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MISSION IN KOSOVO**

**Assessment of the Provision of Social Housing by
Municipalities in Kosovo**

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LIST OF ABBREVIATIONS

| | |
|---------------|--|
| AI | Administrative Instruction |
| CEDAW | Convention on Elimination of All of Forms of Discrimination Women |
| CESCR | United Nations Committee on Economic, Social and Cultural Rights |
| CRC | Convention on the Rights of the Child |
| CSW | Centre for Social Welfare |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| KPA | Kosovo Property Agency |
| MCR | Ministry for Communities and Return |
| MESP | Ministry of Environment and Spatial Planning |
| MLGA | Ministry of Local Government Administration |
| MLSW | Ministry of Labour and Social Welfare |
| MOCR | Municipal Office for Communities and Return |
| OSCE | Organization for Security and Co-operation in Europe Mission in Kosovo |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNMIK | United Nations Mission in Kosovo |
| UNHCR | United Nations High Commissioner for Refugees |

EXECUTIVE SUMMARY

This Report assesses the progress made by municipalities in Kosovo towards realizing the right to adequate housing through the provision of social housing and identifies some of the main shortcomings in their efforts. It is based on field monitoring of the provision of social housing by municipalities in Kosovo conducted by the OSCE from November 2010 to August 2013, as well as information provided by municipal officials and community representatives interviewed throughout Kosovo during that period.

The right to adequate housing means that all persons are entitled to live somewhere in “security, peace and dignity ... irrespective of income or access to economic resources”.¹ The provision of social housing to persons who cannot afford adequate housing through their own means is an important way in which government institutions can fulfil their obligations under this right.

To date, government institutions in Kosovo have undertaken a number of important steps towards the realization of the right to adequate housing, including the development of related legal framework and the implementation of several social housing projects at the municipal level. However, some notable concerns have been identified such as a lack of compliance of municipal regulations with the legal framework in Kosovo, and that some municipalities continue to operate based on outdated guidelines on social housing. There has also been a Kosovo-wide lack of progress with regard to the duties of municipalities and the Ministry of Environment and Spatial Planning (MESP) to carry out housing needs assessments and develop housing strategies, which are essential for measuring and monitoring the realization of the right to adequate housing.

It is commendable that a number of municipalities implement social housing projects. However, procedural concerns have been identified, such as a lack of public notification of housing projects or non-adherence to linguistic requirements for public notification, which can leave some persons or communities uninformed of the possibilities to apply for housing. It is also notable that many municipal selection commissions are dominated by municipal assembly members, do not include representative of communities in a numerical minority in municipalities, and/or include representatives from the war veterans’ association, while not including representatives of vulnerable groups whom the Law requires to be prioritized for social housing. Such composition may work to favour some over other legally prescribed categories of persons, such as disabled persons and other persons in a vulnerable position. Moreover, selection commissions rarely include municipal staff with experience in dealing with social welfare issues (such as directorates of health and social welfare or directors of centres for social welfare). Furthermore, there is a lack of comprehensive and disaggregated data on applications for and beneficiaries of social housing projects, which is necessary in order to properly monitor the selection procedure. Finally, there is a general lack of adherence to the proper appeals procedure.

¹ See Paragraph 7, United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4 (Art. 11(1)): The Right to Adequate Housing, UN Doc. E/1992/23, 13 December 1991 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e) (accessed October 21, 2013).

In order to improve the process of social housing provision, a number of measures should be undertaken by relevant institutions. Municipalities should promptly amend non-compliant articles of municipal regulations and engage in the process of reviewing the legality of regulations. Moreover, the MESP and municipalities should increase their efforts to monitor and address the issue by carrying out housing needs assessments and developing municipal and Kosovo-wide strategies. Municipalities should also reform selection commissions to ensure greater participation of non-Albanian community representatives and relevant municipal staff trained in dealing with social welfare issues. Finally, it is essential that the legally prescribed appeals procedure is adhered to in order to ensure the fairness of the selection process and applicants' rights to an effective remedy.

1. INTRODUCTION

The Universal Declaration of Human Rights (UDHR) provides that all people have the right to a standard of living that is adequate for their health and well-being, including adequate housing and social protection. This widely recognized universal human rights standard is also included in numerous other international human rights instruments. The United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has also observed that the human right to adequate housing is of critical importance for the enjoyment of all economic, social and cultural rights.

In Kosovo, where an estimated 34.5 per cent of the population lives in poverty, while an estimated 12.5 per cent are extremely poor, the issue of provision of social housing remains of utmost importance.² In the only housing needs assessment conducted by institutions in Kosovo to date, Pejë/Peć municipality identified 1,200 families facing difficulties in accessing adequate housing, of whom 300 were living in extreme poverty and were in dire need of social housing. There is, however, a general lack of information as to the total number of persons in need of social housing in Kosovo.

As part of its mandate to monitor, promote and protect human rights, the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) has monitored and assessed the progress and shortcomings of institutions in Kosovo in the assessment of housing needs and the provision of social housing for those in need. The provision of social housing is one concrete measure that can be necessary to realize the right to adequate housing and an adequate standard of living for all people in Kosovo.

This report assesses the progress made by municipalities in Kosovo towards realizing the right to adequate housing through the provision of social housing and identifies some of

² Consumption Poverty in the Republic of Kosovo in 2010, Kosovo Agency of Statistics, the World Bank, December 2012.

the main shortcomings in their efforts.³ It is based on field monitoring of the provision of social housing by municipalities in Kosovo conducted by the OSCE from November 2010 to August 2013, as well as information provided by municipal officials and community representatives interviewed throughout Kosovo during that period. Further information was obtained from the MESP.

The present report is divided into seven chapters. Following this introduction, Chapter 2 outlines relevant international standards and the corresponding legal and institutional framework in Kosovo. Chapter 3 assesses the municipal legal framework and analyses the compliance (or lack thereof) of municipal regulations on social housing with the legal framework in Kosovo. Chapter 4 then considers progress made towards fulfilling obligations to carry out housing needs assessments and draft housing strategies. Chapter 5 looks at procedural issues related to the implementation of social housing projects in municipalities. Finally, the report presents a series of conclusions (Chapter 6) and recommendations on how to better realize the right to adequate housing through social housing projects, without discrimination on prohibited grounds (Chapter 7).

2. INTERNATIONAL STANDARDS AND LEGAL AND INSTITUTIONAL FRAMEWORK IN KOSOVO

2.1 International Standards

The provision of social housing by Kosovo institutions is a vital measure to realize the right to adequate housing. Giving greater depth to the obligations provided by the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴ provides that the right to an adequate standard of living and adequate housing must be progressively realized, using the maximum of available resources.⁵ Although those rights are subject to progressive realization – recognizing that adequate housing cannot always be provided instantly for everyone in need – the CESCR notes that there are aspects of those rights that must be implemented immediately.

First of all, institutions in Kosovo must immediately begin to “take steps” towards the realization of those rights, including through the adoption of legislative and other measures necessary to respect, protect and fulfil the right to adequate housing.⁶

³ The three northern municipalities, Leposavić/Leposaviq, Zvečan/Zveçan and Zubin Potok, are not included in this report.

⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 3 January 1976.

⁵ See Article 2, ICESCR, note 4, *supra*.

⁶ See paragraphs 1–3, CESCR General Comment No. 3: The Nature of States Parties Obligations, UN Doc. E/1991/23, 14 December 1990 <http://www.unhchr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664> (accessed October 21, 2013). In relation to what is meant by adequate housing, the CESCR has stated that such includes: affordability; habitability; accessibility; location; legal security of tenure; and the availability of services, materials, facilities and infrastructure; and cultural adequacy.

