

WORKING GROUP ON ACCESS TO HOUSING AND PROPERTY RIGHTS
GRUPI PUNUES PËT TË DREJTAT PRONËSORE DHE QASJE NË BANIM
RADNA GRUPA O PRISTUPU STAMBENIM I IMOVINSKIM PRAVIMA

STRATEGY ON HOUSING AND PROPERTY RIGHTS FOR SUSTAINABLE RETURN

15 December 2005

Background: the need to move forward

Property and returns are two of the most important challenges for Kosovo's road towards Europe. In order to become a truly democratic society Kosovo needs adequate and effective protection of individual rights, including the right to peacefully enjoy one's possessions and the right to return home in a sustainable fashion. Due to its particular history, a transition in this direction needs careful strategic planning and good coordination of all actors involved. One of the basic elements is to ensure access to land and housing to reduce pressure on the existing stock. However, housing and land administration in Kosovo is becoming increasingly difficult due both to the natural demographic pressure and the past legacy of war and destruction of residential property. Thus, despite important efforts done in the context of Standards implementation, housing and property rights protection in Kosovo continues to be weak. This situation directly affects the right of displaced persons to return home in a sustainable fashion and hinders the road to Europe.

For these reasons, a common road ahead must be sought and followed. Civil society, including the displaced persons themselves, PISG and UNMIK have shared roles and responsibilities towards changing this situation. Kosovo needs a coordinated and strategic approach of all actors involved in which lessons learnt and best practices from the Balkan region and abroad are used and followed accordingly. The process of developing this first strategy has signified thus an opportunity for all actors involved to have a say in the future policies of the Ministry of Communities and Returns and the UNMIK Office of Returns, Communities, Returns and Minorities (OCRM).

Interrelated, interdependent and indivisible rights

In practice, the protection of housing and property rights needs the effective functioning and joint efforts of the courts, the police, the municipalities, the ministries, the cadastre and the international community towards the fulfillment of international standards on both economic, social, cultural and civil and political human rights (the right to property (Article 1, Protocol 1, European Convention for Human Rights), the right to home (Article 8, ECHR), the right to an effective remedy (Article 13, ECHR), to fair trial (Article 6, ECHR), to freedom of movement (Article 2, Protocol 4, ECHR) and the right to adequate housing (Article 11.1, International Convention on Economic, Social and Cultural Rights)-. The right to sustainable return, as the United Nations Security Council portrayed in UNSC 1244, is to some extent the sum of all these interdependent rights as it pertains to displaced persons and refugees, and is therefore a consequence of the establishment of democratic and human rights abiding institutions.

In this regard, the right to sustainable return, while more limited in scope, requires an adequate level of protection and promotion of all these rights and obligations. A strategy on return and property rights must take into consideration good governance practices in the area of urban management (including the regulation of construction and inclusive spatial and urban

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planning), specific measures to ensure administrative and judicial protection of the right to property and related rights, measures to ensure access to adequate and affordable housing as well as policies that aim to positively reinforce social and cultural perceptions towards the legitimacy of property laws based on human rights standards.

A proposed way ahead

Through an open consultative process with the participation of local and international authorities (UNMIK, PISG, Municipalities, UNHCR, UNDP, Country Offices) as well as civil society organizations (Praxis, Movement for Peace Development and Liberation, Civil Rights Project of Kosovo, Mother Theresa Society, Roma and Ashkali Documentation Center), Internally Displaced Persons representatives (thanks to the support of the legal NGO Padem), the Working Group on Property Rights and Access to Housing, co-chaired by the OSCE and the Ministry of Environment and Spatial Planning, has developed this initial strategy for the use of the Ministry of Communities and Returns and OCRM. This strategy aims to open a necessary process of re-evaluation of practices and proposals and to be a living document, open for suggestions and recommendations by all stakeholders.

THEMATIC AREA I: SUSTAINABLE RESOLUTION OF ALL CONFLICT RELATED PROPERTY CLAIMS AND EFFECTIVE PROTECTION OF PROPERTY RIGHTS.

