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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

26 – 27 November 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, according to the United Nations High Commissioner for Refugees. 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.

This document 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.

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.



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- 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 derivative, 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.'¹ 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 Principles on Housing

¹ '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).



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and Property Restitution for Refugees and Displaced Persons, (the 'Pinheiro Principles').² 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

² 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).



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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 1. 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 prove their rights over their homes.

Working Group 2. 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 3: 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 Immovable 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.

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



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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



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RECOMMENDATIONS

To the Prime Minister of the Republic of Serbia

- Consider possibilities for 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 institutions in Kosovo 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.



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- 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 and Returns

- 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 Immoveable Property Rights Register and revise existing deadlines to



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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 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.



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- 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 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 the Establishment of an Immovable Property Rights Register: expand the 5 day deadline provided for public notification in Section 3.3.b of Kosovo Assembly Law 2003/13 on Amendments and Additions to Law 2002/5 On the Establishment of an Immovable Property Rights Register to a minimum of 15 working days in order to ensure adequate public notice. Include mandatory requirements for publication in media of both the Serbian and the Albanian language.



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- *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 property restitution issues related to 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 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.



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- 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

- Re-open 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.



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- 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 75m², 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 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 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 Roma, Ashkali and Egyptian communities in Kosovo and displaced and refugee communities outside of Kosovo:



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- 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 Iniativa 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.