Moreover, institutions must make immediate efforts to guarantee the right to adequate housing in accordance with the internationally recognized principle of non-discrimination, which prohibits discrimination in any form that undermines the equal enjoyment of human rights. Specifically, the right to adequate housing must be respected, protected and fulfilled without discrimination on prohibited grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth,⁷ disabilities, age, marital or family status, sexual orientation or gender identity, health status, place of residence, and economic or social situation.⁸

These immediate obligations of non-discrimination and to “take steps” towards realizing the right to adequate housing have several practical components. Firstly, institutions must monitor the situation regarding inadequate housing and give consideration and priority to disadvantaged social groups in the provision of adequate housing. Secondly, institutions should use disaggregated data to ascertain the full extent of inadequate housing and identify those social groups that are particularly vulnerable or disadvantaged.⁹ Thirdly, institutions should adopt a Kosovo-wide housing strategy in consultation with affected persons that identifies the objectives, available resources, responsibilities and time-frame for implementation. The CESCR has elaborated that, through those ongoing efforts, “the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”¹⁰

2.2 Legal and Institutional Framework in Kosovo

The legal framework in Kosovo reaffirms the obligations of government institutions to realize the right to adequate housing.¹¹ As an important step towards the realization of those obligations, the Law on Financing Specific Housing Programs (hereinafter the Law on Housing) was adopted in 2010 with the aim of providing access to adequate housing for those who could not otherwise afford it.¹²

⁷ See Article 2, ICESCR, note 4, *supra*. This principle is also recognized in other conventions that provide for the right to adequate housing as mentioned in note 4, *supra*. See also Article 2, Universal Declaration on Human Rights (UDHR), United Nations General Assembly Resolution 217 A (III), 10 December 1948, Article 2, Convention on the Rights of the Child (CRC), General Assembly Resolution 44/25, 20 November 1989 and Article 1, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Assembly Resolution 34/180, 18 December 1979.

⁸ See CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), 10 June 2009, UN Doc. E/C.12/GC/20, paragraphs 27–35.

⁹ See paragraphs 11–14, CESCR General Comment No. 4, note 1, *supra*.

¹⁰ See paragraph 14, *ibid*.

¹¹ The rights contained in the UDHR, CEDAW and the CRC, including the right to adequate housing, are made directly applicable in Kosovo by Article 22 of the constitution. Moreover, in accordance with Section 1.3 of the amended UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, 12 December 1999, persons undertaking public duties or holding public office are obliged to observe the provisions of the ICESCR, the UDHR, CEDAW and the CRC.

¹² Article 1, Law No. 03/L-164 on Financing Specific Housing Programs, 27 March 2010 (Law on Housing) states that the aim of the law is to “create possibilities for a sustainable housing for the families or individuals that are not in such economically state to endure the offers of free market of

The legal framework firmly establishes that the provision of social housing is a municipal-level responsibility¹³, while MESP is the body responsible for supervising the implementation of the Law on Housing¹⁴. The MESP subsequently supplemented the Law on Housing with six administrative instructions (AIs)¹⁵, the last of which was adopted in November 2010.

Moreover, the Ministry for Labour and Social Welfare (MLSW) and the Ministry for Communities and Return (MCR) also provide some funding for social housing projects in accordance with the law. Following the completion of the legal framework, MESP, with the support of the OSCE, held a number of workshops in 2011 and 2012 to present this legal framework to municipalities and discuss their obligations thereunder.¹⁶

The universally recognized human rights principles of equality and non-discrimination are also reflected in the legal framework in Kosovo, which provides that the rights of all persons shall be recognized without distinction and that all persons shall have equal access to municipal-level services.¹⁷ As such, municipalities are obliged to provide social housing on an equal, needs-led basis.

3. MUNICIPAL REGULATIONS AND NON-COMPLIANCE WITH LEGAL FRAMEWORK

In March 2010, the Law on Housing entered into force, and in November 2012 MESP issued the last of six AIs¹⁸ to implement the Law on Housing. The Law on Housing together with these six sub-legal acts enable municipalities to implement social housing

dwelling and determination on providing and using ways of financial means for the development of housing specific programs [*sic*]"

¹³ See Article 17.1, Law No. 03/L-040 on Local Self Government, 15 June 2008. See also Article 4, Law on Housing, note 12, *supra*.

¹⁴ See Article 27, *ibid*.

¹⁵ AI No. 18/2010 for Content of the Contract for Non-Profit Housing Rent, 2 September 2010; AI No. 19/2010 for Housing Bonus Content, 02 September 2010; AI No. 21/2010 for Determining the Order of Precedence for Categories of Families that can Benefit from Special Housing Programs, 18 December 2010; AI No. 22/2010 on Procedures of Benefiting by Special Housing Programs, 18 November 2010; AI No. 23/2010 on Procedures for the Announcement of Special Housing Programmes, 18 November 2010; AI No. 24/2010 on Minimum Housing Standards on Apartments of Special Housing Programs, 18 November 2010.

¹⁶ The workshops were held on 13, 14, 20, 21 and 28 October 2011 and hosted around 150 selected municipal officials. Prior to the workshops, the OSCE printed and distributed the new law and administrative instructions and explanatory leaflets and posters. In 2012, the workshops were held on 15, 16, 22, 23, and 24 October and hosted around 120 participants. The expert lecturers were provided by relevant departments of the MESP. The OSCE will further support MESP with follow up activities towards the end of 2013 to discuss progress made and obstacles faced by municipalities.

¹⁷ See Article 4.2, Law on Local Self Government, note 13, *supra*. See also Article 3.4, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 18 March 2008.

¹⁸ See note 15, *supra*.

projects and select the beneficiaries thereof. Unfortunately, to date only five municipalities have so implemented such projects. In addition, these five municipalities did so in a way that appears to be directly or indirectly in contradiction with the legal framework.

As of June 2013, five municipalities had adopted municipal regulations on social housing: Pejë/Peć¹⁹, Lipjan/Lipljane²⁰, two in Prishtinë/Priština²¹, Ferizaj/Uroševac²², Kamenicë/Kamenica²³. A few other municipalities noted a need for such a regulation and that they would adopt one in the near future.²⁴ Five municipalities (Klinë/Klina²⁵, Gjakovë/Đakovica²⁶, Glllogoc/Glogovac²⁷, Skenderaj/Srbica²⁸ and Mitrovicë/Mitrovica²⁹) do not have regulations but have been operating based on the MESP Guidelines on Social Housing from 2007³⁰. These guidelines are clearly out of date, as they were published three years prior to the Law on Housing and, therefore, foresee different selection criteria from those prescribed in the Law on Housing and AIs as well as a different composition for the selection commissions.

The municipal regulations adopted by the first above-mentioned five municipalities contain a number of provisions which are not fully compatible with the Law and related AIs. One common area of non-compliance is that of the selection criteria for determining the beneficiaries of social housing. The legal framework establishes a points system by which points are awarded to would-be beneficiaries across a number of categories: housing status; income; health condition; disability; structure of the family; as well as additional criteria (family of a martyr; single parent family; family caring for orphans).³¹

¹⁹ Municipal Regulation No.022/4429 on Lease of Municipal Owned Apartments for Social Cases, 10 June 2010.

²⁰ Municipal Regulation No.360/2890 on Determination of Criteria for Renting Municipally Owned Flats, 31 May 2011.

²¹ Prishtinë/Priština municipality has two regulations on social housing: Municipal Regulation 01 No. 360/1938 on Allocation of Apartments for Rental Use for Cases under Social Care, 28 July 2010; Municipal Regulation 01 No. 360/2803 on Allocation of Apartments for Rental Use for Members of Martyr's Families, Invalids and Veterans of Kosovo Liberation Army, 29 September 2011.

²² Ferizaj/Uroševac Municipal Regulation No. 01/87 on Determination of Conditions and Criteria for Lease of Municipal Owned Apartments, December 2012.

