

You are displaced, your rights are not: Kosovo experiences in operationalising the right of displaced persons to return home and to recover possessions.

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

Comparing the results of property restitution, returns and resettlement programmes with the appalling massive scale of displacement at the global level does not lead to much optimism. However, encouraging recent developments in international human rights standards –i.e., the 2005 UN Sub-Commission on Human Rights ‘Pinheiro Principles’ and the UN General Assembly ‘Reparation Principles’- as well as relatively successful international interventions in the Balkans reflect a positive trend.

A logical inference would lead to assume that similar processes should be successfully replicated elsewhere as models for intervention.² This opens the questions first as to what extent the specific instruments applied in the Balkans have been successful in achieving their objectives and secondly whether they are a feasible option for other conflicts, especially when the other scenarios lack the institutional tissue and the broad powers the international community has had in the Balkans.

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

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² ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’, UN Doc. A/RES/60/147 (March 21, 2006). See the UN Sub-Commission on Human Rights ‘Housing and property restitution in the context of the return of refugees and internally displaced persons’ (the Pinheiro Principles) E/CN.4/Sub.2/2005/17, 28 June 2005: “The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.” This paper was prepared for the COHRE Sri-Lanka Office Conference on Internal Displacement and Property Restitution in Sri Lanka 29 October 2007.

Both actors had powers to help ensure return of the displaced and recovery of their possessions, as established by both the 1995 Dayton Agreements in BiH and the 1999 UN Security Council Resolution 1244 in Kosovo.³

While in the Bosnian example, the Commission for Real Property Claims (CRPC) and the Property Law Implementation Plan (PLIP) are usually presented as overall successes, the case of Kosovo and the Housing and Property Directorate/Housing and Property Claims Commission (HPD/HPCC, now Kosovo Property Agency) continues to present challenges.⁴ Thus, in the verge of a –though delayed- likely status transition the protection of the rights of displaced persons to housing and property restitution and to return home has only partially been fulfilled for the minority communities (Kosovo Serb and Kosovo Roma, Ashkali and Egyptians).

Thus, thousands remain displaced in and out Kosovo, often in inadequate conditions in collective shelters or occupying unfinished buildings with poor infrastructure and unhealthy sanitary conditions. Surprisingly, assistance for resettlement is almost non-existent. Eight years after the conflict, and due to both fear and lack of opportunities, the displaced have not returned. A large portion of the HPCC decisions have not resulted in the repossession of the home by the displaced property right holder (generally non-willing to return due to security and other concerns) but either in the sale of the property or in its temporary administration pending a better solution.⁵ This fact questions to a certain extent the substantive effectiveness of the remedy offered – repossession and/or temporary administration-. The reasons for HPD/HPCC process not leading to returns are manifold. First of all, an initial lack of resources considerably delayed the processing of claims in the earlier stages thus losing a critical momentum. Secondly, a third of the claims implemented resulted in declaratory statements over destroyed property, offering no other possible remedy. In this sense, the non adequacy of repossession as a remedy when freedom of movement is lacking opens the question of the feasibility of compensation as an alternative. In Kosovo, this has not been offered. Almost twenty thousand claims for compensation remain currently suspended at the request of the UNMIK Department of Justice. Most importantly, due to an initial decision prioritising residential claims over land claims, claims over agricultural and commercial property were not addressed until 2006, when the mandate of HPD/HPCC was expanded through its transformation into the Kosovo Property Agency (KPA). The KPA is a similar structure to the HPD/HPCC. It has a broader mandate as well as the possibility of judicial review by the Supreme Court. Moreover a Supervisory Board with administrative and policy guidance ensures the participation of the local government (without interference with the work

³ Article 1, Annex VII of the Dayton Agreements states that: ‘All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them’. UN Security Council Resolution 1244 reaffirms ‘the right of all refugees and displaced persons to return to their homes in safety’. The unimpeded return of refugees and displaced persons are a responsibility of both international civil and military presences.

⁴ See UNMIK Regulation No. 2000/60 .On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission and UNMIK Regulation No. 2006/50, On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, both available at www.unmikonline.org.

⁵ See OSCE Mission in Kosovo June 2007 report ‘Eight Years After: Minority Returns and Housing and Property Restitution’, available at www.osce.org/kosovo.

of the Property Claims Commission (PCC)). The main challenge to the institution so far has been its financing. Budgetary constraints have affected the functioning of HPD/HPCC (and today the KPA) since its creation. In the meantime, the caseload continues to grow and is now close to 30,000 cases, doubling the expectations.⁶

Other areas of concern affecting the protection of the rights of the displaced are the displacement and loss of cadastral and judicial records, the forgery of property related documents (including identity cards used in fraudulent transactions) and the conduct of expropriations by local authorities without due regards to the requirements to verify, notify and compensate property right holders (sometimes displaced persons).⁷

Minority returns

The returns process in Kosovo was a considerable success for the majority Kosovo Albanian population. Kosovo Albanian refugees and displaced persons returned massively after the entry of KFOR troops in 1999 and with great international assistance for reconstruction. However, the return of the displaced minority communities (primarily Kosovo Serb, and in lower numbers Kosovo Roma/Ashkaeli and Egyptians) was compounded by security concerns, lack of economic opportunities, political pressures from the Belgrade authorities and, in the case of the Kosovo Roma/Ashkaeli and Egyptian communities –who lived in informal settlements before the war- lack of registered title, documents or otherwise secure property tenure. Efforts to operationalise housing rights obligations and ensure the allocation of land title and housing to property-less Kosovo Roma/Ashkaeli and Egyptian were not generally successful, with the relative punctual exception of the ‘Roma Mahala’ in the divided city of Mitrovica/Mitrovicë.⁸

In all, the Kosovo minority returns structure of project development and implementation which had sustainability as its main criteria failed to produce the expected results, despite efforts. The transfer of competencies from international to domestic authorities did not improve the situation. A positive move has taken place, however, towards progressively engaging displaced persons in the process.

While it is difficult to identify lessons from the Kosovo example which could be valid for other scenarios, clearly a mass claims mechanism coupled with a return and reconstruction structure has most chances of successfully benefiting the displaced if all factors are adequately considered in its early conception and planning. Finding the most effective remedy to the disturbance created by war is the greatest challenge. In doing that, all options for alternative dispute mechanisms (including mediation), remedies (including compensation schemes) and provision of land and housing (including new title whenever necessary) should be thoroughly considered. Integrated returns and restitution possibilities, such as the mass implementation of decisions in a particular location can be useful. The participation of displaced persons in the strategic planning and implementation of such programmes is always of outmost importance. They are most aware that although they are displaced, their rights are not.

⁶ See the HPD/HPCC website (www.hpdkosovo.org) and the KPA website (www.kpaonline.org).

⁷ See OSCE Mission in Kosovo report on ‘Expropriations in Kosovo’ (December 2006).

⁸ The reconstruction of the neighbourhood implied the allocation of 3.5 Hectares of socially owned land to house the former inhabitants without registered title, the redefinition of urban plans and a special housing scheme with limited user rights.

22 October 2007