures to be followed in such cases for the allocation of land and housing reconstruction assistance or the provision of housing units to the displaced in areas other than their home of origin. On 27 February 2007, for example, the Rahovec/Orahovac Board of Directors discussed the request of an IDP from the village of Bratatin/Bratutin asking the Municipality to allocate his family a parcel of land located in Velika Hoča/Hočë e Madhe. Due to the lack of procedures for these cases, the Board of Directors asked the Department of Cadastre and the Office of Public Lawyer to assess possibilities.

Moreover, in certain cases, the implementation of ad hoc procedures has resulted in interferences with displaced persons' property rights. In Rahovec/Orahovac, the CCK provided temporary shelter (through the Municipal

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<sup>58</sup> See Annex I, Revised Manual on Sustainable Return.

<sup>59</sup> See letter of individual displaced person to the UNMIK SRSG, 19 May 2006.

<sup>60</sup> The CCK also has its own criteria requirements that must be met by any individual or family in order to be a beneficiary of a CCK-funded project. In Lipjan/Lipljan, for cases of individual return CCK applies the criteria established by the Commissariat which includes: 1) the person has to be registered by the Commissariat as a refugee/IDP; 2) the person should be registered with the Red Cross; 3) should possess an ID card issued by the Ministry of Internal Affairs of the Republic of Serbia; and 4) the actual return of the person to Kosovo should be verified by two witnesses.

<sup>61</sup> Not only the Manual addresses the right to adequate living standards and the possibility to settle or locally integrate in a freely chosen alternative place, but also the Protocol on Voluntary and Sustainable Return, signed in June 2006 between the UNMIK, PISG and the Government of Serbia, acknowledges that the successful return of IDPs is based on three elements: ensuring safety of returnees; returning property to the displaced persons and rebuilding their houses; creating an environment that sustains returns. Moreover, it “recognizes the IDPs' right to freely choose their place of residence”. The Protocol also paves the way for direct dialogue among municipalities (hosting and receiving) and helps ensure that returnees rights are protected.

<sup>62</sup> Revised Manual for Sustainable Return, page 8.

Community Office) between 2001 and 2005 to displaced families from Pejë/Peć and Prizren in their location of displacement (Upper Rahovec/Orahovac and Velika Hoca/Hoçë e Madhe) by authorizing the occupation of uninhabited Kosovo Serb homes.

Despite the fact that recently some of the families that remain in these houses have agreed to pay rent to the owners, the CCK exceeded its competences and interfered with the property rights of the owners, who saw their residences occupied without their express consent. Approximately 7-10 houses remained occupied as of December 2006.

In Prishtinë/Priština Municipality, CCK has often worked outside of existing return mechanisms. It is important to note that most projects that the CCK has been involved in are not actually return projects, but mostly local integration initiatives or temporary solutions as a response to an emergency situation such as the March 2004 violence.

In other cases, like the project Novi Badovac/Badofc (Gračanica/Graçanicë), the implementation of a reintegration project resulted in construction on municipal land without the relevant land use, urban and construction permits. There, the CCK funded the installation of 16 prefabricated houses to accommodate IDPs, mostly originating from neighbouring municipalities. Unfortunately, the municipality was not initially involved in this process, despite the fact that the concept paper for the second part of this project includes the full involvement of the municipality and other actors as suggested in the Manual for Sustainable Return. At present, the project foresees the construction of 70 houses for IDPs and social cases in Novi Badovac/Badofc. The concept paper was endorsed by the MWG and approved by the CRM on the 25 January 2007. However, the allocation of land has not yet been approved by the municipal authorities.

In this sense, a positive example of co-operation among relevant stakeholders can be found in the “Roma Mahalla Co-ordination Mechanism”, created by the international community to help implement the return project of displaced Roma, Ashkali and Egyptian individuals to a large destroyed informal settlement in the centre of the city of Mitrovicë/Mitrovica. A “Protection and Legal Issues Unit”, co-chaired by the Municipality, has – during 2006 and 2007- addressed land tenure. It defined selection criteria for beneficiaries and helped to verify property rights, including the drafting of long-term lease agreements of socially owned property, later approved by the SRSG.

#### **e) Co-ordination with the KPA**

Co-ordination with the Kosovo Property Agency (KPA) in the returns structures is foreseen in the Revised Manual through the participation of the KPA in the Steering Group. At the local level, KPA is expected to participate in the “Project Teams” as expert. The KPA is however not explicitly foreseen to participate in the sessions of the MWGs and KPA officials do not always attend Municipal Working Groups on return despite invitations to do so by Municipal Return Officers. Although there is no mandatory obligation on KPA side to attend, their participation certainly supports outreach activities towards displaced persons as well as expertise on project teams. UNHCR co-ordinates regularly with the KPA, particularly in terms of organising Go and See Visits (which afford the opportunity to the displaced to gather first-hand information on living conditions prevailing in their place of origin).

#### **f) Municipal Returns Strategies and Municipal Development Plans**

One aspect of municipal government responsibilities in the returns process is reflected in the mandatory drafting, adoption and implementation of yearly Municipal Returns Strategies (MRS)<sup>63</sup>. The MRS is an important tool that enables municipalities to assume responsibility for overall returns. Better access to housing and protection of property rights is one of the features that is supposed to be reflected in the MRS. Some municipalities do include references in this regard, like in Podujevë/Podujevo, Lipjan/Lipljan and Prishtinë/Priština, although apparently in vague terms. However, in most of the municipalities like in Pejë/Peć, the MRS seems to be nothing more than a list of ongoing projects and statements rather than a feasible strategy with a set of actions to achieve a pre-determined goal.

The revised Manual encourages municipalities to incorporate their MRSs in their Municipal Development Plans (MDPs) and overall budget planning. The MDPs are mid-term projections of the development of the municipality. Such incorporation would benefit community development in minority and/or returnee areas in terms of infrastructure, education, health and other services.

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<sup>63</sup> The Municipal Returns Strategy should provide a return framework with clear objectives and activities.

### **g) Displaced persons' participation**

The participation of displaced persons is important to ensure that return projects are successfully implemented. Displaced persons representation is foreseen both in the MWG and, at the central level, in the CRM and the Steering Group, which is to meet quarterly in co-ordination with the Stability Tracking Mechanism and Kosovo Standards and European Partnership processes.

Displaced persons are an integral part of the core composition of any MWG as this is the main forum for them to engage in a dialogue on returns issues, request assistance to return and it is the principal local implementation co-ordination body with primary responsibility for return projects design as well as sustainability of the process.

In practice, participation of displaced persons in the return process varies from one municipality to the other. The participation of IDPs association/representatives has been presented as active in some municipalities (Podujevë/Podujevo, Fushë Kosovë/Kosovo Polje, Prishtinë/Priština and Pejë/Peć) through participation of associations, NGOs and even village representatives in the MWG. However, this contribution is not systematic. In addition, in order to engage displaced persons in Serbia proper, UNHCR chairs an "IDP Working Group" with the participation of NGOs, international organizations, donors and IDP representatives.