²³ Municipal Regulation No. 02/4626 on Lease of Municipal Owned Apartments for Social Cases, 30 April 2013.

²⁴ Gjilan/Gnjilane, Štrpce/Shtërpçë and Fushë Kosovë/Kosovo Polje.

²⁵ Director, health and social welfare directorate, Klinë/Klina municipality, Klinë/Klina, oral interview, 4 June 2012.

²⁶ Director, health and social welfare directorate, Gjakovë/Đakovica municipality, Gjakovë/Đakovica, oral interview, 6 June 2012.

²⁷ Director, health and social welfare directorate, Glllogoc/Glogovac municipality, Glllogoc/Glogovac, oral interviews, 1 June 2012 and 20 May 2013.

²⁸ Director, health and social welfare directorate, Skenderaj/Srbica municipality, Skenderaj/Srbica, oral interviews, 10 June 2012 and 30 May 2013.

²⁹ Director and officer, european integration and social welfare directorate, Mitrovicë/Mitrovica municipality, Mitrovicë/Mitrovica, oral interviews, 08 June 2012 and 24 May 2013.

³⁰ Guidelines on Social Housing, Ministry of Environment and Spatial Planning, 2007. Note that the outdated guidelines are no longer available on MESP's website.

³¹ See Article 5, Law on Housing, note 12, *supra*. See also Articles 5 to 10 and Annex 1, AI 21/2010, note15, *supra*.

However, the points system of the Pejë/Peć, Prishtinë/Priština, Ferizaj/Uroševac, Kamenicë/Kamenica and Lipjan/Lipljane municipal regulations differ considerably. They each use different categories and different points systems compared with the Law.³² Notably, Lipjan/Lipljane and Ferizaj/Uroševac also award greater points than foreseen in the Law for participation in war.³³ In the case of Prishtinë/Priština, there are two regulations targeting two different categories of beneficiaries, which potentially opens doors for discrimination, nepotism and/or corruption and violates the points system established by the Law on Housing.

Another area of non-compliance is the foreseen composition of the municipal selection commission, the body responsible for selecting the beneficiaries. The legal framework is silent about the specific composition of the selection commission, but stipulates that three to five members must be selected by the mayor.³⁴ However, the Pejë/Peć municipal regulation provides for a selection commission of nine members, Ferizaj/Uroševac municipal regulation provides for the selection commission of eleven members, Kamenicë/Kamenica municipal regulation provides for the selection commission of five members and the Lipjan/Lipljane municipal regulation stipulates that the selection commission shall be composed of seven members³⁵. The Ferizaj/Uroševac, Kamenicë/Kamenica, Pejë/Peć and Lipjan/Lipljane selection commissions are created by the municipal assembly rather than appointed by the mayor, as required by the Law on Housing³⁶. The mayor of Prishtinë/Priština municipality has established two selection commissions, each consisting of five members, for different categories of beneficiaries. One selection commission is assigned to deal with provision of housing for war veterans and the other deals with housing issues of all other vulnerable groups³⁷.

Finally, the appeals procedure provided for in the municipal regulations is inconsistent with that of the Law on Housing, which contemplates that dissatisfied parties may appeal the decisions of selection commissions to the MESP.³⁸ In turn, the decisions of MESP may be appealed to the Supreme Court.³⁹ In the cases of Pejë/Peć, Prishtinë/Priština (regulation referring to vulnerable groups other than war veterans), Lipjan/Lipljane and Kamenicë/Kamenica, the municipal regulations only foresee that aggrieved parties may appeal to the selection commission itself and then to the Supreme Court but not to

³² See Article 12, Pejë/Peć Municipal Regulation, note 19, *supra*. Article 9 of Prishtinë/Priština Municipal Regulation 01, note 21, *supra*. See Article 6, Lipjan/Lipljane Municipal Regulation, note 20, *supra*. See also Article 9, Ferizaj/Uroševac Municipal Regulation, note 22, *supra*.

³³ See Article 6, Lipjan/Lipljane Municipal Regulation, note 20, *supra*.

³⁴ See Article 5, AI 22/2010, note 15, *supra*.

³⁵ See Article 13, Pejë/Peć Municipal Regulation, note 19, *supra*. See also Article 10, Lipjan/Lipljane Municipal Regulation, note 20, *supra*. See Article 10, Kamenicë/Kamenica Municipal Regulation, note 23, *supra*.

³⁶ *Ibid.*

³⁷ See Article 10, Prishtinë/Priština Municipal Regulation 01 No. 360/1938 and Article 10, Prishtinë/Priština Municipal Regulation 01 No. 360/2803, note 21, *supra*.

³⁸ See Article 14, Law on Housing, note 12, *supra*.

³⁹ See Article 14, Law on Housing, note 12, *supra*. See Article 15, Ferizaj/Uroševac Municipal Regulation, note 22, *supra*. See also Articles 5.7 and 6.2, AI 22/2010, note 15, *supra*.

MESP.⁴⁰ In the case of Ferizaj/Uroševac, the municipal regulation contemplates that a decision of the municipal assembly cannot be a subject of appeal, but parties may initiate an administrative dispute before the Supreme Court not later than 30 days from the day that the decision is served to the parties⁴¹. This may result in the denial of affected parties' right to an effective legal remedy, as well as their right to adequate housing, in violation of institutions' legal obligations.⁴²

In Kosovo, there continues to be a general problem regarding the lack of adherence to the process of mandatory review of legality of municipal regulations. Regulations adopted by the municipal assemblies are subject to mandatory review of legality by the "supervisory authority".⁴³ In practice, the municipality should forward the regulation to the Ministry of Local Government Administration (MLGA), which should forward it to the relevant line ministry for review (in this case, MESP). However, according to Pejë/Peć municipality⁴⁴, they never submitted their regulation for review. Lipjan/Lipljane municipality stated that they sent their regulation for review in July 2011 and received a reply in September 2012. MESP found that the regulation in general is not compliant with the Law on Housing and related AI.⁴⁵ According to Ferizaj/Uroševac municipality, the municipal regulation was submitted for review on 11 March 2013. The MLGA responded on 24 April⁴⁶ finding that Article 4 which stipulates that the duration of the lease agreement with the families of war martyrs for indefinite period was contrary to Articles 5 and 6 of the Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the municipality⁴⁷. According to Prishtinë/Priština municipality, both regulations were submitted and approved without comment. However, MESP stated that they never received the Prishtinë/Priština municipal regulations. Therefore, there is clear indication that the review process is not being adhered to and there is a need for greater co-ordination and co-operation between the central and local levels in this regard.

On a positive note, MESP and MLGA have taken steps to improve the system of review of legality. In July 2012, the two ministries established a joint committee to review the legality of municipal regulations. This should help to streamline the review process and

⁴⁰ See Article 19, Pejë/Peć Municipal Regulation, note 19, *supra*. See also Article 15, Prishtinë/Priština Municipal Regulation 01 No. 360/1938 and Article 15, Prishtinë/Priština Municipal Regulation 01 No. 360/2803, note 21, *supra*. See also Articles 14 and 15, Lipjan/Lipljane Municipal Regulation, note 20, *supra*. See Article 15, Kamenicë/Kamenica Municipal Regulation, note 23, *supra*.

⁴¹ See Article 20.2, Ferizaj/Uroševac Municipal Regulation, note 22, *supra*.

⁴² See Article 8, UDHR. See also Article 2.3, International Covenant for Civil and Political Rights (ICCPR), United Nations General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.

⁴³ See Article 81, Law on Local Self Government, note 13, *supra*.

⁴⁴ Director, health and social welfare directorate, Pejë/Peć municipality, Pejë/Peć, oral interview, 18 January 2012.

⁴⁵ Municipal legal officer, Lipjan/Lipljane municipality, Lipjan/Lipljane, oral interview, 26 September, 2012.

⁴⁶ MLGA letter No.0204-303/2, 24 April 2013.

