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MISSION IN KOSOVO

Department of Human Rights, Decentralization and Communities

Eight years after
Minority returns and housing and property restitution in Kosovo

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GLOSSARY OF ABBREVIATIONS

ASB	Arbeiter-Samariter-Bund
CCK	Coordination Center for Kosovo
CEO	Chief Executive Officer
CIMC	Central Inter-ministerial Commission for Reconstruction
COCG	Communities' Outreach and Communication Group
CRM	Central Review Mechanism
DoJ	Department of Justice
ECHR	European Convention on Human Rights
EUPT	European Union Planning Team
HPCC	Housing & Property Claims Commission
HPD	Housing and Property Directorate
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Persons
KFOR	Kosovo Force
KPA	Kosovo Property Agency
KPC	Kosovo Protection Corps
KPCC	Kosovo Property Claims Commission
MAP	Municipal Assembly President
MCR	Ministry of Communities and Returns
MDP	Municipal Development Plans
MHC	Municipal Housing Committees
MR	Municipal Representative
MRO	Municipal Returns Officer

MRS	Municipal Return Strategies
MWG	Municipal Working Group
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organization
UNMIK OCRM	UNMIK Office of Communities, Return and Minority Affairs
UNMIK OLA	UNMIK Office of Legal Adviser
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
SRSG	Special Representative of the Secretary-General
TPA	Tri-Partite Agreement
TF	Task Force
UDHR	Universal Declaration on Human Rights
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOSEK	United Nations Office of the Special Envoy to Kosovo

EXECUTIVE SUMMARY

Housing and property restitution and returns of displaced persons after a conflict are separate but interrelated and interdependent processes that require a strategic planning, involving all stakeholders in order to be successful. Housing and property restitution, combined with security safeguards and providing socio-economic development opportunities are pre-requisite for the sustainable return and reintegration of displaced persons and refugees.

The rights of refugees and displaced persons to return and to housing and property restitution are internationally recognized standards. The right of displaced persons and refugees to return and its implications with regard to the right to property and to an effective remedy have been most recently articulated in the “Principles on Housing and Property Restitution for Refugees and Displaced Persons”, adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights in 2005. These principles were developed in order to consolidate the existing standards and to ensure consistency of the response of the international community to housing and property restitution challenges in post-conflict societies.

In Kosovo, minority returns have been scarce despite the development of comprehensive returns mechanisms and strategies by the international community and the PISG. The fact that returns remain a priority eight years after the conflict reflects the reality that all mechanisms and strategies developed were not successful in providing adequate protection of the rights of returnees.

The commitment to ensure voluntary minority returns is therefore reaffirmed in the recent comprehensive proposal for a status settlement in Kosovo. Most recently, the Council of Europe has highlighted the importance of this objective to the UNMIK Special Representative of the Secretary General.

The reasons for the insufficient number of minority returns in Kosovo are manifold. Some of the main findings in this report that show the scale of the problem are as follows:

- In June 2007, 10,405 residential properties belonging to currently displaced persons remain destroyed;¹
- As of June 2007, the Kosovo Property Agency (KPA), successor of the Housing and Property Directorate (HPD), has received more than 23,629 claims over residential, agricultural and commercial private property;
- More than 20,000 claims requesting compensation for war related damage are currently suspended and pending an adequate solution;
- Thousands of individuals remain displaced since the 1999 conflict within and outside of Kosovo - some as a result of the March 2004 riots- and have not, for various reasons, chosen to return to their homes and to recover their possessions.²

¹ Source: Housing and Property Directorate Website. This figure leads to estimates of remaining displaced population lower than the CCK and UNHCR estimates and closer to the calculations of the European Stability Initiative.

Many displaced persons and refugees have began a new life elsewhere and do not intend to return to their places of origin. Some have sold their properties. Many live in poor housing conditions in other areas of Kosovo or in Serbia proper.

Through its monitoring activities and field presence in Kosovo, the Organization for Security and Co-operation in Europe (OSCE) has assessed the practical realization of the housing and property restitution and return process in Kosovo.

This report analyzes in depth the development of the new returns structures, the housing and property restitution process, the resolution of claims related to conflict damage and other relevant challenges to the protection of displaced persons' rights. The March 2004 Riots Reconstruction Program, responding to the crisis which temporarily halted returns and housing and property restitution, is also analyzed.