### **h) Access to housing of displaced persons in their current place of residence**

The lack of minority returns and the displacement provoked by the March 2004 riots in Kosovo has meant that large number of people had to find alternative accommodation. Displaced persons have either accommodated themselves in collective shelters and/or occupied private and/or public properties with or without the owner's consent.

International human rights standards oblige state authorities to ensure that displaced persons enjoy adequate housing conditions and are protected from unlawful evictions.<sup>64</sup> The reality on the ground is distant from this goal. As an example, most of the displaced persons from Obiliq/Obilić are living in private rented houses or the homes of relatives. There are no plans to resettle them or provide access to housings. Requests for housing by displaced persons, forced returnees and others accumulate in the municipalities. In Fushë Kosovë/Kosovo Polje, for example, there were 600 pending requests for shelter at the municipality in 2006.<sup>65</sup>

There are approximately 330 displaced persons living in Gjilan/Gnjilane Municipality according to UNHCR estimates. As an example of the harsh conditions, there are nine Kosovo Serb families (29 persons) living in a refrigeration plant in Šilovo/Shillovë (Gjilan/Gnjilane). Concrete plans in the municipality to improve the housing conditions, ensure returns or resettlement are lacking.

Out of 587 displaced persons who arrived in Zvečan/Zveçan after the violence in March 2004, 353 are currently accommodated in collective centres in two unfinished buildings and the village of Mali Zvečan/Zveçan i Vogël. In addition, 51 families (with a total of 234 members) are now living with relatives in the area.

### **i) Forced repatriation**

Western countries are increasingly forcing Kosovo individuals living in their territory to return to Kosovo. Forced return is, prima facie, incompatible with international human rights standards, as it can lead to violations of the principle of non-refoulement.<sup>66</sup> Asylum seekers whose application are rejected and third national residing illegally in EU member states are also entitled to minimum guarantees. The European Union indicated in several documents (2002 Green paper on a return community policy of illegal residents; council Directive 2002/55/EC 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and) the necessity to establish minimum standards for repatriation procedures and thus comply with human rights standards. In this regard, article 19 of the European Charter of fundamental Human rights prohibits collective expulsions (see also Article 4, Protocol 4 ECHR). Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular state. This provision is especially relevant in light of temporary protection afforded in the event of a mass influx of displaced persons as it has been the case with Kosovo refugees in 1999. Once temporary protection ceases states may forcibly return individuals in their country of origin if conditions exist for a safe, and dignified return. When protection ends states shall in specific cases consider any compelling reasons which makes return impossible. They shall extend the residence of the persons who have special needs such as medical or

<sup>64</sup> See, for example, Principle 18 of the Guiding Principles on Internal Displacement: 'Regardless of the circumstances and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (...) basic shelter and housing'.

<sup>65</sup> Interviews with the Municipal Returns Officers of Prishtinë/Priština; Obiliq/Obilić and Fushë Kosovë/Kosovo Polje, April 2006.

<sup>66</sup> See Article 33 (1) of the United Nations Convention relating to the Status of Refugees and Principle 15 of the Guiding Principles on Internal Displacement.



psychological, and whose children are minors and are attending schools in a member state so that they can complete the current school period. In any case where children are involved it is worth noting that the Convention on the Rights of Children contains a set of obligations aiming to protect children interests.

Following international standards and the position of UNHCR, UNMIK is not supposed to accept the repatriation of individuals belonging to groups at risk, such as Kosovo Serbs, Roma and Kosovo Albanians in a minority situation, and continues to screen Ashkali and Egyptians individuals subject to possible repatriation. During 2006, the overall number of persons involuntarily repatriated from other countries reached 3,598.<sup>67</sup>

There is no Kosovo wide housing strategy in place to address the needs of forced returnees (Kosovo individuals forcibly returned from other countries). Moreover, municipalities are not always informed about the incoming forced returnees. Officials consulted in Prishtinë/Priština and Fushë Kosovë/Kosovo Polje stated to the OSCE that they had no information on forced returns.<sup>68</sup> UNMIK is currently developing a strategy on reintegration in the context of the discussions on the Status transition.<sup>69</sup>

### 3. Housing and property restitution process

In a post conflict situation, claim mechanisms need to be in place to restore the rights of those who lost their property and/or possession as a result of displacement.<sup>70</sup> Pursuant to principle 29 (2) of the Guiding Principles on Internal Displacement, “competent authorities have the duty and the responsibility to assist returned or resettled Internally Displaced Persons to recover to the extent possible their property and possessions, which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation”.<sup>71</sup>

The realisation of property rights in the return process of displaced persons implies a two fold process: access to claim mechanisms and effective enforcement of related decisions.

Competent authorities have the duty to support actively this process through positive actions, namely outreach activities towards IDPs, and support the efficient implementation of the relevant decisions. Likewise, competent authorities such as the police, should support this process through preventive measures (i.e., to avoid looting and/or damage to properties).

In Kosovo, UNMIK established the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) to address post-conflict restitution of residential property. The HPCC, thus, is the independent quasi-judicial body to “achieve an efficient and effective resolution of claims concerning residential property”, while the HPD is the administrative body managing the process. The legal framework for the HPD/HPCC was established through UNMIK Regulation 1999/23 and UNMIK Regulation 2000/60, which defined the exclusive jurisdiction of the HPCC for three types of residential claims: Category A claims concerning property rights lost due to discriminatory policies during the period 1989-1999; Category B claims concerning informal property transactions of residential property during the period 1989-1999, and Category C claims, which concern involuntary loss of possession of residential property during or after 1999.<sup>72</sup>

Despite difficulties encountered by the institution the first years, HPD/HPCC largely fulfilled its mandate. Thus the HPD/HPCC has implemented 28,828 decisions concerning residential property claims (98.9 % of the total case load of 29,160 claims). The remaining 332 decisions will be implemented in the coming months.<sup>73</sup> The reason

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<sup>67</sup> UNMIK OCRM, End of the Year Activity Report, 2006.

<sup>68</sup> Interview with MRO, April 2006. Interview with Municipal Deputy President of Fushë Kosovë/Kosovo Polje, April 2006.

<sup>69</sup> The OSCE is also a member of the Repatriation and Reintegration Working Group.

<sup>70</sup> International law does not provide a standard model of claim mechanism; however there has been a growing recognition lately that the restitution or compensation of properties is a cornerstone of a peace building process and a sustainable return strategy. Consequently, provisions for the resolution of property and land problems have been included in several recent peace agreements or related documents, among others the Dayton Peace Agreement (1995) or following the resolution of the conflict in Abkhazia the subsequent Georgian Draft Law on Restitution of Housing and Property to the Victims of the Georgian Ossetia Conflict. See ABA CEELI: Analysis of the Draft law on Restitution of Housing and Property to the victims of the Georgian-Ossetian Conflict, 30 August 2004.

<sup>71</sup> See also Article 2, Principles on Housing and Property Restitution for Refugees and Displaced Persons E/CN.4/Sub.2/2005/17.

<sup>72</sup> See UNMIK Regulation 1999/23 On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission and UNMIK Regulation 2000/60 On Residential Property Claims and the Rules of Procedure of the Housing and Property Directorate and the Housing and Property Claims Commission.