⁴⁷ See Articles 5 and 6, No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality, 2 January 2013. According to the Law on Housing, the municipality may allocate the land for a short-term use from one to fifteen years, while the period for the long-term use may be from fifteen to ninety-nine years.

ensure co-ordination among the relevant ministries. According to MESP, this joint committee has already commenced reviewing the Lipjan/Lipljane, Ferizaj/Uroševac, and Kamenice/Kamenica regulations.⁴⁸

In sum, there continues to be problems of non-compliance of aspects of each of the municipal regulations with the legal framework. The common areas of non-compliance relate to the criteria for selecting beneficiaries, the composition of the municipal selection commission, and the appeals procedure. In spite of those inconsistencies, none of the municipalities has amended its regulations to comply with the legal framework. It is imperative that each municipality address these issues to ensure that social housing projects are implemented in a legal, fair and transparent way. It is also important that both central- and local-level institutions properly engage in the mandatory review process for municipal regulations to ensure their legality.

4. LACK OF HOUSING NEEDS ASSESSMENTS AND STRATEGIES FOR SOCIAL HOUSING

Pursuant to the Law on Housing, municipalities are required to carry out housing needs assessments in their respective areas of responsibility. Based on those needs assessments, they must then draft a three-year housing strategy, including elements such as the housing needs, financing needs, and identification of available land for construction of housing.⁴⁹ The Law on Housing then requires MESP to draft a three-year Kosovo-wide strategy – including budget allocation – based on the information provided by municipalities, and to establish a Kosovo-wide database related to housing needs.⁵⁰

The Law on Housing does not provide any detail on what should be included in the municipal-level needs assessment. However, reporting guidelines issued by the ICESCR and a report by the OHCHR on indicators for monitoring the implementation of, *inter alia*, ICESCR rights (including the right to adequate housing), offer some guidance⁵¹. More specifically, competent government institutions (MESP and municipalities in Kosovo) should collect information on social housing waiting lists, length of waiting

⁴⁸ Head of department for social housing, MESP, written correspondence, 18 June 2013, and interview, 9 July 2012. Please note that the joint committee reviewed in total 11 documents since its establishment. Apart from reviewing 3 above-mentioned regulations, the joint committee has reviewed 8 related reports and decisions submitted by the municipalities, e.g. Viti/Vitina decisions on allocation of apartments for specific housing programs and public call for allocation of apartments for specific housing programs.

⁴⁹ See Articles 20 and 25, Law on Housing, note 12, *supra*.

⁵⁰ See Article 24, *ibid*.

⁵¹ See paragraph 8, CESCR General Comment No. 4, note 1, *supra*; See also *The Guidelines on Treaty-Specific Documents to be Submitted by State Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/2008/2, 18 November 2008, at paras. 42–43. See also the *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*, UN Doc. HRI/MC/2008/3, 6 June 2008, p. 29, http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf, (accessed October 21, 2013).

time, and public expenditure on social housing. Moreover, the data should be disaggregated to be able to monitor adequate housing as it relates to persons with special needs. The CESCR has also offered a non-exhaustive list of persons who should be ensured some degree of priority consideration in the housing sphere, including: “elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups”⁵².

In spite of these obligations, all assessed municipalities, but one, have failed to undertake housing needs assessments and develop strategies for social housing. As of August 2013, Pejë/Peć was the only municipality to carry out a housing needs assessment. It identified 1,200 families that are facing difficulties in accessing adequate housing. Out of this, the municipality assessed that around 300 families lived in extreme poverty and were in dire need of social housing⁵³. Notably, the eligibility criteria stipulated in the legal framework were not used; the municipality instead relied on the municipal regulation. None of the data gathered during the assessment was disaggregated in meaningful ways to prioritize individuals or families at greater risk.

Although many other municipalities stated that they did carry out such assessments, it is apparent that they are referring only to their efforts to keep track of *ad hoc* housing requests received from individuals rather than a proactive and comprehensive evaluation of the municipal-wide housing needs.⁵⁴ This approach excludes all those who do not directly apply to the municipality for housing assistance and thus does not provide an accurate picture of the social housing needs for the municipality. It is notable that, according to the MESP, as of August 2013, no municipality had drafted or adopted a three-year housing program.⁵⁵ Rather, specific housing projects are developed on an *ad hoc* basis as funding arises.

A common reason cited for not carrying out housing needs assessments or drafting housing plans is a lack of municipal funds to develop housing. Such reasoning seems counter-intuitive as it is more difficult for municipalities to seek external funding if they do not have accurate information on the scale of their housing needs. Some smaller municipalities stated that they do not carry out these assessments or draft housing plans as they consider there are no families or persons in need of social housing.⁵⁶ However, this would appear to be a tenuous contention in the absence of a municipality-wide

⁵² CESCR General Comment No. 4, at paragraph 8(e), note 1, *supra*.

⁵³ The needs assessment was carried out in 2009, director, health and social welfare directorate, Pejë/Peć municipality, Pejë/Peć, oral interview, 12 February 2013.

⁵⁴ For example, Gjilane/Gnjilan, Ferizaj/Uroševac, Viti/Vitina, Glogoc/Glogovac, Podujevë/Podujevo, Skenderaj/Srbica, Mitrovicë/Mitrovica, Fushë Kosovo/Kosovo Polje, Shtime/Štimlje, Lipjan/Lipljan, Obilić/Obiliq, Suharekë/Suva Reka, Malishevë/Mališevo.

⁵⁵ Lipjan/Lipljane municipality claims that they have drafted a housing program 2013-2015 and submitted it to MESP for review and comments in May 2013. To date, the municipality did not get any response from MESP. Source: municipal legal officer, 28 May 2013.

⁵⁶ Klokot/Klllokot, Novo Brdo/Novobërdë, Ranilug/Ranillug, Parteš/Partesh, Kaçanik/Kaçanik, Hani i Elezit/Elez Han, Dragash/Dragaš and Mamuša/Mamushë/Mamuša (information provided by heads of municipal health and social welfare directorates).

housing needs assessment. Furthermore, this assertion was in several cases directly contradicted by either Municipal Offices for Communities and Return (MOCR) or community representatives who have identified communities in need of social housing in their municipalities.⁵⁷

Further obligations include process requirements such as the adoption of a Kosovo-wide housing strategy and effective monitoring of the extent of inadequate housing, which should include disaggregated data and identification of the most disadvantaged and vulnerable social groups.⁵⁸ The lack of comprehensive and disaggregated data at the municipal level, however, prevents local- and central-level institutions from establishing a clear and accurate picture of the scale of social housing needs in their areas of responsibility. This, in turn, prevents municipalities from responding adequately to these needs and measuring progress made towards the realization of the right to adequate housing. It also prevents MESP from fulfilling its obligations to draft a three-year strategy and establish a Kosovo-wide database. Consequently, the failure of institutions to adequately determine and track social housing needs constitutes a violation of their obligations in relation to the right to adequate housing.

5. IMPLEMENTATION OF SOCIAL HOUSING PROJECTS

Eight municipalities have finalized one or more housing projects since the completion of the legal framework in November 2010. Figure 1 shows a list of social housing projects completed per municipality and the number of housing units per project.

| Projects per Municipality | Year | No. of units per project |
|----------------------------------|-------------|---------------------------------|
| Pejë/Peć (1) | 2011 | 25 ⁵⁹ |
| Pejë/Peć (2) | 2011 | 6 ⁶⁰ |
| Pejë/Peć (3) | 2013 | 18 ⁶¹ |
| Gjakovë/Đakovica | 2011 | 25 |
| Klinë/Klina | 2011 | 25 |
| Gjilan/Gnjilane (1) | 2010 | 9 |

⁵⁷ Klokot/Kllokot, Novo Brdo/Novobërdë, Ranilug/Ranillug, and Partesh/Partesh.