Goals:

- Ensure the timely resolution of all outstanding conflict related property claims, including those related to agricultural and commercial property.
- Improve the functioning of the regular courts in protecting displaced persons, refugees and minority community individual's property rights.
- Integrate parallel administrative and judicial structures and end the legal uncertainty created by their past and present activity.
- Ensure access to judicial and cadastral records displaced in Serbia proper.
- Increase cooperation between Kosovo administrative and judicial institutions and those in Serbia proper.
- Sanction and prevent unlawful transactions.
- Ensure the sufficient provision of affordable legal aid and access to justice to IDPs and minority community individuals.
- Sanction and prevent unlawful practices and law implementation deficiencies, such as those identified in the use of forged powers of attorney and identification documents.
- Ensure that displaced persons are able to have full access to the services of the immovable property rights register in the Municipal Cadastral Offices and adequate administrative and judicial review venues are in place and functioning.

Challenge A. Existence of a large backlog of outstanding and potential cases of illegal occupation of residential and non residential property.

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Action 1: Establishment and implementation of an effective mechanism to process conflict related claims of illegal occupation of agricultural and commercial property. (Actor: UNMIK, Supported by: PISG).

Action 2: Resolution of the 20,000 conflict related stayed civil claims for compensation against UNMIK, PISG, Municipalities and KFOR. (Actor: UNMIK (DoJ), Courts).

Action 3: Ensure effective intervention of police, including referral for prosecution when appropriate, in cases of illegal occupation of residential property after a court or an HPD ordered eviction has taken place. (Actor: Police, Supported by: HPD, Pillar I).

Action 4: Implementation of case management projects aimed to reduce the existing backlog and improve the functioning of the courts. (Actors: Ministry of Public Services (Department of Judicial Administration), UNMIK (Department of Justice)).

Action 5: Employment of additional judges and court support staff to work specifically with IDP cases. (Actors: UNMIK (Department of Justice), Ministry of Public Services (Department of Judicial Administration)).

Action 6: Temporarily exempt IDPs from paying court fees and compensate from the budget of Kosovo courts the costs of procedure, experts assessments, investigation, etc. (Actors: UNMIK (Department of Justice), Ministry of Public Services (Department of Judicial Administration)).

Action 7: Revision and improvement of the system of delivering submissions to courts and certifying reception in order to ensure timely resolution of property claims. (Actors: UNMIK (DoJ), Supported by: Courts, Legal Aid NGOs).

Action 8. Identify and help implement any other targeted measure deemed necessary to ensure access to justice by IDPs. (Actors: Working Group on Access to Housing and Property Rights).

Challenge B: Lack of clarity on validity of certain documents and need for effective access to displaced judicial and cadastral records in Serbia proper.

Action 9: Formalisation of institutional co-operation and agreements between Kosovo and Serbia proper administrative and judicial institutions to ensure effective access to justice. (Actors: UNMIK (Office of the SRSG), UNMIK (Department of Justice), Kosovo Cadastral Agency, Republic of Serbia).

Action 10: SRSG determination on the validity of displaced records and documents produced by parallel administrative structures within and outside Kosovo. (Actors: UNMIK (Office of the SRSG), UNMIK (Department of Justice), Republic of Serbia).

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Action 11: Agreement on access to displaced cadastral and judicial records. (Actors: UNMIK (Office of the SRSG), Republic of Serbia, Ministry of Public Services (Kosovo Cadastral Agency)).

Challenge C: Unlawful practices related to property related records.

Action 12: Establish effective procedures for the effective verification of the authenticity of powers of attorney, especially if issued in Serbia proper (Actors: UNMIK (DoJ). Supported by: Courts).

Action 13: Restrict the practice of court appointment of Temporary Representatives for property claims at the municipal court level. Strictly enforce the high standard for notification to IDP and absentee defendants and establish an additional procedural requirement for Department of Justice approval of such designations, to be authorized only under extraordinary circumstances. (Actors: UNMIK (Department of Justice)).