The assessment focuses on voluntary returns and reintegration and does not assess in depth the challenges resulting from the increased numbers of forced repatriations to Kosovo, nor the situation of asylum seekers and refugees. It also does not comprehensively address all challenges to the protection of the rights of displaced persons and refugees and does not fully address the issues of interference with human rights of the persons currently occupying the housing, land or property of displaced persons and refugees.

For the purposes of this report, the OSCE uses the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the "Pinheiro Principles") as an analytical tool.³

The OSCE has identified various areas that need further attention. As for the implementation of the structural reforms in the returns process, the areas of concern are as follows:

- Funding of returns projects;
- property rights safeguards in returns projects;
- guidance on procedures for housing and land allocation;
- integration of returns and displaced persons protection in the municipal development plans;
- effective displaced persons' participation; and
- measures to improve housing of displaced persons where they currently live.

Furthermore, the OSCE has identified a number of concerns with regards to the protection of displaced persons and refugees' rights such as:

² The Co-ordination Centre for Kosovo and Metohija sources list up to 242,381 persons belonging to Kosovo Serb and Kosovo RAE communities who are displaced within and outside Kosovo. Source CCK Website (<http://www.kc.gov.yu/D-ENGLISH/dokumenti-eng/program-povratka-eng.html>) accessed on 31 January 2007. The NGO European Stability Initiative (ESI) considers that two thirds of the pre-war Kosovo Serb population remain in Kosovo and estimates the displacement figures outside Kosovo to be 65,000 and the figures of Kosovo Serbs living in Kosovo to be 130,000.

³ These principles were formally endorsed by the United Nations Sub-commission on the Promotion and Protection of Human Rights on the 11 August 2005. (Principles on Housing and Property Restitution for Refugees and Displaced Persons. E/CN.4/Sub.2/2005/17)

- Existence of an unresolved caseload of compensation claims;
- Lack of effective responses to fraudulent transactions;
- Irregular use of temporary representatives in courts;
- Lack of effective protection of empty reconstructed properties.

With regard to the Kosovo Property Agency's (KPA) mandate, the main challenges are related to the implementation of the decisions of the Kosovo Property Claims Commission (KPCC). It is important, thus, to ensure that subsidiary legislation is adopted and that important ongoing initiatives, such as the rental scheme, are adequately implemented. Providing the possibility of land administration as a remedy for successful claimants creates opportunities for both local rural economic development and regular income to displaced persons' provision. Co-ordination of the activities of KPA and return structures would help the return process in practice (for example through mass implementation of decisions related to specific areas).⁴

The OSCE believes that the housing, land and property rights aspects of the comprehensive strategy developed by UN and the PISG need to be strengthened and prioritised in the context of the status transition and to become an integral part of the status implementation process. This will help prevent future displacement and allow for better living conditions for displaced persons.

⁴ See "An Evaluation of the Housing and Property Directorate in Kosovo", by Bjorn Vagle and Fernando de Medina, Nordem Report 12/2006, page 107.

RECOMMENDATIONS

To the Government of Kosovo

Develop a Strategy and an Action Plan on Returns, Reintegration, Housing and Property Restitution consistent with its overall Human Rights Strategy.

Implement, as appropriate, the Protocol on Voluntary and Sustainable Returns, in co-operation with UNMIK and the Republic of Serbia.

Ensure the functioning and access to the March 2004 Reconstruction Programme claims panel.

To the Ministry of Communities and Returns

Guide the Municipalities in the development and implementation of effective Municipal Returns Strategies and their incorporation in Municipal Development Plans.

Assess possibilities for the protection of empty reconstructed properties, including administration by relevant bodies.

Finalise the establishment of the IDP database and produce regular statistic reports on displacement.

To the Kosovo Cadastre Agency

Establish, through a Memorandum of Understanding with the Kosovo Property Agency, an efficient mechanism to register titles whenever appropriate after decisions of the Property Claims Commission.

To the Kosovo Property Agency

Increase outreach efforts to explain the remedies offered by the KPA to displaced property right holders in co-operation with all relevant stakeholders.

Ensure that the implementation of the rental scheme is effectively expanded to all properties under its administration.

Ensure, in co-operation with UNHCR and the OSCE, that Municipal Return Officers are fully informed of the KPA process in order to support returns and reintegration.

To the Municipalities

Ensure that displaced persons are adequately notified of any administrative action affecting their property rights and provided with effective remedial venues against them.

Ensure the development of effective Municipal Returns Strategies that take into account the needs of displaced persons within the Municipality as well as possible forced repatriations and integrate them in the Municipal Development Plans.

Assess land and housing needs of displaced persons within the Municipality and incorporate them into municipal housing strategies.

