



MISSION IN KOSOVO

**Working Regional Roundtable on
Formalising Informal Settlements of Roma and other vulnerable groups
30-31 October 2003, Prishtinë/Priština, Kosovo**

Final Conference Document

Purpose

This document is the primary outcome of the “Working Regional Roundtable on Formalising Informal Settlements of Roma and other vulnerable groups” held on 30-31 October 2003 in Prishtinë/Priština, Kosovo. Drafted by the participants, this document is designed to coordinate and guide both advocacy and policy formulation regarding informal settlements present in the former Yugoslavia. Participants, who range from representatives of vulnerable communities, to representatives of governmental authorities, to representatives of donors should use this document in their efforts to regularise/formalise informal settlements in their communities. It eventually may be used as a basis for a regional policy framework regarding informal settlements.

Problem Statement

Inhabitants of informal settlements—especially those belonging to the most vulnerable groups, including Roma, Ashkali, and Egyptians—are marginalized from the larger community. They are more prone to suffer violations of their human rights and are not given the opportunity to fully participate in governance. In particular, inhabitants of informal settlements do not enjoy justiciable rights to access and use land and property, providing them protection from human rights violations such as forcible, extra-judicial evictions. This situations needs to be remedied and placed as a priority on central and local government agendas.

Working Definitions

Informal Settlements

Informal settlements are human settlements that do not enable inhabitants to enjoy their right to an adequate standard of living, particularly to adequate housing. As such, informal settlements may possess the following characteristics:

- Informal or insecure tenure
- Inadequate access or deprivation of access to basic services
- Inadequate or deprivation of participation in governance
- Vulnerability to discrimination

Security of tenure¹

Tenure is an agreement between an individual and/or group and a private or public landlord on the use of land or residential property, and this agreement is governed and regulated by a legal and administrative framework. Security of tenure is achieved when rights to access and use land and property is underwritten by a known set of rules and that this right is justiciable. A person or a household can be said to have secure tenure when they are protected from

¹ UN Habitat Global Campaign for Secure Tenure Concept Paper

involuntary removal from their land or residence except in exceptional circumstances, and then only by means of a known and agreed upon legal procedure.

Right to the City

A “right to the city” means that every person in the city or community has the right to be an equal member of the community. As an equal member, each inhabitant of the city should enjoy the same level of realisation of his/her rights to an adequate standard of living and access to services as everyone else in the city.

Overall Findings

- **Obligations:** Central and local governments have obligations under international law, particularly of the right to adequate housing, to ensure that the situation of the inhabitants of informal settlements is improved. Specifically, governments should be mindful of the following elements: adequacy; legal security of tenure; protection against forced evictions; availability of services, materials, facilities and infrastructures; affordability; habitability; accessibility for disadvantaged groups; location; and cultural adequacy.
- **Nature of Problems:** The problems encountered by inhabitants of informal settlements are not unique to Roma, Ashkali, Egyptians or other vulnerable groups, but may be more acutely felt by these groups due to the discrimination that they experience by virtue of their status as a member of the group.
- **Social attitudes versus laws:** Social attitudes/norms, and not necessarily inappropriate or inadequate laws cause some of these problems. To begin to determine sustainable solutions, both the adequacy of the laws and the manner in which they are implemented need to be examined.
- **A human settlements issue:** The situation of inhabitants of informal settlements is most constructively addressed as a human settlements issue rather than purely through the lens of individual human rights, such as rights to property, return to one's home, or against discrimination.
- **Inclusion:** Critical to improving the situation in informal settlements is changing the governmental authorities' and wider community's perception of inhabitants of informal settlements to one that recognises these individuals as equal members of the city or community.
- **Self-advocacy:** Inhabitants of informal settlements are the best advocates for and protectors of their rights and interests and should be effectively participating in any decision-making process on the status of their informal settlement.
- **Decision-making processes:** Participatory and transparent decision-making processes are required to find mutually satisfactory solutions which balance the respect of the human rights of inhabitants of informal settlements with the wider public interest, as protected by the local government. This process is particularly relevant to enable such balancing in urban and spatial planning.
- **Multi-sectoral approach:** A multi-sectoral approach to creating security of tenure for inhabitants of informal settlements is key to successfully improving the situation of inhabitants of informal settlements. Such an approach should enable adequate access to basic services, justice without discrimination, and safeguards against forcible, extra-judicial evictions. Such an approach also includes appropriate urban and spatial planning.