<sup>73</sup> Source: KPA website (<http://www.kpaonline.org>).

for the delay in implementation is that the decisions in question were pending reconsideration by the HPCC. It is worth noting that in these cases “implementation” does not mean that the claimants have repossessed (and/or returned). It means that either:

- a) the owner has settled privately and no longer needed HPD services (which usually implies a sale);
- b) the property is destroyed so administration not needed;
- c) the property is being administered by HPD;
- d) the case is dismissed; or
- e) the owner has taken possession.

**Fig 2. Implemented Claims / June 2007**

Area	Total	All Claims					A/C - Claims				B-Claims
		withdr.	Rej. HPD	Dismissed HPCC		Closed Claimant Request	Destroyed Property	Reposs.	Under Admin	w/o Phy. Imp.	Granted Ownership
				No Juris.	No merrits						
<b>Kosovo Wide</b>	28829	2187	65	160	2712	2218	10154	5199	3513	2226	395
<b>% of claims</b>	98.9	7.5	0.2	0.5	9.3	7.6	34.8	17.8	12	7.6	1.4
<b>% of implemented</b>	100	7.6	0.2	0.6	9.4	7.7	35.2	18	12.2	7.7	1.4

The mandate of the HPD/HPCC was designed to deal exclusively with conflict related residential property claims. While immovable property, which was associated to a residence fell within the HPD/HPCC’s mandate, privately owned agricultural and commercial property was left out of the process.

This gap in the protection of the rights to housing and property restitution was only addressed recently. In 2005, the Special Envoy of the UN Secretary General, Mr. Kai Eide, in his Comprehensive Review of the Situation in Kosovo (the “Kai Eide Report”) identified illegal occupation of agricultural and commercial property as one of the major factors hindering returns in Kosovo and thus requiring urgent intervention. In a parallel process of local empowerment, the international body entrusted to resolve conflict related property disputes, the HPD/HPCC was succeeded by the Kosovo Property Agency (KPA), an independent local institution with the mandate of resolving all outstanding residential, commercial and agricultural private immovable property disputes related to the conflict.<sup>74</sup>

The KPA is thus formed by an Executive Secretariat, a Supervisory Board and a Property Claims Commission (PCC) as a quasi judicial body. The participation of the PISG in the administrative oversight and policy guidance of the KPA is ensured through the nomination by the Prime Minister of Kosovo of two of the members of the Supervisory Board. As for the claims dispute resolution the PCC shall reach a decision on the claimed property in relation to title, property use rights and lawful possession rights. The decisions of the PCC are final if not appealed. Unlike the previous HPD/HPCC mechanism, commission decisions may be appealed to the Supreme Court to be adjudicated by a panel of three judges, two internationals and one local, all authorized by the SRSG. Most importantly, the decisions of the PCC constitute title determinations and therefore successful claimants holding PCC decisions will be able to register their ownership (or right of use) in the Kosovo Immoveable Property Rights Register.

**a) Access to claim mechanisms**

The first step in ensuring full realisation of property rights relies on the existence of a claim mechanism that displaced persons can access. Information on and access to the claim in-take process is ensured through KPA offices, mobile teams within and outside Kosovo, outreach campaigns by the Kosovo Property Agency, non-governmental and inter-governmental agencies, as well as the PISG. As of June 2007, the Kosovo Property Agency has taken 23,629 claims (See Fig 2).

<sup>74</sup> See UNMIK Regulation 2006/10 On the Resolution of Claims Relating to Private Immoveable Property, including Agricultural and Commercial Property, as superseded by UNMIK Regulation 2006/50.

Special efforts have been taken to ensure access to the claim process by vulnerable communities, such as Roma, Ashkali and Egyptians. In this sense, the KPA conducted in February 2007 an outreach campaign to inform displaced Roma, Ashkali and Egyptian persons about the claim process. The KPA expects an additional 1,000 claims as a result of this campaign.

## **b) Enforcement of claims and impact on return**

The resolution of claims constitutes the first phase of the process necessary to restore rights and subsequently encourage and in many cases conditions a sustainable return. However, as mentioned above, the resolution of a property claim does not necessarily imply the return of the displaced. In Kosovo the reality has been rather the contrary as a result of a still high rate of destroyed properties and a low rate of repossession. In 10,108 of the cases, the property was found to be destroyed and therefore no remedy was available from HPD/HPCC. In these cases, the result of the process was a declaratory statement of the HPCC establishing the lawful possession of the successful claimant.

In 3,513 adjudicated cases the claimant chose to place the property under administration and in 1,159 cases the claimant could not be reached. In all, only in 5,199 cases (17.8 per cent) implementation has resulted in a request for repossession by the property right holder, which often signifies the sale of the residence to either the current occupant or otherwise a new buyer.<sup>75</sup> Out of these, in 3,771 cases a forced eviction was necessary (86.6 per cent) and in 588 (13.4 per cent) cases the occupant released the property voluntarily before a forced eviction was necessary.

In certain cases, the eviction of the occupant is followed by a new unlawful occupation of the residential property. In these cases the applicable legislation allows for an action *ex officio* by the Police to remove the illegal occupant.<sup>76</sup> However, after reported cases of illegal re-occupation after evictions, the international community prioritised the need to deter re-occupation by the Kosovo Police Service in the "Contact Group's 13 Priorities for Standards Implementation". Relevant Standard Operation Procedures were revised to ensure adequate enforcement.<sup>77</sup> Moreover, the Kosovo Property Agency appointed a focal point to monitor cases of re-occupation in co-operation with the police.

The enforcement of decisions of the PCC over claims related to land will require remedies other than evictions from closed premises, including, but not limited to placing the property under administration, lease agreements, seizure and demolition of unlawful structures, auction, all of which will facilitate and ensure the return of properties to the lawful property right holder. By receiving a determination of title, the successful claimants will be able to register the confirmed title, if necessary, in the Kosovo Immovable Property Rights Register.

In this sense, the wide range of remedies envisaged by the KPA in addition to evictions (administration, leases, seizure and demolition, auctions) provide different possibilities to respond to occupation of land. Taking into account the experience of the HPD/HPCC process, administration of land is likely to be the primary method of implementation of PCC decisions.

## **c) Compensation**

International standards foresee the possibility of compensation in cases in which restitution is not feasible. In line with the earlier described "Pinheiro Principles", as an example, the European Court of Human Rights held in *Cyprus v. Turkey* that the fact that displaced Greek Cypriots owners of property in Northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights constituted a violation of Article 1 of Protocol 1 (Right to Property).<sup>78</sup> In this regard, in the pending caseload of HPD/HPCC there are some 258 HPCC decisions where there are both an 'A' and a 'C' successful claims for the same residence. In these cases awards of monetary compensation have been made in favour of the 'A' claimants pursuant to Section 4 of UNMIK Regulation 2000/60. This concerns category A claims where the unsuccessful party to the claim should be paid compensation for their loss of a residual property right following the award of possession to the other party (the 'C' claimant). Further legislation is still needed to arrange for the necessary determination of the precise amounts in compensation to be paid, and discussions are taking place between UNMIK and the PISG to establish an appropriate mechanism. In principle, the successful party to the claim will be required to pay the compensation, although alternative arrangements are also under consideration.