In co-operation with UNMIK or successor body, facilitate access to land when necessary for the implementation of returns and reintegration projects.

Co-ordinate through Municipal Returns Officers with the KPA at the local level to ensure that displaced persons and returnees are aware of the remedies provided by the agency.

To the Kosovo Police Service

Strengthen, in co-ordination with UNHCR, KPA and Municipal authorities, existing mechanisms to ensure that empty reconstructed properties, residential properties subject to lawful evictions and other immovable property belonging to vulnerable groups is adequately protected from damage and unlawful occupation.

To the Kosovo Judicial Institute

Ensure regular training to the courts on the different aspects of the mandate of the Kosovo Property Agency over conflict-related property claims, including on the implications of the final binding force of HPCC decisions.

To the Serbian Ministry for Kosovo

Participate in the returns structure so as to ensure that all projects funded by the Coordination Center for Kosovo (CCK) follow the guidelines and principles reflected in the revised Manual for Sustainable Returns.

Help ensure the return of cadastral and judicial records originating or pertaining to Kosovo which are currently located in Serbia proper.

To UNHCR

Integrate housing and property rights protection considerations, such as transparent and non-discriminatory beneficiary selection and property rights verification procedures, into its capacity building program on returns.

Ensure municipal authorities access to statistics on displacement and returns.

To the UNMIK Department of Justice

Develop a proposal together with other stakeholders to expeditiously adjudicate the property related cases filed by Kosovo Serbs against KFOR, UNMIK, Municipalities and

individuals suspended in 2004 (and related cases), including assistance to courts and judges and elimination of legal impediments.

Revise and streamline procedures for the prevention of fraudulent transfers, such as the verification of letters of authorisation issued in Serbia proper.

To the UNMIK/Office of Communities, Returns and Minorities

In co-operation with the Ministry on Communities and Returns guide the MWGs on procedures for the allocation of land and housing to displaced persons in return and reintegration projects.

To the UNMIK Office of the Legal Adviser

Expedite the development of the legislation necessary for the full implementation of the Kosovo Property Agency mandate, including outstanding legislation regulating compensation for the implementation of residential property claims.

To the European Union Planning Team

Take into account the need for a co-ordinated strategy on housing and property restitution and return and reintegration into the EU plans for a Mission in Kosovo.

To international donors

Assess possibilities for funding reconstruction of the outstanding minority destroyed properties as well as opportunities for integration in connexion with the implementation of the KPA mandate (i.e., land administration).

1. Introduction: the rights of displaced persons and refugees to return and to housing and property restitution.

The rights of displaced persons' and refugees⁵ to return home and to housing and property restitution⁶ are recognised international human rights standards, implicit in the European Convention for Human Rights and Fundamental Freedoms (ECHR) and promoted by the UN in all post-conflict settings.⁷ More recently, these rights have been articulated in the “principles on housing and property restitution for refugees and displaced persons”, also known as the “Pinheiro Principles”, adopted in August 2005.⁸ This assessment primarily focuses on principle 2, or “the right to housing and property restitution”, and Principle 10, or “the right to voluntary return in safety and dignity”.

The housing and property restitution principle provides that refugees and displaced persons “have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land/or property that is factually impossible to restore as determined by an independent, impartial tribunal”. Principle 10, or the “right to voluntary return in safety and dignity”, states that “all refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity (...)”. It is important to note that the “Pinheiro Principles” contain a much broader elaboration of housing and property restitution rights for refugees and displaced persons, which include legal policy on procedural and institutional implementation mechanisms as well as considerations related to the rights of secondary occupants (against arbitrary or unlawful forced eviction). In all, the “Pinheiro Principles” can be summarized in the rights to:

- Housing and property restitution;
- Protection from displacement;
- Peaceful enjoyment of possessions;
- Adequate housing;
- Respect for home and privacy;

⁵ The term ‘refugees and displaced persons’ includes those persons displaced across borders, for example due to conflict or disaster, who may not meet the legal definition of a refugee under international refugee law. See Explanatory Notes on the Principles on Housing and Property Restitution for Refugees and Displaced Persons. E/CN.4/Sub.2/2005/17/Add.1, 8 July 2005, para. 2 and 3.

⁶ Throughout this text, the term ‘restitution’ refers to ‘an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position’. See *supra* nota.