Conclusions

1. Approach

- **An approach centred on ensuring that everyone equally enjoys their “right to the city” is recommended. Such an approach includes developing a participatory approach to decision-making related to the status of informal settlements.**

1.1 General principles

- **Good governance:** Central and local authorities should follow as closely as possible principles of good governance, such as non-discrimination, equality, transparency and accountability in relation to provision of public services and other activities. When providing assistance, donors and international organisations are encouraged to assess compliance with these principles.
- **Recognition:** To address regularisation of informal settlements effectively, central and local authorities need to recognise that it is in the interest of the local municipal authorities and in the benefit of the community as a whole to address the varied issues in informal settlements. In doing so, central and local authorities should recognise that informal settlements are characterised by a different mix of elements, including formal and informal tenure, vulnerability to disadvantaged groups, appalling health conditions, high incidence of crimes, and non-existent services and infrastructure.
- **Balancing:** Central and local authorities should be transparent in balancing the rights of inhabitants of informal settlements with broader public interest considerations, through the effective participation and representation of all affected communities in the decision-making process. Accepting the validity of both sides’ interests can enable a more satisfactory and sustainable solution.
- **Regularisation norm:** Regularisation rather than relocation should be the norm when formalising informal settlements.
- **Bottom-up:** A bottom-up approach in a participatory process may encourage policy makers to be more inclusive. Such an approach can be achieved by strengthening civil society, empowering inhabitants of informal settlements to effectively represent themselves. International organisations, NGOs, and central and local authorities should support and encourage such initiatives.

1.2 Participation and awareness raising

- **Dialogue:** Steps should be taken to improve dialogue and build trust between marginalized inhabitants of informal settlements and policy makers. Such steps should be drawn from best practices and use lessons learned.
- **Engage communities:** Effective participation of inhabitants of informal settlements is crucial to find creative and sustainable solutions to problems related to their right to adequate shelter. Central and local authorities are urged to engage in efforts towards developing a participatory approach and recognise the role of civil society in finding sustainable solutions.
- **Local ownership:** To ensure sustainability of solutions, affected communities’ ownership over the process should be encouraged, along with the mobilisation of the potential capacity of all stakeholders, particularly the inhabitants of informal settlements.

- **Role of vulnerable groups:** Central and local authorities along with all other stakeholders should identify a clear role for disadvantaged and marginalized groups. In designing strategies and policies to address the issue of informal settlements, central and local authorities are encouraged to engage in partnerships with community groups, particularly the disadvantaged and vulnerable populations, and to promote their participation in order to empower them.
- **Use of framework:** Communities are encouraged to take advantage of the institutionalised framework established to ensure representation and participation by communities, particularly vulnerable groups. When they do not exist, central and local authorities are strongly encouraged to facilitate the establishment of mechanisms for participation and representation.
- **Civil society organisations:** Civil society organisations' role in contributing to efforts of regularising informal settlements by providing technical assistance, long term support on issues such as documentation and evidence, and supporting implementation and monitoring of the process should be recognised by all stakeholders and used.
- **Awareness raising:** Efforts should be made to raise awareness amongst vulnerable groups about their right to adequate housing and how to effectively realise it, including access to information. Through recognition and awareness, both governmental authorities and affected communities can engage in a constructive dialogue on how policies can best improve the situation of inhabitants of informal settlements.
- **Legal aid:** Central and local authorities should facilitate the provision of legal aid for inhabitants of informal settlements and other vulnerable groups through support of NGOs or other organisations providing such assistance.

2. Creating security of tenure

2.1 *Broad policy changes recommended*

- **Facilitation:** Policies and laws should be constructed to enable the regularisation of informal settlements to be the rule, rather than the exception. Absence of personal documents should be minimised as an obstacle to formalisation/regularisation of informal settlements.
- **Review and harmonisation of laws:** Central and local authorities are encouraged to review the existing legal framework and mechanisms/tools and to use innovative interpretation of existing laws to benefit, not hamper, communities in improving their situation. Harmonising laws related to housing and property rights at the central and local level is encouraged to facilitate such use.
- **Privatisation:** Specifically, when transforming from a socialist to market economy, central and local authorities should take all necessary efforts to minimise adverse impacts on the right to adequate housing. Such efforts include enabling municipalities to provide sustainable alternatives when attempting to regularise informal settlements, such as renewable leases.