⁵⁸ Article 24, Law on Housing, note 12, *supra*. See also Articles 4, 20 and 21, *ibid*.

⁵⁹ United Arab Emirates-funded project.

⁶⁰ These social housing units were obtained by a transfer of housing units from the Kosovo Property Agency (KPA) to the municipality for use as social housing, in accordance with Article 30, Law on Housing, note 12, *supra*. In total there were 35 housing units transferred from the KPA. For 29 of these units, the occupants already residing there were allowed to remain as they were considered to meet the criteria for benefiting from social housing while the remaining six were vacated and publicly advertised for social housing applications.

⁶¹ Out of 18 housing units, three were allocated to the families whose properties were expropriated for the construction of the Public Prosecutor's building, while the remaining families were selected based on the evaluation done back in 2011 for the project funded by United Arab Emirates, note 66, *infra*.

| | | |
|------------------------|-----------------------|----|
| Gjilan/Gnjilane (2) | 2011 | 27 |
| Ferizaj/Uroševac (1) | 2010/11 ⁶² | 13 |
| Ferizaj/Uroševac (2) | 2011 | 4 |
| Suharekë/Suva Reka (1) | 2011 | 4 |
| Prishtinë/Priština (1) | 2011 | 48 |
| Prishtinë/Priština (2) | 2012 | 52 |
| Glllogoc/Glogovac (1) | 2010 | 25 |
| Glllogoc/Glogovac (2) | 2011 | 23 |

Figure 1: Social housing projects finalized by municipality (period November 2010 – June 2013)

In total, there were 14 projects with 304 social housing units allocated. A number of other municipalities have commenced social housing projects but they have not yet been finalized, in that the final lists of beneficiaries have not been declared.⁶³ However, interviews with municipal officials and community representatives revealed that there is still a considerable need for further social housing projects.

Prishtinë/Priština municipality completed one project pursuant to the first Regulation 01 No. 360/1938 on Allocation of Apartments for Rental Use for Cases under Social Care. Another project, finalized in December 2012, was completed pursuant to the Regulation 01 No. 360/2803 on Allocation of Apartments for Rental Use for Members of Martyr's Families, Invalids and Veterans of Kosovo Liberation Army.

5.1 Funding for social housing projects

According to the Law on Housing, MESP, municipalities and other donors can finance social housing projects.⁶⁴ Most of the municipalities stated that they have no available funds for constructing social housing and rely on donations. Additional sources of funding include central-level institutions⁶⁵ and other external sources⁶⁶, while

⁶² The municipal official interviewed did not give the exact date but stated that the project was finalized at the end of 2010/beginning of 2011.

⁶³ As of June 2012, Prizren (one project) and Štrpce/Shtërpçë (four projects) had commenced housing projects, which were expected to be completed in late 2013. No developments were noted up to June 2013. In Gračanica/Graçanicë (one project, two locations), a social housing project was completed in 2012, selection of beneficiaries is ongoing. In Kamenicë/Kamenica (one project), Ferizaj/Uroševac (one project) and Viti/Vitina (one project), social housing projects were completed in 2013, selection of beneficiaries is ongoing.

⁶⁴ See Article 19, Law on Housing, note 12, *supra*.

⁶⁵ The MESP funded the two projects in Glllogoc/Glogovac (partly funded by the municipality). The MLSW has funded projects in: Klinë/Klina, Gjakovë/Đakovica (the municipality covered 50 per cent of the costs), Gjilan/Gnjilane, Kamenicë/Kamenica (the project is expected to be completed later this year), and Gračanica/Graçanicë (two projects expected to be completed later this year). The MCR is also partly funding the Gračanica/Graçanicë projects as the beneficiaries will also be returnees. In Štrpce/Shtërpçë four buildings are being constructed with the Office of the Prime Minister funding three and the MCR financing one.

⁶⁶ In Pejë/Peć funding was received in 2011 from the United Arab Emirates. In 2011, some properties were transferred from the Kosovo Property Agency to Pejë/Peć municipality for use as social housing. According to the director of the Health and Social Welfare Directorate in Suharekë/Suva Reka

Prishtinë/Priština municipality has adopted a public/private partnership approach to develop its two housing projects.⁶⁷ Some larger municipalities contributed from their own budgets⁶⁸, whereas some municipalities did take other steps to improve housing conditions for vulnerable families, such as providing construction materials or funds to improve housing.⁶⁹

5.2 Public announcement of social housing projects

The legal framework in Kosovo stipulates that the municipality must make a public announcement for social housing programs in the media and on the municipal bulletin board; furthermore, the announcement must be published in Albanian and Serbian and “other communities’ languages as needed”.⁷⁰ According to the municipal officials interviewed, most municipalities that completed social housing projects did utilize local media and municipal bulletin boards and did advertise in both official languages⁷¹. However, there were a few notable exceptions to this. In Gjakovë/Đakovica and Glllogoc/Glogovac, the notifications were only in Albanian. Although Glllogoc/Glogovac is a municipality inhabited predominantly by Kosovo Albanians, this should not detract from the legal obligation to advertise in both languages. In 2012, in Suharekë/Suva Reka⁷² and Ferizaj/Uroševac⁷³, there were no public calls for applications. In Suharekë/Suva Reka, the selection commission visited all neighborhoods of the town and all villages to conduct their own assessment. In Ferizaj/Uroševac⁷⁴ they merely focused on requests for social housing that had already been received. In 2013, in Ferizaj/Uroševac⁷⁵ and Viti/Vitina calls for applications were made in both official languages⁷⁶, in keeping with the legal framework.

municipality (oral interview, 3 December 2012) four houses were constructed with funds from the Kosovo Albanian diaspora residing in Norway.

⁶⁷ The residential blocks are constructed on municipal property by a private developer and a certain number of units are placed under municipal ownership for use as social housing.

⁶⁸ Prizren, Gjilan/Gnjilane, Ferizaj/Uroševac, Gjakovë/Đakovica (the MLSW covered 50 per cent of the costs), and Glllogoc/Glogovac (partly funded by MESP).

⁶⁹ The following municipalities reported undertaking these initiatives: Gjilan/Gnjilane, Klinë/Klina, Partesh/Partesh, Fushë Kosovo/Kosovo Polje, Shtime/Štimlje, Vushtri/Vučitrn, Podujevë/Podujevo, and Mitrovicë/Mitrovica. According to Pejë/Peć municipality, for the most severe cases in need of housing assistance, some financial assistance is available under the mayor’s subventions in each budget year. The Viti/Vitina municipality stated that it received funds from the MLSW for this purpose.

⁷⁰ See Article 4, AI 23/2010, note 15, *supra*.

⁷¹ See Figure 1 on page 12 for the list of municipalities that have completed social housing projects. Prizren, Kamenicë/Kamenica and Štrpce/Shtërpçe have yet to make a call for applications as the projects in these municipalities are still under way.

⁷² Director, health and social welfare directorate, Suharekë/Suva Reka municipality, Suharekë/Suva Reka, oral interview, 3 December 2012.

⁷³ Director, health and social welfare directorate; head, health and social welfare department, Ferizaj/Uroševac municipality, Ferizaj/Uroševac, oral interview, 08 May 2012.

⁷⁴ *Ibid.*

⁷⁵ Director of general administration, Ferizaj/Uroševac municipality, oral interviews, 6 February and 4 April 2013.

⁷⁶ Director of health and social welfare, Viti/Vitina municipality, oral interview, 25 April 2013.

Concerns were also raised by Serbian-speaking community members in Prishtinë/Priština municipality that officials persistently fail to issue public notices in the Serbian-language media⁷⁷. Since they do not utilize the Albanian-language media, they are left uninformed of public announcements for social housing.