⁷ See Article 8 (Right to Respect for Private and Family Life), Article 14 (Prohibition of Discrimination), Article 1, Protocol 1 (Right to Property) and Article 2, Protocol 4 (Freedom of Movement) of the ECHR. See UN Security Council Resolutions 1287 (2000), 1036 (1996), 971 (1995) and 876 (1993) on Abkhazia and the Republic of Georgia; UN SC Resolution 820 (1993) on Bosnia and Herzegovina and UN SC Resolution 1244 (1999) on Kosovo. Regarding the right to return to one’s country, see Article 13(2) of the Universal Declaration of Human Rights (UDHR); Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR); Articles 45, 127, 132, 134 and 135 of the Geneva Convention on the Protection of Civilian Persons in Time of War; and article 12 (2) of the African Charter on Human and Peoples’ Rights.

⁸ After years of discussion and input from experts involved in property restitution programmes in such places as Kosovo and Guatemala the ‘Pinheiro Principles’ were formally endorsed by the UN Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. See Principles on Housing and Property Restitution for Refugees and Displaced Persons, E/CN.4/Sub.2/2005/17.

- Freedom of movement; and
- Voluntary return in safety and dignity.

It is important to note that the right of displaced persons to return and to housing and property restitution has a dual character: it implies both the need for measures to promote returns and the need for available effective remedies against a human rights violation.⁹ Measures to promote the right to return imply that there should be in place:

- a) effective, transparent and accountable structures for the allocation of reconstruction, land and housing assistance and the implementation of comprehensive and balanced returns projects; and
- b) remedial venues against the unlawful occupation of housing, land and other property; against harassment, threats and forced departure and from coercion and/or fraud in the conduct of immovable property transfers.

The basic principles that guide the return process can be summarized by the need for returns to be voluntary, safe and sustainable.¹⁰ Return should take place in dignity and should be based on the free and informed choice of the displaced person. In this respect, the mechanisms for the protection of the right to housing and property restitution need to be accessible, efficient and respect international human rights standards. In addition state authorities are obliged to ensure that displaced persons enjoy adequate housing conditions and are protected from forced evictions.¹¹

These standards are also reflected in the UN Guiding Principles on Internal Displacement,¹² which reflect an earlier effort to enhance the protection of internally displaced persons by the UN Human Rights Commission. The “Guiding Principles” emphasize the obligations of the state towards internally displaced persons. In addition, considering their vulnerability to be forcibly evicted by local authorities due to their situation of displacement, principle 21 provides that “properties shall in all circumstances be protected; property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use”.

In Kosovo, the primary source of the rights of displaced persons and refugees to return and to housing and property restitution is UN Security Council Resolution 1244. In line

⁹ Williams C. Rhodri, ‘Post-conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for Standard-Setting and Practice’, *New York University Journal of International Law and Politics*, Volume 37, Number 3, Spring 2005, page 451.

¹⁰ See 27 May 2002, UNMIK concept paper on “The Right to Sustainable Return”.

¹¹ The UN Committee on Economic, Social and Cultural Rights (CESC), in its General Comment 7 (The Right to Adequate Housing: Forced Evictions) defines ‘forced evictions’ as the ‘permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection’. The Committee states that evictions ‘should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available’.

¹² Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2

with Annex VII of the Dayton Agreements, which settled the conflict in Bosnia and Herzegovina, this resolution reaffirms the right of all refugees and displaced persons to return to their homes in safety as one of the responsibilities of the international civil and security presence in Kosovo.¹³ Moreover, the Constitutional Framework for Provisional Self-Government in Kosovo guarantees the right of all refugees and displaced persons from Kosovo “to return to their homes, and to recover their property and personal possessions” and states that “the competent institutions and organs in Kosovo shall take all measures necessary to facilitate the safe return of refugees and displaced persons to Kosovo, and shall cooperate fully with all efforts by the UNHCR and other international and non-governmental organizations concerning the return of refugees and displaced persons”.¹⁴

Despite this framework and the different strategies and programs developed in the last eight years (see Chapter 2), returns in Kosovo have been scarce with regard to minority communities (Kosovo Serb, Roma, Ashkali, Egyptians and Kosovo Albanians in municipalities where they constitute a relative minority).¹⁵ Returns have therefore remained a high political priority for both UNMIK and the PISG, as well as for human rights organisations. Thus, the Parliamentary Assembly of the Council of Europe, for example, recently transmitted the need to protect the right to return to the UNMIK SRSG.¹⁶

Most importantly, the proposal of the United Nations Office of the Special Envoy to Kosovo (UNOSEK) for a status settlement in Kosovo reaffirms the need to promote the right to return. Article 4 of the proposal states that “all refugees and internally displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions in accordance with domestic and international law”. Moreover, Kosovo is expected to “take all measures necessary to facilitate and to create an atmosphere conducive to the safe and dignified return of refugees and displaced persons, based upon their free and informed decisions”. The terms of the proposal are to be supervised by a double hatted International Civilian Representative and European Union Special Representative.