2.2 *Specific steps recommended*

- **Situational analysis:** Prior to developing related policies, central and local authorities are encouraged to undertake a **comprehensive** situational analysis of informal settlements in their area, which includes open discussion with inhabitants of informal settlements.

- **Action plan:** Once a situational analysis is completed, central and local authorities, in co-operation with other relevant stakeholders, are encouraged to construct an action plan for addressing the issue of informal settlements.
- **Provision of addresses, individuation:**² Appropriate authorities should facilitate the swift provision of official, individual addresses to inhabitants of informal settlements in order to enable them to resolve documentation issues and facilitate access to basic services as well as to establish the autonomy of the dwelling. Other technical provisions encouraging the principle of individuation, such as one electricity and water meter per housing unit should be provided
- **Alternative, innovative tenure arrangements:** In formalising/regularising informal settlements, central and local authorities are encouraged to explore alternative forms of secure tenure besides the traditional freehold title, such as local authorities' leasehold and group tenure arrangements.
- **Access to documents:** Central and local authorities are encouraged to facilitate the provision of evidentiary documents and other proof of physical presence, especially in light of the endemic lack of personal documentation amongst Roma, Ashkali, Egyptians and other inhabitants of informal settlements. Such facilitation could include simplifying procedures, offering periods of amnesty for those without documents to regularise their status, conducting awareness campaigns.
- **Eligibility criteria:** When formalising/regularising informal settlements, central and local authorities are encouraged to set eligibility criteria which are transparent, non-discriminatory and fair. Authorities also should take into account the length of time that a community has occupied an informal settlement with the tacit or explicit consent of the local authorities.
- **Right to return:** When addressing the issue of regularising informal settlements, central and local authorities, in co-operation with affected communities, are urged to develop programmes and projects that protect the rights of IDPs and refugees to return to their homes.

2.3 Urban planning activities recommended

- **Adapting urban plans to realities:** Urban plans should, as far as possible, reflect the existing reality of land use in a given area, including informal settlements. Incorporating informal settlements into urban plans improves security of tenure and should be viewed as the rule rather than the exception. As such, during the inventory process undertaken prior to the development of the urban plan, existing informal settlements should be included.
- **Understanding the nature of settlements:** Policy makers should take into account assessments on location, type, and nation of informal settlements (public/private land, etc.), such as those provided by the situational analysis, when reviewing urban plans.
- **Recognition of incentives of inclusion:** For urban planning to facilitate the regularisation of informal settlements, efforts to change policy makers' perceptions of inhabitants of informal settlements and to encourage recognition that inclusion of informal settlements benefits economic development of the broader community are necessary.
- **Training:** Professional training of central and local level planning authorities to broaden thinking and encourage innovation when dealing with planning options for informal

² Individuation is basically the provision of individual-based access to services by providing a street address, individual electricity and water meters, etc.

settlement, such as regularisation rather than relocation, and protection of informal housing rights. Such training would include encouraging the use of best practices, pilot schemes, etc.

- **Participatory and transparent planning process:** For the planning process to appropriately balance interests of the affected communities with the public interest, the planning process must be consultative and include the effective participation of the inhabitants of informal settlements, other vulnerable communities, as well as the general public. Central and local authorities are encouraged to be transparent in their balancing of interests when drafting urban plans.
- **Awareness raising on urban planning:** For such a participatory process to be successful, efforts should be undertaken to increase public awareness and understanding of planning requirements and procedures.

3. Enabling prevention and sustainability

3.1 Security

- **Security required:** Efforts should be undertaken to ensure adequate short-term and long-term security of inhabitants and their possessions in informal settlements.
- **Security is crucial:** Security and effective protection of individuals and structures—in particular homes—is crucial for the sustainability of formalisation/regularisation of informal settlements. During post-conflict rehabilitation of informal settlements, protecting inhabitants, returnees and others and their dwellings or homes under reconstruction should be a particularly high priority. Appropriate long-term policing and protection of exposed settlements inhabited by ethnic minorities is key to the sustainability of regularising such informal settlements.
- **Policing and developing security policies:** Creative solutions arrived at after full consultation with affected minority communities should be sought to address community policing issues. In doing so, a fine balance needs to be struck between public order concerns and the danger of racial profiling.
- **Interaction:** Police should not be the only interface between minority community inhabitants of informal settlements and the majority community. Particularly when involving minority returns, inclusion of all stakeholders—majority and minority—in the returns process is crucial to the creation of a secure environment.
- **Other security aspects:** Provision of adequate infrastructure, such as streetlighting, is required to ensure appropriate security in informal settlements, and should be included in any formalisation/regularisation of informal settlements.