While it is commendable that municipalities are undertaking social housing initiatives, the failure of a few to make public announcements in both official languages (or not at all) creates a process that lacks transparency and fairness. Without a public call in both official languages for applications, not all inhabitants may be aware of the possibility to gain housing assistance. In particular, vulnerable families who do not submit requests for housing assistance on their own initiative may never be identified by municipal officials as being in need. Non-adherence to the linguistic requirements⁷⁸ for public notification may exclude those who do not speak the majority language in a given municipality.

5.3 Establishment of selection commissions

When municipal social housing programmes are being developed, the municipality should establish a selection commission. This body plays a central role as it is responsible for verifying the merits of individual applications for social housing and for proposing the final list of beneficiaries. Of the municipalities that had completed social housing programs since November 2010, all had established formal selection commissions for the purpose of selecting beneficiaries.⁷⁹ However, in addition to the non-compliance of the Pejë/Peć, Ferizaj/Uroševac, Prishtinë/Priština and Lipjan/Lipljane municipal regulations with the legal framework on this point (see Chapter 3), other concerns have arisen.

As aforementioned, legal framework remains largely silent on what form the selection commissions should take⁸⁰, however the best practice is to remain non-political, reflect the communities living in the municipality and include persons trained in dealing with vulnerable groups. Having all this in mind, the composition of some of these selection commissions in practice does raise a number of concerns. The selection commissions established in Pejë/Peć⁸¹, Ferizaj/Uroševac⁸², Gjakovë/Đakovica⁸³, Klinë/Klina⁸⁴ and

⁷⁷ Officer for communities and returns and information officer, Prishtinë/Priština municipality, Prishtinë/Priština, oral interview, 25 May 2012.

⁷⁸ See also Articles 7 and 8, Law No. 02/L-37 on the Use of Languages, as promulgated by UNMIK Regulation 2006/51, 27 July 2006.

⁷⁹ See Figure 1 on page 12 for the list of municipalities that have completed social housing projects. As of June 2012, Prizren, Štrpce/Shtërpce, and Kamenicë/Kamenica had not yet established selection commissions as their housing projects were still being developed.

⁸⁰ As already noted in Chapter 3 of this report, the legal framework only stipulates that the selection commission should have three to five members who should be selected by the mayor.

⁸¹ As previously noted, the Pejë/Peć municipal regulation provides for a selection commission of nine members, seven of whom come from the municipal assembly while the other two are representatives from the CSW and the war veterans' association. However, reportedly, instead of the representatives from the CSW, the municipal legal officer under the directorate of health was on the selection commission. Source: Municipal director of health and social welfare, 12 February 2012.

⁸² Ferizaj/Uroševac Municipal Regulation, note 22, *supra*. Article 15.2 provides for a selection commission of eleven members, five of whom come from the municipal assembly, one from municipal directorate of health and social welfare, one from the war veterans association, one from the association

Glllogoc/Glogovac⁸⁵ are heavily dominated by municipal assembly members. The favouring of political party representatives may lead to a politicization of the selection process, particularly through the potential for selection of beneficiaries who have political links with those parties.

It is a notable concern that around half of selection commissions consisted of Kosovo Albanians only, thereby failing to reflect other communities present in the municipalities. This was the case in Prishtinë/Priština (both selection commissions)⁸⁶, Ferizaj/Uroševac (for the 2013 project), Glllogoc/Glogovac, Klinë/Klina and Suharekë/Suva Reka.⁸⁷ The donors for the housing project in Suharekë/Suva Reka (Kosovo Albanian diaspora) specifically stipulated that only Kosovo Albanians should benefit from the project⁸⁸. Likewise concerning, neither of the two selection commissions established in Gračanica/Gracanice⁸⁹ (Kosovo Serb majority municipality) consist of Kosovo Serbs only. However, some other municipalities did ensure the representation of communities in numerical minority in their selection commissions, e.g. in Pejë/Peć, Gjakovë/Đakovica, Gjilan/Gnjilane⁹⁰, Viti/Vitina⁹¹ and Ferizaj/Uroševac (for the

of martyrs' families, one from the association of former prisoners and one from the association of disabled persons. Source: Municipal director of health and social welfare, 13 December 2012.

⁸³ In Gjakovë/Đakovica the selection commission was composed of seven members all from the municipal assembly. Source: Municipal director of health and social welfare, 6 June 2012.

⁸⁴ In Klinë/Klina, the selection commission was composed of four municipal assembly members together with the municipal director of health and social welfare. Source: Municipal director of health and social welfare, 4 June 2012.

⁸⁵ In Glllogoc/Glogovac, the selection commission was composed of three members and two municipal employees (it was unstated what positions they held within the municipality). Source: Director of health and social welfare, 20 May 2013.

⁸⁶ In Prishtinë/Priština, one selection commission was established pursuant to Prishtinë/Priština Municipal Regulation No. 360/1938, note 21, *supra*. This selection commission is composed of five members from the directorates of administration and health and social welfare and the CSW. Another selection commission was established pursuant to Prishtinë/Priština Municipal Regulation 01 No. 360/2803, note 21, *supra*. This selection commission comprises of two civil servants from the directorate of health and social welfare, one municipal assembly member and two representatives from the war veterans' association.

⁸⁷ Suharekë/Suva Reka selection commission was comprised of four municipal directors from the directorates of health and social welfare; planning, development and agriculture; general administration; and spatial planning and urbanism (Director, health and social welfare directorate, Suharekë/Suva Reka municipality, Suharekë/Suva Reka, oral interview, 3 December 2012).

⁸⁸ *Ibid.*

⁸⁹ In Gračanica/Gracanice, two housing projects are under way in the municipality and they will be for returnees and displaced persons as well as other vulnerable persons. They are part funded by the MLSW and the MCR. As such, two selection commissions were established. The first will assess applications from returnees and displaced person and is comprised of a representative from the UNHCR, the MCR and the municipality. The second will assess applications from other persons in need of housing and is comprised of a representative of the CSW, the MLSW and the municipality.

⁹⁰ The selection commission in Gjilan/Gnjilane consisted of five members which included four Kosovo Albanians (a civil servant from the directorate of health and social welfare, the secretary of the municipal assembly, and two others, details of whom were not provided) and one Kosovo Serb (former municipal returns officer).

⁹¹ In Viti/Vitina, the selection commission consisted of five members which included four Kosovo Albanians (one representative from non-governmental organizations, one from the war veterans associations a civil servant from the directorate of economy, budget and finance, one from the CSV)

2010/2011 project)⁹² one such representative was present. The lack of participation of communities in a numerical minority in many other selection commissions is of considerable concern as their participation in decision-making is important to ensure that their communities' needs are recognized and addressed.

Furthermore, as noted earlier, the selection commissions in Pejë/Peć, Kamenicë/Kamenica⁹³, Ferizaj/Uroševac⁹⁴, Lipjan/Lipjane⁹⁵, and Prishtinë/Priština (in particular the second Regulation 01 No. 360/2803 on Allocation of Apartments for Rental Use for Members of Martyr's Families, Invalids and Veterans of Kosovo Liberation Army) also hold representatives of the war veterans' association. Such a composition may work to favour those who participated in the conflict rather than those who are simply the most vulnerable.

The risk of possible politicization of the selection commission – through its domination by municipal assembly members, the lack of community representation, and the favouring of war veterans' associations – raises serious concerns about the impartiality and needs basis of the process of selecting beneficiaries. Therefore, it is recommendable to have representatives from the centres for social welfare (CSWs) and municipal directorates of social welfare as their staff is usually trained in assessing and dealing with vulnerable persons in need of social assistance, especially considering that CSWs are responsible for administering the social welfare scheme. Only the municipalities of Pejë/Peć, Klinë/Klina, Prishtinë/Priština, Lipjan/Lipljane, Suharekë/Suva Reka, Gjiilan/Gnjilane⁹⁶, and Gračanica/Gracanice included at least one such member on each of their selection commissions⁹⁷. However, municipalities ought to strive to include representatives of communities in a numerical minority to ensure their communities' rights are recognized and protected.