<sup>75</sup> As of April 2007, source Housing and Property Directorate Website (<http://www.hpdkosovo.org>).

<sup>76</sup> See Section 13.6 of UNMIK Regulation 2000/60 and Section 16.5 of UNMIK Regulation 2006/50.

<sup>77</sup> See letter of the UNMIK Office of the Legal Adviser to the Police Commissioner (13 February 2007) requesting a revision of the Kosovo Police Service Standard Operating Procedures.

<sup>78</sup> ECtHR, *Cyprus v. Turkey*, 2001.

In approximately 300 cases involving both dismissed A claims and successful C claims the HPCC authorised the regular courts to determine the legal remedies that may be available to the A claimant.

The KPA notified the OSCE and the UNMIK Department of Justice and the relevant court of a case in which the court issued a decision reviewing the decision of HPCC on a C claim, in breach of Section 2.7 of UNMIK Regulation 1999/23 which states that final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.<sup>79</sup> Such cases prove the need for training of the judges and close monitoring by the international community to ensure that the exclusive jurisdiction of HPCC is respected.

#### d) Administration of abandoned properties

The KPA has the authority to administer abandoned properties.<sup>80</sup> "Abandoned" in this sense means "any property which the owner or lawful possessor and the members of his/her family household have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied".<sup>81</sup> The administration of a house or an apartment means that KPA can allocate it on a temporary basis to other persons on humanitarian grounds.<sup>82</sup>

Since November 2006, the KPA has implemented a rental scheme covering all of the 5,046 residential properties currently under KPA administration. To date, more than 3,118 property right holders have included their property in the scheme. 409 occupants are currently paying rent and thus 133.475,61 euros have been collected. Following pressure from the PISG, several banks have agreed to reduce their charges on transfers outside Kosovo. The first payments for the period of September to November were completed in December while the December rents were transferred in early January 2007. The implementation of the rental scheme guarantees income for displaced persons as well as a physical protection of properties. As mentioned above, administration of land is one of the remedies provided for in the KPA framework. The publicity of the land administration possibilities may allow for agricultural investors to lease groups of parcels belonging to different displaced persons and thus promoting both economic development and a regular income to those displaced.

**Fig. 3. Total claimed properties as of June 2007 by type of rights and property claimed (source KPA website).**

#### Type of Property Rights

Region/Category	Gjilan/ Gnjilane	Mitrovicë/ Mitrovica	Pejë/Peć	Prishtinë/ Priština	Prizren	Total	% of Claims
<b>Ownership</b>	4946	2681	8054	4326	3416	<b>23423</b>	<b>99.1</b>
<b>User Rights</b>	21	37	49	64	35	<b>205</b>	<b>0.9</b>
<b>Compensation</b>	0	0	0	0	0	<b>0</b>	<b>0</b>
<b>Total</b>	<b>4967</b>	<b>2718</b>	<b>8103</b>	<b>4390</b>	<b>3451</b>	<b>23629</b>	<b>100</b>
<b>% of Claims</b>	<b>21</b>	<b>11.5</b>	<b>34.3</b>	<b>18.6</b>	<b>14.6</b>	<b>100</b>	<b>100</b>

<sup>79</sup> Letter of the Executive Director of the Kosovo Property Agency, 18 April 2007.

<sup>80</sup> Section 16, UNMIK Regulation 2006/10.

<sup>81</sup> See Section 1, UNMIK Regulation 2000/60.

<sup>82</sup> There are two ways in which KPA places a property under administration: a) by agreement of the parties in settlement of a claim; by the claimant, following a decision confirming his property right; or following eviction, if the claimant fails to repossess the property within 14 days of being notified of the execution of the eviction. This means that the residence is under administration only for so long as the displaced person wants to do so. If the displaced person decides to return or to sell the property, he or she can request that the administration be terminated. The KPA is obliged then to hand over the property under administration to the successful claimant within 90 days; and b) where no claim has been submitted for the property and it is either vacant, occupied, but the current occupant does not assert any right to the property; or on the request of the owner or occupancy right holder of the property.

## Type of Property

Region/ Property Type	Gjilan/ Gnjilane	Mitrovicë/ Mitrovica	Pejë/Peć	Prishtinë /Priština	Prizren	Total	% of Claims
Residential	262	152	514	334	235	1497	6.3
Commercial with buildings	95	140	175	254	94	758	3.2
Commercial without buildings	4610	2426	7414	3802	3122	21374	90.5
Total	4967	2718	8103	4390	3451	23629	100
% of Claims	21	11.5	34.3	18.6	14.6	100	100

### 4. Claims for conflict-related damage suspended in 2004 and other challenges linked to displacement

The right to housing and property restitution establishes that refugees and displaced persons should be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.<sup>83</sup> Moreover, the institutional protection of the property rights of displaced persons and their right to return requires the effective functioning of the judiciary and the police. This will ensure remedies for the unlawful occupation and/or damage to property and will prevent and sanction new unlawful acts.

The protection of these rights in Kosovo is compounded by challenges which are directly related to the particular circumstances of the Kosovo conflict, as well as to displacement, and a judicial system under development. In some instances, these challenges lead to a de facto discrimination of displaced persons and violations of the right to a fair trial (Article 6, ECHR). Of particular importance are:

- a) non-resolution of a number of conflict related damage claims lodged by Kosovo-Serbs against UNMIK, KFOR and PISG;
- b) fraudulent transactions;
- c) irregular use of the office of the temporary representative in civil proceedings;
- d) lack of effective protection of empty properties belonging to minorities and/or returnees; and
- e) lack of adequate notice and compensation in expropriations by government authorities.

#### a) The claims against UNMIK, KFOR, PISG and individuals suspended in 2004

Immediately after the conflict in Kosovo, a large number of residential and other immovable properties owned by minority community individuals were destroyed. The March 2004 Riots, as reflected in the previous chapter, made the situation even more complicated. In the course of its work, the KPA has identified up to 10,401 destroyed properties. In the majority of these cases, the houses belonged to minority community members who are currently displaced and have seen no remedy for the destruction of their properties.<sup>84</sup>

The individuals affected by destruction of their properties have sought remedy with the Kosovo regular courts: in 2004 thousands of Kosovo Serbs lodged claims in the regular courts requesting, based on applicable legislation, compensation for damage that occurred immediately after the conflict. A considerable number of these claims are lodged against multiple defendants. Thus, the plaintiff is requesting compensation from *inter alia* both UNMIK and/or KFOR, whose personnel benefits from the immunities defined by UNMIK Regulation 2000/47, and which can be considered as falling outside the courts' mandate, and Kosovo Municipalities or individual persons. As of December 2006, the number of such claims amounted to 18,132.<sup>85</sup>

<sup>83</sup> Pinheiro Principles, Section II. The Right to Housing and Property Restitution.

<sup>84</sup> See Website of the Housing and Property Directorate: <http://www.hpdkosovo.org/newimplemented.asp>, accessed on the 30 November 2006.

<sup>85</sup> Article 180, Law on Contracts and Torts, Official Gazette of SFRY No. 29/1978, as amended. Special liability under subsection  
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 acts of violence or terror, as well as in the course of street demonstrations and public events'.