3.2 Justice

- **Independent judiciary:** Access of inhabitants of informal settlements to a functioning and independent judiciary should be improved. Effective and equal access to justice that ensures due process and effective protection of rights contributes to the sustainability of regularised/formalised informal settlements.
- **Prosecution of ethnically motivated crimes:** The judiciary should ensure it effectively protects victims of ethnically motivated crimes, and information on successful prosecution of perpetrators of such crimes should be disseminated widely through both mainstream and minority media outlets.

- **Justice and post-conflict reconciliation:** Perpetrators of crimes committed during inter-ethnic conflicts should be prosecuted to the fullest extent of the law. The application of justice is an intrinsic component of inter-ethnic reconciliation and crucial to increasing vulnerable groups' confidence in the judiciary.

3.3 Non-discrimination/anti-discrimination

- **Different layers of discrimination:** Central and local authorities should take into account that discrimination against inhabitants of informal settlements can be related to both their status as an inhabitant of an informal settlement and his/her status as a member of a certain group, such as a minority community.
- **Evaluating discriminatory effects:** When central and local authorities are deciding upon actions and policies which affect inhabitants' rights, they should determine if such actions or policies appropriately balance the public interests with that of the affected individuals by being reasonable, justifiable, and proportionate to the aim of the action or policy in order to avoid discriminatory actions or policies on their face or in their effect.
- **Anti-discrimination laws:** Central and local authorities should support, and minority communities should advocate for, the adoption of comprehensive anti-discrimination laws in conformity with European standards.
- **Non-discrimination obligations:** Due to the possibility that some ethnic groups may be over-represented amongst the inhabitants of informal settlements, central and local authorities' non-discrimination obligations may be engaged. Central and local authorities should collect accurate data on the ethnic breakdown of those inhabiting informal settlements in order to ensure appropriate policies are undertaken.

3.4 Education

- **Equal access to education:** Due to the particular risk of ethnically-based segregation into sub-standard schools located in or near informal settlements, regularisation and formalisation processes should be linked to policies designed to provide equal access to education for all.
- **Participation in desegregation process:** In designing integration programmes, consultation with all stakeholders is crucial. Educational and municipal authorities as well as parents from minority and majority communities should be involved.
- **Pre-school education:** Central and local authorities should facilitate the provision of pre-school education for Romani children and children from other vulnerable groups. Such education, designed in a manner considering the best interests of the child as central, is crucial for successful transition into mainstream, integrated schooling.

3.5 Health and social services

- **Improving health conditions:** When formalising/regularising informal settlements, central and local authorities should prioritise eliminating immediate health threats. Conditions in many informal settlements constitute a *de facto* threat to the realisation of the right to the highest obtainable standards of physical and mental health.
- **Access to health care services:** Guaranteed access for inhabitants of informal settlements to adequate primary and emergency health care services should be included in any formalisation/regularisation of informal settlements.

3.6 Employment

- **Support income generation:** During the process of formalising/regularising, central and local authorities should seek to support small business and/or agricultural projects through training and small grants and/or loans. This support should either be direct or through relevant NGOs.
- **Access to public employment:** Due to the prevalence of poverty and extreme poverty in informal settlements, central and local authorities should include public works projects designed to employ inhabitants of informal settlements in the formalising/regularising process. Such public works projects may also be used to improve the environmental situation within informal settlements.

3.7 Housing

- **Housing policies:** Central and local authorities are encouraged to develop comprehensive social housing policies, including a housing programme. Housing policies adopted should be based upon a recognition of the concept of a “right to the city” and accommodate inhabitants of informal settlements regardless of their legal status. Such policies should be adequately funded, preferably through local and central budgets, though authorities are encouraged to seek international funding, if necessary.
- **Positive discrimination in housing policies:** More specifically, due to the extreme vulnerability of many inhabitants of informal settlements, central and local authorities are encouraged to introduce strong anti-discrimination measures in policies on access to privately owned and public housing, including social housing. Key measures in relation to public housing could include:
 - Strong legal provisions related to the ban on discrimination in access to social housing;
 - Quotas in the provision of social housing to facilitate access of vulnerable;
 - Transparency through independent monitoring, and regular provision of data by ethnicity on persons provided with social housing or other assistance.