5.4 Selection of beneficiaries

The municipal selection commissions are responsible for reviewing applications for social housing, deciding on their merits⁹⁸, and proposing the final list of beneficiaries for

and one Kosovo Serb member from MOCR director of health and social welfare, oral interview, 25 April 2013.

⁹² Director, health and social welfare directorate; chief, health and social welfare department, Ferizaj/Uroševac municipality, Ferizaj/Uroševac, oral interview, 08 May 2012.

⁹³ Article 10, Kamenicë/Kamenica Municipal Regulation provides for a selection commission composed of five members (one representative of the war veterans associations and four from the municipal assembly), see note 23, *supra*.

⁹⁴ In Ferizaj/Uroševac, out of eleven members of the selection commission, three representatives are from war veterans' association; one from the martyrs' families association, one from the war veteran invalids' and, one member from the former prisoners' association. Director of general administration, oral interview, 06 February 2013.

⁹⁵ See Article 10, Lipjan/Lipljane Municipal Regulation, note 20, *supra*.

⁹⁶ Director, health and social welfare directorate; head, office for communities and returns, Gjiilan/Gnjilane municipality, Gjiilan/Gnjilane, oral interview, 16 May 2012.

⁹⁷ See notes 81–90, *supra*.

⁹⁸ The Law on Housing establishes a points system by which points are awarded to would-be beneficiaries across a number of categories: housing status; income; health condition; disability; structure of the

each social housing project. For the social housing projects that were completed during the reporting period, all the municipalities stated that the merits of applications were assessed by the selection commission after it carried out house visits to assess the situation of those who applied. Community representatives verified this in all cases, except in the case of Klinë/Klina⁹⁹, where the community representative stated that the municipality did not conduct house visits among its community members who had applied for social housing.

There is a general lack of comprehensive information relating to the application process (for example, total number of applications and a disaggregation of that data). Undoubtedly, this is linked to the general lack of comprehensive municipal data on housing needs discussed above. With the exception of Gjilan/Gnjilane municipality, municipal officials claimed that they were not able to provide disaggregated data on the persons that applied for social housing. However, most municipalities could provide disaggregated data (albeit by ethnicity only) on the persons who were finally granted social housing. These figures were generally corroborated by community representatives, except where community representatives were simply unaware of what social housing allocations were made. Interestingly, Ferizaj/Uroševac municipality was unable to provide any data at all, although the same interviewee did refer to a “list of applicants” from which beneficiaries were selected¹⁰⁰. Figure 2 shows the social housing allocations as reported by municipalities disaggregated by ethnicity.

| Projects per Municipality | Year | No. of units | No. of units allocated to Kosovo Albanian community | No. of units allocated to non-Albanian community |
|----------------------------------|-------------|---------------------|--|---|
| Pejë/Peć (1) | 2011 | 25 | 24 | 1 |
| Pejë/Peć (2) | 2011 | 6 | 5 | 1 |
| Pejë/Peć (3) | 2013 | 18 | data not available | data not available |
| Gjakovë/Đakovica | 2011 | 25 | data not available | data not available |
| Klinë/Klina | 2011 | 25 | 24 | 1 |
| Gjilan/Gnjilane (1) | 2010 | 9 | 9 | 0 |
| Gjilan/Gnjilane (2) | 2011 | 27 | 25 | 2 |
| Ferizaj/Uroševac (1) | 2010/11 | 13 | n/a | n/a |
| Ferizaj/Uroševac (2) | 2011 | 4 | data not available | data not available |
| Suharekë/Suva Reka | 2011 | 4 | 4 | 0 |
| (1) | | | | |

family; additional criteria (family of a martyr; single parent family; family caring for orphans). See Article 5, Law on Housing, note 12, *supra*. See also Articles 5 to 10 and Annex 1, AI 21/2010, note 15, *supra*.

⁹⁹ Chairperson, communities committee, Klinë/Klina municipality, Klinë/Klina oral interviews, 4 June 2012 and 31 May 2013.

¹⁰⁰ Head, social welfare assistance unit, Ferizaj/Uroševac municipality, Ferizaj/Uroševac, oral interview, 8 May 2012.

| | | | | |
|------------------------|------|----|--------------------|--------------------|
| Prishtinë/Priština (1) | 2011 | 48 | 47 | 1 |
| Prishtinë/Priština (2) | 2012 | 52 | data not available | data not available |
| Glllogoc/Glogovac (1) | 2010 | 25 | 25 | 0 |
| Glllogoc/Glogovac (2) | 2011 | 23 | 23 | 0 |

Figure 2: Social housing units allocated by municipality

Considering the lack of comprehensive data around social housing (such as the number of people who are actually in need of housing, the number of people who actually apply for social housing, and disaggregation thereof) it is difficult to assess the fairness of the final allocation of social housing units. However, it is apparent from Figure 2 that the vast majority of housing units were allocated to members of the communities in numerical majority in the respective municipalities, which constitutes a serious concern. Issues such as a lack of public notification of housing projects, non-adherence to linguistic requirements for public notification (see Chapter 5.2 above) and the establishment of selection commissions consisting of members community in numerical majority only (see Chapter 5.3 above) may have contributed to this. As discussed earlier, in Suharekë/Suva Reka there was a clearly discriminatory policy for selecting only Kosovo Albanians, which was reportedly applied at the request of the donors (members of the Kosovo Albanian diaspora)¹⁰¹. Notably, in Viti/Vitina, the mayor arbitrarily decided that out of 25 apartments, four will be allocated to war veterans, twenty to social cases and one to non-Albanian communities for the project for which the selection of beneficiaries is ongoing.¹⁰²

Reaching out to those communities who are most vulnerable and in need of housing, such as those residing in informal settlements, is a crucial part of the responsibility to ensure the right to adequate housing. In Kosovo, this obligation is incumbent on municipalities to carry out comprehensive housing needs assessments and establish databases tracking social housing interventions to ensure that the allocation of social housing is conducted in a comprehensive, transparent and fair way. Such monitoring and data collection is essential in order to identify those communities that are especially marginalized or disadvantaged and to then be able to target projects to improve their housing status. However, almost no municipality made special efforts to reach out to particularly vulnerable communities living in their areas. A few municipalities claimed to have done so, however, they could not substantiate the claim with any specific details and no community representative verified these claims.

¹⁰¹ See notes 87 and 88, *supra*. Also, according to the director of health and social welfare directorate of Suharekë/Suva Reka municipality (oral interview, 3 December 2012), four houses were constructed with funds from the Kosovo Albanian diaspora residing in Norway.

¹⁰² The decision of the mayor, dated 22 March 2013.

5.5 The complaints mechanism

The legal framework stipulates that aggrieved parties have the right to submit complaints against the final decisions of the municipal selection commission to MESP.¹⁰³ At second instance complaints may be submitted to the Supreme Court.¹⁰⁴ According to municipal officials, complaints were only submitted in Pejë/Peć, Prishtinë/Priština, and Gjiilan/Gnjilane. However, the proper appeals procedure is not being utilized and complaints are submitted directly to the municipal selection commission.

This is for example the case in Pejë/Peć and Prishtinë/Priština. In Pejë/Peć, at second instance, the complaints were sent to the Supreme Court.¹⁰⁵ In Prishtinë/Priština, the municipal selection commission received over 150 appeals against the first social housing project in 2011, and 125 appeals against the preliminary list of beneficiaries regarding the second project. According to Prishtinë/Priština municipality, they stated that they would record the complaints and then forward them to MESP. However, MESP representatives declared that they did not receive any complaints. It therefore seems to be the case that such complaints are not submitted to MESP but are only dealt with at the municipal level by municipal selection commissions¹⁰⁶.