In August 2004, the UNMIK DoJ instructed Presidents of the Supreme, District and Municipal courts not to process these cases pending an adequate solution. The DoJ issued new instructions on 15 November 2005 requesting the courts to process those cases related to claims for compensation for damages committed by identified natural persons after October 2000.<sup>86</sup>

The reason given by the UNMIK DoJ for this instruction was that the massive influx of claims would severely hinder the work of the courts, increasing their already large backlog of cases. In addition, most of the Serbian plaintiffs would need special security arrangements to access the courts.<sup>87</sup> The instruction has raised human rights concerns, as it compromises the right of access to court by the Kosovo Serbs plaintiffs as well as their right to have a case adjudicated within a reasonable time.<sup>88</sup>

The instructions have been also interpreted by most judges dealing with civil cases as applicable to the claims for compensation filed against the Municipalities and UNMIK as a result of damages to property occurred during the March 2004 riots (see Chapter 5). Consequently, even though many persons have been convicted for the crime of damage of property committed in respect of acts that took place during the March 2004 riots, the OSCE has not identified any civil case for compensation arising from those convictions. On the other hand there are a few compensation claims for the damages suffered by Kosovo Serbs during the March riots filed against the Municipalities, the Provisional Institutions of Self-Government and UNMIK, but they all remain on hold until the present date, pursuant to the instructions of the Department of Justice.

The problem of pending claims does not only exist with regard to damages suffered by Kosovo Serbs since 1999. In addition, and during the same period of time, more than 2,939 claims of a similar nature were lodged by Kosovo Albanians against the Republic of Serbia and Kosovo Serb individuals for damage suffered during the 1999 conflict.<sup>89</sup> Although there is no instruction by the Department of Justice regarding these cases, they are all suspended given the incapacity of the courts to deal with indemnity claims against absent persons (the current location of most Kosovo Serb respondents is unknown) and the lack of jurisdiction of the Kosovo Courts to try cases against the Serbian State.

The longstanding lack of resolution of these claims (almost three years since August 2004) constitutes a violation of the right to a fair trial.<sup>90</sup> Moreover, it constitutes a clear breach of the right of all refugees and displaced persons to have restored to them any housing, land and/or property of which they were arbitrarily deprived or to be compensated when such restoration is not possible.<sup>91</sup>

Currently, the UNMIK DoJ, in co-ordination with other stakeholders (the Kosovo Property Agency, the European Union Planning Team, the Kosovo Judicial Council, the Ministry of Justice and the OSCE) is attempting to find a solution for all of these cases. The aim is to develop a proposal to expeditiously adjudicate the property related cases filed by Kosovo Serbs against KFOR, UNMIK, Municipalities and individuals suspended in 2004 (and related cases), including assistance to courts and judges and elimination of legal impediments as appropriate.

## **b) Fraudulent transactions**

Fraudulent transfers of immovable property occur either through the falsification of personal identification documents or the forgery of authorisations to third parties to conduct the transaction.<sup>92</sup> After receiving complaints in this direction, the Director of the UNMIK Department of Justice issued an instruction to all Municipal Courts in Kosovo to refer any letter of authorisation for an immovable property transfer issued in Serbia proper to the Department for verification.<sup>93</sup> This procedure, however, results in considerable delays due to the fact that the Department needs to communicate with the Ministry of Justice in Serbia.

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<sup>86</sup> Letter of the UNMIK Director of Justice, 24 August 2004 and 15 November 2005.

<sup>87</sup> See OSCE Legal System Monitoring Section First Review of the Civil Justice System in Kosovo.

<sup>88</sup> See supra note. This issue also raised concerns within the Ombudsperson Institution in Kosovo, which addressed the matter to the Department of Justice on several occasions. See Ombudsperson Institution in Kosovo, *Fifth Annual Report 2004-2005 addressed to the Special Representative of the Secretary-General of the United Nations*, 11 July 2005, available at <http://www.ombudspersonkosovo.org>.

<sup>89</sup> According to the statistics provided by the Kosovo Judicial Council (KJC), Office for Statistics.

<sup>90</sup> The ECtHR has pointed out on several occasions that the right of access to court is part of the Right to a Fair Trial (Article 6, ECHR) and shall be rendered effective. See the judgments of the Court in *Golder v. UK*, A 18, 1975 and *Airey v. Ireland*, A32, 1979.

<sup>91</sup> See Pinheiro Principles, Article 2.

<sup>92</sup> See OSCE LSMS First Review of the Civil Justice System, June 2006, p. 21.

<sup>93</sup> Justice Circulars DOJ/DIR/344/JH/04 and DOJ/LPD/0371/er/05.

### **c) Irregular use of temporary representatives**

As for the use of temporary representatives, the OSCE has repeatedly observed court practices that lead to violations of the right to a fair trial. This is due to the fact that in a number of cases: a) the courts fail to use available means to locate the respondents prior to the appointment of a temporary legal representative; b) the courts fail to demonstrate that their decision to appoint a temporary representative is necessary to prevent detrimental consequences to the parties which is a precondition for the appointment of a temporary representatives according to the applicable law<sup>94</sup> c) inappropriate public announcement of the appointment of temporary representatives; d) the plaintiff proposing the name of the temporary representative; e) the temporary representative is paid by the plaintiff; f) inadequate performance during representation.<sup>95</sup>

### **d) Lack of effective protection of properties belonging to minorities and/or returnees**

Another area of concern related to the displacement of property right holders and the process of reconstruction of their houses, is the protection of reconstructed houses from damage and looting. The protection of empty reconstructed properties where the former lawful occupant does not return is especially worrying. In Fushë Kosovë/Kosovo Polje, with the exception of the few houses repossessed or sold, all other houses reconstructed after the March riots were looted. For example, 65 cases of criminal acts of damage and burglaries were reported to Police during 2005, involving 51 of these properties.

Other cases of damage have been reported throughout Kosovo. One of the most recent and prominent ones took place during September 2006, in two different villages of Klinë/Klina Municipality. On the night of the 11<sup>th</sup> September 2006, a reconstructed house belonging to a Kosovo Serb in the village Shtupel/Štupelj was severely damaged by an explosion. Few days earlier, a looting incident had taken place in a reconstructed house in the village Klinavac/Klinafc.

Also in Klinë/Klina, the Municipality demolished on the 3<sup>rd</sup> March 2007 an entire building under KPA Administration following an expropriation procedure. Despite official requests from the KPA to stop the demolition, the Municipality went ahead and demolished the building after notifying the occupant (a temporary permit holder) verbally. A criminal lawsuit is ongoing.

In all, the lack of effective protection leads to a decreased confidence in the Kosovo law enforcement institutions by displaced persons and minority community individuals.

**e) Lack of adequate notice and compensation in expropriations by government authorities.** The municipalities and other government authorities still either inappropriately apply or avoid the procedure resulting in unlawful interference with property rights without an effective remedy. Furthermore, such actions may constitute violations of due process, and, in cases involving minority community members, possible discrimination. The OSCE is concerned about: the failure of the local authorities to expropriate appropriately for the conduct of public works; the inadequate determination of the nature of the common interest, as well as lack of appropriate identification of and notification to affected property right holders (particularly displaced persons) and provision of adequate compensation; and the lack of effective remedies, as well as the conduct of unlawful expropriations by parallel administrative structures. Moreover, municipalities still lack respect for the applicable legislation on the transfer and use of socially owned property (see OSCE report on 'Expropriations in Kosovo', December 2006).