Action 14: Establish extended periods of appeals for claims already adjudicated under ‘temporary representatives’ and an instruction from the Department of Justice to judges to automatically approve fee exempt Motions to Reopen cases for the class of IDP claimants. (Actors: UNMIK (Department of Justice)).

Challenge D: Inadequate access of displaced persons and refugees to the immovable property rights registration services.

Action 15: Assess practice in the implementation of the legal framework on immovable property rights registration regarding a) the registration of transfers and other changes in the immovable property rights register, b) physical access to minority community individuals and availability of services in all languages and c) functioning of administrative and judicial remedial venues in accordance with international standards. Identify and propose measures accordingly for the effective provision of services to internally displaced persons, minority community members and refugees. (Actors: Working Group on Access to Housing and Property Rights, Kosovo Cadastral Agency, Municipal Cadastre Offices, Legal Aid NGOs, OSCE).

Challenge E: Insufficient provision of affordable legal aid.

Action 16: Inform IDPs in Serbia about the system of free legal assistance in Kosovo provided through the Kosovo Bar Association (Actors: Kosovo Bar Association, Legal Aid NGOs, UNHCR).

Action 17: Coordinate advocacy of donors to support the legal aid system in relation with displaced persons. The provision of legal aid should include civil law matters (i.e. family laws) as they are instrumental to guarantee women’s security of tenure. (Actors: Ministry of Communities and Returns, Kosovo Bar Association, OSCE, Legal Aid NGOs).

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Action 18: Joint program between the Chamber of Advocates and law faculties to involve both lawyers and current students in projects to provide legal aid to IDPs. (Actors: The President of the Chamber of Advocates and the deans of the faculties of law, supported by DoJ).

Action 19: Propose to Chamber of Advocates that practicing attorneys provide a minimum yearly course to IDP cases on a *pro bono* basis (Ministry of Communities and Returns, Chamber of Advocates).

Action 20: Establish through the law Faculty of the University of Pristina incentives for students to earn academic credits for the support of IDP claims. *Pro bono* attorneys could also satisfy their obligation by serving as mentors to law students. (Actors: University of Pristina, Faculty of Law, Legal Aid NGOs).

Action 21: Emphasize the commitment of PISG and NGO legal service providers of ‘functionalizing existing protection mechanisms’ and remedies under international law, sanctions under the Provisional Criminal Code of Kosovo for destruction of property as well as their standing to act as private prosecutors (‘injured parties’) under the Provisional Criminal Procedure Code of Kosovo for illegal occupation of property. (Actors: Ministry of Communities and Returns, MPS (DJA), Chamber of Advocates, Legal Aid NGOs).

Action 22. Identify and help implement any other targeted measure deemed necessary to ensure access to justice by IDPs. (Actors: Working Group on Access to Housing and Property Rights).

THEMATIC AREA II: EFFECTIVE REGULATION OF CONSTRUCTION TO SANCTION AND PREVENT ILLEGAL OCCUPATION OF MINORITY COMMUNITIES, IDPS AND REFUGEES LAND

Challenge F: Widespread illegal construction affects displaced property rights holders.

Goal:

-Ensure the effective implementation of the legal framework on construction by the Ministry of Environment and Spatial Planning, the Ministry of Local Government Administration and the Municipalities of Kosovo to ensure that illegal construction on IDP lands is sanctioned and future unlawful acts are prevented.

Action 23: Elaboration and implementation of targeted administrative measures directed to sanction and prevent illegal construction on displaced persons’ properties. (Actors: Ministry of Environment and Spatial Planning, Municipalities, Ministry of Local Government Administration).

Action 24. Identify and help implement any other targeted measure deemed necessary to ensure effective regulation of construction to promote the right to sustainable return. (Actors: Working Group on Access to Housing and Property Rights).