According to Gnjilane/Gjiilan municipality, complaints in both oral and written format were addressed directly to the mayor, to the department of health and social welfare or to members of the selection commission.

In the cases of Prishtinë/Priština and Pejë/Peć, the failure to utilize the proper appeals procedure is likely linked to the appeals mechanism provided for in the municipal regulations. In both cases, as previously discussed, the regulations allow for appeals to the selection commission and then to the Supreme Court, with no provision for appeal to MESP.

The failure of Prishtinë/Priština, Pejë/Peć, and Gjiilan/Gnjilane municipalities to adhere to the proper appeals procedure and to inform aggrieved parties thereof may result in a violation of those affected parties' right to an effective remedy, as well as their right to adequate housing.

6. CONCLUSION

MESP has taken a number of important steps towards realizing the right to adequate housing by adopting the present legal framework, taking measures to promote that legal

¹⁰³ Article 14(1), Law on Housing, note 12, *supra*.

¹⁰⁴ Article 14(3), Law on Housing, note 12, *supra*. See also Articles 5.7 and 6.2, AI 22/2010, note 15, *supra*.

¹⁰⁵ See Pejë/Peć Municipal Regulation, note 19, *supra*. The complaints in Pejë/Peć relate to the six apartments transferred from KPA management to the municipality.

¹⁰⁶ Chairperson, Prishtinë/Priština selection commission, Prishtinë/Priština, oral interview, 2 July 2012.

framework at the municipal level, and establishing a joint committee with the MLGA to review the legality of municipal regulations. A number of municipalities have adopted measures aimed at realizing this right by implementing social housing projects, thus directly providing housing to persons in need. As of August 2013, eight municipalities had implemented 14 projects leading to the allocation of 304 housing units to families and persons in need of housing assistance. Other municipalities have also commenced housing projects, often with full or partial funding from the MESP, Ministry of Labour and Social Welfare and Ministry of Communities and Return.

However, the municipal-level legal framework continues to raise numerous concerns. In each of the municipalities that adopted regulations on social housing, there are problems of non-compliance of important aspects of these regulations with the legal framework. Common areas of non-compliance relate to the criteria for selecting beneficiaries, the composition of municipal selection commissions, and the appeals procedure. The failure of some municipalities to adhere to legal framework raises serious questions about the legality and fairness of the social housing projects implemented in those municipalities. Moreover, the lack of respect for the proper appeals procedure interferes with the right to an effective remedy. The recent establishment of the MESP/MLGA joint committee to review the legality of municipal regulations is a positive development that has the potential to meaningfully address those concerns. Some other municipalities continue to operate with the outdated 2007 MESP Guidelines on Social Housing.

It is also notable that only Pejë/Peć municipality has carried out a housing needs assessment, while no municipality has developed a housing strategy to date.¹⁰⁷ This lack of information has in turn made it difficult for MESP to fulfil its responsibilities to develop a three-year Kosovo-wide strategy and establish such a database. As the CESCR notes, adequately monitoring the situation, including through the collection and analysis of disaggregated data, is essential in order to ascertain the scale and nature of the problem of inadequate housing and to be able to identify particularly vulnerable or disadvantaged social groups in need of assistance. Furthermore, the development of a housing strategy is an important step to plan appropriate responses to the identified housing needs.

The actual implementation of social housing projects is an essential and important way that government institutions can concretely work towards realizing the right to adequate housing. However, some procedural concerns and shortcomings have been identified. Although municipalities are obliged to make public announcements of social housing projects, some have failed to do so entirely or have failed to do so in both official languages. As a result, some individuals or communities in the linguistic minority may never become aware of the possibility to apply for social housing.

While the legal framework does not elaborate on the composition of municipal selection commissions, there are clear shortcomings in their composition in some municipalities that could undermine the object and purpose of social housing: to assist those most in need. A number of selection commissions are heavily or entirely dominated by municipal assembly members, which has the potential to lead to a politicization of the selection

¹⁰⁷ *Ibid.*

procedure. Some selection commissions are mono-ethnic, which is out of step with the better practice of ensuring the inclusion and participation of communities in numerical minority to ensure that their communities' rights are also acknowledged and respected. A few municipalities also provide for the inclusion of members of the war veterans' association on the selection commissions, which may work to favour those who participated in the conflict rather than those who are simply most in need of housing assistance. The inclusion of the members of war veterans' associations in the selection commissions could be seen as legitimate if their presence did not favour war veterans on bases other than social need, and provided that representatives of other needy potential beneficiaries (i.e. disabled persons and other vulnerable groups) were included in the selection commissions as well. A number of municipalities do include officials from the directorates of health and social welfare or the CSWs on their selection commissions. It would be advisable for all municipalities to follow this practice, as these municipal bodies are staffed with individuals trained in and working with social welfare issues, who are thus better suited to identifying and assessing those most in need.

In addition to inadequate data due to the lack of municipal housing needs assessments, there is also a general lack of disaggregated data relating to the numbers of applicants for, and the number of beneficiaries of social housing. Such comprehensive data is necessary in order to be able to properly monitor the selection procedure and track progress made in realizing the right to adequate housing for all. Specifically, in line with the government's obligation to progressively realize the right to adequate housing, tracking this information is essential to ensure that housing projects are administered in a non-discriminatory manner, in order to identify and benefit any particularly disadvantaged and marginalized social groups.

There is also a failure by municipalities to adhere to the appeals procedure stipulated in the Law on Housing. In cases where there have been complaints against the selection of beneficiaries, those complaints have gone to the same municipal selection commission that carried out the selection procedure and not to MESP, as required under the Law on Housing. Not adhering to the proper appeals procedure and not informing aggrieved parties thereof may lead to a violation of the right to an effective remedy, as well as the right to adequate housing.

7. RECOMMENDATIONS

To the Ministry of Environment and Spatial Planning:

- Re-engage in activities such as workshops to provide guidance to municipalities on the legal framework, conducting housing needs assessments and developing housing strategies.
- Promptly develop a three-year Kosovo-wide strategy and establish a database on housing pursuant to Article 24.1 of the Law on Housing.
- Undertake a regular and timely review of the legality of all municipal regulations, including those on social housing.

To municipalities:

- Ensure that staff dealing with social housing projects is aware of and adheres to the provisions of the current legal framework on social housing.
- Ensure that municipal regulations are compliant with the legal framework and submit municipal regulations for the review to the responsible authority within the Ministry of Environment and Spatial Planning, pursuant to Article 27 of the Law on Housing and Articles 80 and 81 of the Law on Local Self Government.
- Carry out comprehensive municipal-wide housing needs assessments, which should gather disaggregated data in order to identify any particularly vulnerable or marginalized social groups pursuant to Article 25.1.1 of the Law on Housing.
- Develop three-year municipal housing strategies based on these needs assessments pursuant to Article 25.1.2. of the Law on Housing.
- Ensure that the needs and rights of communities in numerical minority are recognized and respected through the inclusion of their representatives in municipal selection commissions.
- Include in the selection commissions relevant staff from directorates of health and social welfare or CSWs, who have been trained in identifying and dealing with persons in need of social welfare assistance.
- Properly monitor the implementation of social housing projects by tracking disaggregated data on applicants and beneficiaries to ensure projects are implemented in a fair and non-discriminatory manner, and target any social groups that are particularly vulnerable or marginalized.
- Adhere to the legally prescribed appeals procedure to ensure that all persons' right to adequate housing is respected, as well as their right to an effective remedy when they are unduly denied social housing.

To the international community:

- Assist Kosovo institutions to realize the right to adequate housing for persons and families in need, *inter alia*, by providing the much-needed funding for social housing projects.
- Condition funding for social housing projects upon their being implemented in a manner consistent with the legal framework and applicable human rights standards.