## **5. The March 2004 Riots reconstruction programme**

During the March 2004 Riots minority community owned properties as well as Serb Orthodox cultural heritage sites were targeted. As a result, 993 residential properties and 34 religious buildings were either damaged or destroyed and 398 minority community members suffered damages or destruction to their commercial and/or secondary buildings. Moreover, close to 4,000 persons were displaced from their homes, some of them for the second time, as they had already been displaced in 1999.<sup>96</sup> The events had a considerable impact on both the implementation of the HPD/HPCC mandate (i.e., HPD Regional Offices were looted) as well as the returns process, which was brought to a virtual halt. The riots negatively affected the physical security of the minority communities as well as the perspectives for socio-economic integration of potential returnees. In all, local and international authorities failed to protect individuals from displacement.

<sup>94</sup> Article 84, LCP.

<sup>95</sup> OSCE LSMS Spot Report on 'The Appointment of Temporary Representatives in Property Disputes', April 2005. See also First Review of the Civil Justice System, June 2006, p. 25.

<sup>96</sup> See OSCE Mission in Kosovo report on 'Human Rights Challenges after the March Riots', page 15.

The reconstruction of the March 2004 Riots damage to residences, secondary buildings and commercial premises was entrusted to the PISG.<sup>97</sup> Thus, during the initial reconstruction period the reconstruction process was led by an ad hoc governmental commission - the Central Inter-ministerial Commission for Reconstruction (CIMC) also known as the "Brajshori Commission".<sup>98</sup> Significant progress was achieved until the CIMC ceased to function at the end of July 2005. The CIMC was dissolved in November 2005.

Addressing the March 2004 destruction became higher priority for the government of Kosovo after the countries of the Contact Group included it as one of its "13 points" (priorities in Kosovo Standards implementation) in mid-2006. The Contact Group, thus, called for the completion of all housing reconstruction in the Kosovo Serb village of Svinjarë/Svinjare (Mitrovicë/Mitrovica) by the end of October 2006 and the reconstruction and/or compensation of commercial property damaged during the riots. In June 2006, at the request of the Prime Minister of Kosovo, the UNMIK SRSG decided that the Kosovo Protection Corps (KPC) would finalise outstanding reconstruction works in Svinjarë/Svinjare and will support the government in the resolution of pending complaints (Kosovo wide) related to the March 2004 riots physical reconstruction. The KPC undertook the works in Svinjarë/Svinjare while the Government established an ad hoc body in charge of reviewing all claims.

In all, as of January 2007, 897 of the residential properties (out of the 993 targeted) had been reconstructed and 289 of the cases involving secondary buildings had been addressed (either reconstructed or compensated). As of January 2007, a number of these complaints have been solved. The remaining 96 non reconstructed houses include 19 properties for which beneficiaries have refused reconstruction assistance, 20 properties in North Mitrovica which are not accessible due to security reasons as well as 57 properties destroyed in the "Podkalaj" neighbourhood of Prizren town for which a special programme has been developed, but is still awaiting funding three years later.

Regarding secondary buildings, there are still 49 pending cases (out of 338 eligible beneficiaries), the majority of which are related to disagreements as to the estimation of the compensation rate set by the CIMC. As for the provision of "start up assistance", 92 cases out of 635 are pending. Finally, there are still 24 cases, regarding commercial properties which have not been addressed. A PISG-run panel for resolving compensation and reconstruction claims (apart from claims concerning Svinjarë/Svinjare) was established in October 2006 to resolve all outstanding March 2004 Riots reconstruction complaints. The panel's task was to revise individual claims from beneficiaries as well as from contractors. To date, the panel has limited its review to contractor's claims and none of the other claims have been reviewed due to budgetary constraints.

The Government is hesitant to allocate further funds to the March 2004 reconstruction programme without indications that such interventions would facilitate the return of the displaced. Currently the Government has no further plans either for post-March 2004 reconstruction or to investigate claims. Available information of the numbers of displaced persons is also lacking. In January 2006, UNHCR estimated that 1,231 persons displaced during the March riots remained in displacement. However, no precise statistics on March 2004 riots displacement have been kept since then.

## 6. Conclusions

While both the international community and the Kosovo institutions have invested considerable resources and energy in ensuring the protection of the right of displaced persons to housing and property restitution, this has not translated in effective protection of the right, or in substantive sustainable returns. Approximately one third of the HPD caseload has indeed resulted in declaratory decisions over destroyed property.

On the verge of the status transition the protection of the rights of displaced persons to housing and property restitution and to return continues to be a major challenge. The fact that eight years have passed after the end of the 1999 conflict does not preclude the rights of displaced persons over the properties left behind, or their right to adequate living conditions.

In this sense, the implementation of the KPA mandate over immovable private property claims related to the conflict and the effective enforcement of PCC decisions is by far the largest remaining challenge for the local and international authorities. The effectiveness and the sustainability of the process depend on the implementation of the PCC decisions. The full donor funding for KPA should be ensured until the completion of its mandate.

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<sup>97</sup> Reconstruction of damaged cultural heritage sites is not covered by this report. Currently, a Reconstruction Implementation Commission (RIC), led by the Council of Europe, is in charge of implementing the repairs.

<sup>98</sup> Minister Brajshori resigned in November 2004, before the change of Government, and Minister Haraqia was appointed as new chair of the CIMC in December 2004.



Apart from the KPA claims, all other outstanding conflict related issues need to be resolved. In this sense, an acceptable solution for the conflict related compensation claims stayed at the request of the UNMIK DoJ and pending in the courts is also necessary. The longstanding lack of resolution of these claims (almost three years since August 2004) constitutes a violation of the right to a fair trial. Concerns arising in the regular courts regarding fraudulent transactions and the protection of displaced persons' property rights in civil proceedings need to be addressed as well. In this regard, the mechanisms in place to prevent fraudulent transactions need to be streamlined and made more effective. Also, the appointment of temporary representatives needs to comply with the law and due process requirements.

With regards to the promotion of the right to return, the transformation of returns structures needs yet to bear its fruits, which should translate into the reconstruction of the homes of all those displaced who wish to return. In this sense, displaced persons associations' participation in MWGs needs to continue and be made effective. While the participation of the CCK in the process is overall a positive development, CCK needs to follow the principles and procedures outlined in the Revised Manual for Sustainable Returns. The same applies to municipal authorities, who need to co-operate in providing access to land and housing whenever necessary, as well as in providing reconstruction assistance. The 2006 "Protocol on Sustainable Returns" signed by the Kosovo government, the Republic of Serbia and UNMIK may serve as a model for co-ordination and support to returns at the municipal level. The Municipalities of Kosovo which are hosting displaced persons, particularly in the northern part of Kosovo, need to fulfil their obligations to ensure adequate housing conditions. Thousands of persons continue to live in unacceptable conditions almost eight years after the conflict, and this needs to be addressed.