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THEMATIC AREA III: PROVISION OF ALTERNATIVE FORMS OF ACCESS TO HOUSING AND LAND, REGULARISATION OF INFORMAL SETTLEMENTS AND TEMPORARY HOUSING FOR IDPS

Goals:

- Reduction of the pressure on the housing and land market that leads to unlawful occupation of residential properties and land.
- Provision of additional and alternative social and housing finance schemes to the displaced and the society as a whole.
- Protection and promotion of the right to adequate housing and to an adequate standard of living of displaced persons, including those who transferred their homes in the place of origin and those whose homes are still destroyed.
- Creation of legal security of tenure for displaced and returnee informal settlements inhabitants.
- Equal access to public services for informal settlements inhabitants, particularly returnees and displaced individuals.
- Protect the right to return home of persons displaced from informal settlements.
- Recognition of all informal settlements in Kosovo as such, including those in which destruction and displacement has occurred, and effective fulfilment of governmental obligation towards them.

Challenge G: Insufficient access to housing and alternative housing for evictees.

Action 25: Development and implementation of socially intended housing policies that include displaced persons and minority communities, provide temporary housing for IDPs as appropriate and provide additional housing units relieving pressure on the general housing stock. Specific measures should be taken to support women heads of households in vulnerable situations. (Actors: Ministry of Environment and Spatial Planning, Ministry of Labour and Social Welfare, Municipalities, supported by UN Habitat).

Challenge H: Non-implementation of HPD rental scheme

Action 26: Ensure the implementation of a mechanism for the administration of IDP/Refugee properties and the development of a rental scheme for the benefit of the displaced property right holders that includes gender criteria. (Actors: UNMIK, (HPD)/PISG, MESP, Municipalities).

Challenge I: Need for innovation in housing finance models.

Action 27: Assessment of needs and options in the development and implementation of mutual assistance schemes, issuance of covered bonds and other housing finance possibilities that benefit IDPs and the general public including women in vulnerable situations. (Actors: Ministry of Environment and Spatial Planning (Housing and Construction Department), Ministry of Labour and Social Welfare, Municipalities).

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Action 28: Use temporary administration of residential properties by HPD as a tool to facilitate return. (Actors: UNMIK (Housing and Property Directorate), Municipalities).

Challenge J: Informal housing settlements inhabitants lack legal security of tenure.

Action 29: Undertake measures such as the allocation of land use, the registration of informal transfers, the incorporation in urban plans and the development of housing schemes to secure access to housing and secure property tenure of persons displaced from informal settlements and to protect their right to return home. (Actors: Municipalities, Ministry of Environment and Spatial Planning, Ministry of Communities and Returns, Ministry of Public Services, Office of Communities Returns and Minority Affairs, other UNMIK and PISG actors as required).

Action 30: Inclusion of specific guidelines for municipalities on the regularization of informal settlements in the new returns manual and strategies. (Actors: Ministry of Communities and Returns, OCRM, MESP, Municipalities).

Action 31: Identify and help implement any other targeted measure deemed necessary to ensure access to housing by IDPs and the general public. (Actors: Working Group on Access to Housing and Property Rights).

THEMATIC AREA IV: SOCIAL AND CULTURAL PERCEPTIONS ON ILLEGAL OCCUPATION

Goals:

- Strengthen the perception of the legitimacy of laws through the promotion of international human rights standards.
- Raise awareness on international human rights standards related to housing and property.

Challenge K: Insufficient respect for others' persons property rights erodes the rule of law.

Action 32: Development and implementation of further public information campaigns to promote the rule of law; (Actors: MESP/OSCE, Ministry of Communities and Returns, Office of Communities Returns and Minority Affairs, Office of the Prime Minister, Working Group on Access to Housing and Property Rights).

Action 33: Further inclusion of international human rights standards related to housing, property and return in the school and university curricula. Actors: Ministry of Education).

Action 34: Implementation of a double occupancy policy for illegal occupation of residential property by civil servants modelled in the OSCE Mission in Bosnia and Herzegovina experience. (Actors: UNMIK, PISG (Ministries, Municipalities, Office of the Prime Minister)).

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Action 35. Identify and help implement any other targeted measure deemed necessary to strengthen perceptions on the legitimacy of property laws based on international human rights standards. (Actors: Working Group on Access to Housing and Property Rights).