The March 2004 Riots Reconstruction Program - responding to a crisis which temporarily halted returns and housing and property restitution- has met to a large extent its goals, but it still needs to be finalised as soon as possible by the Kosovo Protection Corps. The PISG run claims panel needs to be more accessible and transparent.

In all, the assessment shows that while the restoration of housing and property rights after a conflict and the physical voluntary return of displaced persons are separate processes, they need a co-ordinated strategy to ensure that they support and reinforce each other.

## **FOLLOW UP TO THE RECOMMENDATIONS OF THE OSCE REPORT: 'EIGHT YEARS AFTER: MINORITY RETURNS AND HOUSING AND PROPERTY RESTITUTION IN KOSOVO'.**

29 November 2007

In its "Eight Years After: Minority Returns and Housing and Property Restitution" report, the OSCE developed a set of recommendations. These were sent formally to the responsible person in each institution in order to encourage its implementation and thus support the returns process and housing and property restitution as well as better conditions for the displaced in their current areas of residence. The OSCE, based on its research, believes that these recommendations represent the best possible options in ensuring progress in the area of minority returns and housing and property restitution. Below is an update on the status of the implementation of each recommendation five months after the release of the report, covering the period from July to November 2007. The update is based on information gathered through the OSCE's field presence.

### **To the Provisional Institutions of Self-Government of Kosovo**

Develop a Strategy and an Action Plan on Returns, Reintegration, Housing and Property Restitution consistent with its overall Human Rights Strategy.

*There has been no development to date regarding a specific housing and property component within the Provisional Institutions of Self-Government Human Rights Strategy.*

Implement, as appropriate, the Protocol on Voluntary and Sustainable Returns, in co-operation with UNMIK and the Republic of Serbia.

*The Protocol is not formally being implemented.*

Ensure the functioning and access to the March 2004 Reconstruction Programme claims panel.

*The March 2004 Reconstruction Programme claims panel is currently not functioning.*

*Note: The local media quoted an adviser to the Office of the Prime Minister qualified these three recommendations to the Provisional Institutions of Self-Government of Kosovo as "groundless" and in conflict with ongoing efforts by the Provisional Institutions of Self-Government to fulfil the Kosovo Standards Implementation Plan.<sup>99</sup>*

### **To the Ministry of Communities and Returns**

Guide the Municipalities in the development and implementation of effective Municipal Returns Strategies and their incorporation in the Municipal Development Plans.

*The Ministry of Communities and Returns has been encouraged to guide the Municipalities. No specific guidance has been provided towards the incorporation of Municipal Returns Strategies in the Municipal Development Plans to date.*

Assess possibilities for the protection of empty reconstructed properties, including administration by relevant bodies.

*No development has taken place to date in the reporting period. A representative of the Ministry of Communities and Returns publicly stated that the reserved competencies of the international community compounded the implementation of this recommendation.<sup>100</sup>*

Finalise the establishment of the Internally Displaced Persons database and produce regular statistic reports on displacement.

*No substantial development has taken place to date in the reporting period. The Ministry of Communities and Returns claims that work is ongoing to finalise the establishment of the Internally Displaced Persons database.*

### **To the Kosovo Cadastre Agency**

Establish, through a Memorandum of Understanding with the Kosovo Property Agency, an efficient mechanism to register titles whenever appropriate after decisions of the Property Claims Commission.

*No development has taken place in the reporting period.*

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<sup>99</sup> Daily Newspaper, Koha Ditore, Sunday 12 August 2007.

<sup>100</sup> Daily Newspaper, Koha Ditore, Sunday 12 August 2007.

## **To the Kosovo Property Agency**

Increase outreach efforts to explain the remedies offered by the Kosovo Property Agency to displaced property right holders in co-operation with all relevant stakeholders.

*Outreach efforts have been increased. Awareness campaigns are ongoing.*

Ensure that the implementation of the rental scheme is effectively expanded to all properties under its administration.

*Implementation of the Kosovo Property Agency led rental scheme continues. 2,681 property right holders have included their property into the scheme (4561 properties are currently under administration). 487 occupants are currently paying rent, 187 evictions were carried out and a total of € 209,315 was collected.*

Ensure, in co-operation with United Nations High Commissioner for Refugees and the OSCE, that Municipal Return Officers are fully informed of the Kosovo Property Agency process in order to support returns and reintegration.

*A campaign on property related remedies is being implemented by the OSCE in co-operation with Kosovo Property Agency and other stakeholders.*

## **To the Municipalities**

Ensure that displaced persons are adequately notified of any administrative action affecting their property rights and provided with effective remedial venues against them.

*Lack of adequate notification continues to be a problem. There has been no relevant development in this area in the reporting period.*

Ensure the development of effective Municipal Returns Strategies that take into account the needs of displaced persons within the Municipality as well as possible forced repatriations and integrate them in the Municipal Development Plans.

*The guidelines for drafting Municipal Returns Strategy need to be revised to allow integration of the strategies in the municipal budgetary process.*

*No Municipal Returns Strategy has yet been incorporated into a Municipal Development Plan and/or Urban Development Plan. Twelve municipalities have stated to the OSCE that they will include the Municipal Returns Strategies into their future spatial plans. These are Mitrovicë/Mitrovica, Vushtrri/Vučitër, Podujevë/Podujevo, Lipjan/Lipljan, Obiliq/Obilić, Kamenicë/Kamenica, Novobërdë/Novo Brdo, Ferizaj/Uroševac, Dragash/Dragaš, Deçan/Dečani, Gjakovë/Đakovica and Istog/Istok.*

Assess land and housing needs of displaced persons within the Municipality and incorporate them into municipal housing strategies.

*No specific assessment has been undertaken in this direction in any Municipality of Kosovo.*

In co-operation with UNMIK or successor body, facilitate access to land when necessary for the implementation of returns and reintegration projects.

*No development has taken place to date. On the other hand, Administrative Instruction 11/2007 issued by the government to protect future 'Protective Zones' has effectively stopped the process to facilitate access to land to the former inhabitants of the Rudesh/Rudeš return site (Istok/Istog Municipality). A land swap requested by the Municipality of Istok/Istog in co-operation with the Kosovo Trust Agency is currently pending approval by the UNMIK Special Representative of the Secretary General.*

Co-ordinate through Municipal Returns Officers with the Kosovo Property Agency at the local level to ensure that displaced persons and returnees are aware of the remedies provided by the agency.

*An awareness campaign on property related remedies is being implemented by the OSCE in co-operation with*

*the Kosovo Property Agency and other stakeholders since September. The campaign consists of a series of presentations to Internally Displaced Persons' Associations and displaced persons themselves on the legal remedies available for violations of property rights.*

### **To the Kosovo Police Service**

Strengthen, in co-ordination with United Nations High Commissioner for Refugees, Kosovo Property Agency and Municipal authorities, existing mechanisms to ensure that empty reconstructed properties, residential properties subject to lawful evictions and other immovable property belonging to vulnerable groups is adequately protected from damage and unlawful occupation.

*During the last five months, the Kosovo Property Agency found difficulties in the execution of Housing and Property Claims Commission decisions. In two cases in Klinë/Klina Municipality and in contradiction with the final and enforceable character of Housing and Property Claims Commission decisions, the Kosovo Police Service refused to provide assistance to the Kosovo Property Agency in enforcing evictions and/or to remove unlawful occupants after the eviction had taken place.*

*In one of the cases, involving a property located in the Centre for Social Work of the Municipality, the Kosovo Police Service initially argued that they need proof that the apartment was totally vacated during the original Kosovo Property Agency eviction, and then referred to an injunction issued on the 8<sup>th</sup> of October by the municipal court as the basis for not providing assistance. However, the municipal court decision was in contradiction with the applicable legislation. Following the letter from the Head of the Kosovo Property Agency to the court, declaring the court incompetent to take such a decision, the court annulled the temporary measure and the occupant handed over the keys to the Municipality.*

*In the second case, the Kosovo Police Service referred to ongoing court proceedings, also in disregard of the exclusive jurisdiction of Housing and Property Directorate/Housing and Property Claims Commission and the final and enforceable character of Housing and Property Claims Commission decisions.*

*On 2 August the UNMIK Special Representative of the Secretary General issued an Executive Decision temporarily suspending the implementation of Housing and Property Claims Commission decisions 'until the necessary unity among all stakeholders was re-established'. The decision was repealed on 8 August after the Provisional Institutions re-affirmed their commitment to the implementation of all decisions including the most difficult ones.*

### **To the Kosovo Judicial Institute**

Ensure regular training to the courts on the different aspects of the mandate of the Kosovo Property Agency over conflict-related property claims, including on the implications of the final binding force of Housing and Property Claims Commission decisions.

*In October 2007, the Kosovo Judicial Institute undertook a training on the referral of certain cases adjudicated by the Housing and Property Claims Commission to the municipal courts. Additional trainings on Kosovo Property Agency related issues and property rights are being planned for 2008.*

### **To the Serbian Ministry for Kosovo**

Participate in the returns structure so as to ensure that all projects funded by the Co-ordination Centre for Kosovo follow the guidelines and principles reflected in the revised Manual for Sustainable Returns

*The Serbian Ministry for Kosovo does not currently participate formally in the returns process structure.*

Help ensure the return of cadastral and judicial records originating or pertaining to Kosovo which are currently located in Serbia proper.

*Return of cadastral and judicial records continues to be pending. No developments have taken place during the reporting period.*

### **To the United Nations High Commissioner for Refugees**

Integrate housing and property rights protection considerations, such as transparent and non-discriminatory beneficiary selection and property rights verification procedures, into its capacity building program on returns.

*No development to date.*

Ensure municipal authorities access to statistics on displacement and returns.

*Municipal authorities have access to United Nations High Commissioner for Refugees statistics.*

### **To the UNMIK Department of Justice**

Develop a proposal together with other stakeholders to expeditiously adjudicate the property related cases filed by Kosovo Serbs against Kosovo Force, UNMIK, Municipalities and individuals suspended in 2004 (and related cases), including assistance to courts and judges and elimination of legal impediments.

*A concrete proposal has not yet been developed. Municipal courts have started issuing decisions rejecting their jurisdiction in these matters and referring the claims to the Kosovo Property Agency. An opinion on the topic is needed from the President of the Supreme Court to serve as guidance for municipal and district courts and avoid further legal uncertainty.*

Revise and streamline procedures for the prevention of fraudulent transfers, such as the verification of letters of authorisation issued in Serbia proper.

*The instructions issued by Director of the UNMIK Department of Justice to all Municipal Courts in Kosovo to refer any letter of authorisation for an immovable property transfer issued in Serbia proper to the Department for verification remain in place.<sup>101</sup> No further development have taken place to date in this direction.*

### **To the UNMIK/Office of Communities, Returns and Minorities**

In co-operation with the Ministry on Communities and Returns guide the Municipal Working Groups on procedures for the allocation of land and housing to displaced persons in return and reintegration projects.

*No specific guidance or related development has taken place in the reporting period. Allocation of land continues to take place in an ad hoc manner.*

### **To the UNMIK Office of the Legal Adviser**

Expedite the development of the legislation necessary for the full implementation of the Kosovo Property Agency mandate, including outstanding legislation regulating compensation for the implementation of residential property claims.

*No concrete development has taken place to date in this direction during the reporting period.*

### **To the European Union Planning Team**

Take into account the need for a co-ordinated strategy on housing and property restitution and return and reintegration into the European Union plans for a Mission in Kosovo.

*No concrete development has taken place in this direction during the reporting period.*

### **To international donors**

Assess possibilities for funding reconstruction of the outstanding minority destroyed properties as well as opportunities for integration in connexion with the implementation of the Kosovo Property Agency mandate (i.e., land administration).

*No concrete development has taken place during the reporting period.*

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<sup>101</sup> Justice Circulars DOJ/DIR/344/JH/04 and DOJ/LPD/0371/er/05.



### **'EIGHT YEARS OF DISPLACEMENT...'**

PHOTOGRAPHS BY CRISTOPHE QUIRION

*"Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced".*  
(Principle 1, Guiding Principles of Internal Displacement)

Eight years after the conflict in Kosovo around 227.000<sup>102</sup> people still live in displacement in Kosovo or in the region. All communities have been affected by displacement during and in the aftermath of the conflict, including Kosovo's Serb, Gorani, Bosniak, Turkish, Croat community members. However, the Roma, Ashkali and Egyptians constitute a particular vulnerable group. Out of approximately 43.000 displaced Roma, Ashkali and Egyptians currently in Serbia proper, up to 20.000 lack basic documents that prevents them for accessing services and exercising their rights.

Irrespective of their ethnicity, all people in displacement suffer a huge setback in their quality of life. They often live in appalling conditions lacking basic infrastructure, access to any services, and future perspectives. Whether they wish to return to their homes, to another location in Kosovo, to a third country, or to integrate in their location of displacement, many lack a feasible and sustainable solution to their plight.

Efforts by the international community to facilitate property restitution and the sustainable return of refugees and displaced persons has been very slow. Only 17,585<sup>103</sup> minority returns have been registered by UNHCR since 2000. Poor economic prospects and lack of security are obstacles to return, but the restitution of destroyed or occupied property is one of the most prominent and tangible.

The fact that eight years after the Kosovo conflict people still face the hardship of living in displacement should urge the competent authorities to take responsibility and assist returned and/or resettled internally displaced persons in recovering their property and possessions, which they left behind, or in providing these persons with appropriate compensation or reparation.

These photographs show the hardship of displacement and through them we hope to pay a tribute to the endurance and dignity of these men, women and children.

#### **About the photographer...**

*Christophe Quirion is a French freelance photographer living and working in Kosovo since 2005. Through his work he has explored social issues such as "Kosovar Identities" and the lives and circumstances of Kosovo's diverse communities [christophequirion@hotmail.com]*

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<sup>102</sup> UNHCR, July 2007.

<sup>103</sup> UNHCR, October 2007.

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MPDL  
Movement for Peace



PISG  
Ministry of Environment  
and Spatial Planning

osce  
Mission in Kosovo