The proposal gives the UNHCR the lead role in assisting the competent authorities in extending protection and assistance to returnees, as well as in reporting publicly on these issues.¹⁷ In this regard, UNHCR has recently signed a Memorandum of Understanding with the Government of Kosovo for the implementation of a capacity building and monitoring program on returns and reintegration, including the creation of an internal protection capacity at the municipal level.

¹³ UNSC Resolution 1244 (1999), Preamble, section 9 c, 11 k, 13 and Annexes.

¹⁴ UNMIK Reg. 2001/9, 15 May 2001, preamble and section 3.4.

¹⁵ 16,117 persons as of December 2006, according to UNHCR. This figure does not take into account departures.

¹⁶ See Council of Europe Parliamentary Assembly Resolution 1533 (2007) and Recommendation 1780 (2007) on the Current Situation in Kosovo.

¹⁷ UNOSEK Comprehensive Proposal for a Status Settlement in Kosovo. Article 4. Rights of Refugees and Internally Displaced Persons.

2. Return process structures and procedures

The returns process is organised through a multi-stakeholder structure which is separate from the mechanism set up to ensure housing and property restitution. The return process structure aims to ensure effective, transparent and accountable structures for the allocation of reconstruction, land and housing assistance and the implementation of comprehensive and balanced returns projects for displaced persons, refugees and their receiving communities (see Fig.1). This involves a considerable number of actors with different roles and responsibilities. UNMIK and the PISG have jointly defined the roles and responsibilities of each actor in the “Revised Manual for Sustainable Return”, published in 2006. The Manual, thus, provides a policy framework and a structure for inter-institutional co-ordination in the development, funding and implementation of returns and reintegration projects.

Actors directly involved in the returns process range from the PISG Ministry of Communities and the UNMIK Office of Communities, Returns and Minorities to the municipalities, civil society organisations and the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) – with an increasing role in institutional capacity building on returns matters, UNMIK, and OSCE representatives. Also Republic of Serbia governmental bodies continue to take part in the process, including the Serbian Commissariat for Refugees (Commissariat)¹⁸ and the Coordination Centre for Kosovo (CCK).¹⁹

The most fundamental components of the returns structure are:

- a) the Municipal Working Group on Return (MWG) the local coordination and implementation forum for all return related activities, chaired by the Municipal Assembly President;
- b) the Central Review Mechanism, chaired by the Ministry of Communities and Returns (MCR) and in charge of revising proposed return projects;
- c) the Steering Group, a policy guidance body co-chaired by the UNMIK SRSG and the Prime Minister; and
- d) the Communities Outreach and Communication Group (COCG), chaired by the Ministry of Communities and Returns and responsible to ensure outreach to displaced persons and the general public.²⁰

The main characteristics of the transformed returns structure reflect the increased ownership of the municipalities and central government in taking the lead of return-

¹⁸ The Commissariat for Refugees is a state administration body that performs tasks related to identifying refugee status, caring for refugees, keeping records, coordinating humanitarian aid provided by other agencies and organization as well as monitoring the equal and timely provision of such aid. The Commissariat works to provide favorable conditions for returns. For more information in the Commissariat, visit: www.kirs.sr.gov.yu.

¹⁹ See: www.kc.gov.yu; The key purpose of the Program for Return is to create conditions that would encourage permanent development of interethnic relations that would prevent Serbs from leaving Kosovo. In Kosovo, the Commissariat performs the following tasks related to IDPs: registering IDPs and issuing ID-cards to the displaced; accommodates and supports IDPs in collective centers in Serbia as well as 17 collective centers in Kosovo; and provide individual humanitarian support to IDPs as well as their associations. For more information on the CCK

²⁰ See Revised Manual for Sustainable Returns, Operational Guidelines, page 13.

related issues as well as the strengthened role of civil society organisations. They also reflect the importance of the participation of the CCK in the process.²¹ The returns operational framework aims also to be more flexible in order to provide guidance and respond to every scenario.

The MWG continues to be the “engine” of the returns process and the most important local co-ordination and implementation forum for all return-related issues, projects and activities. The MWG chair has been transferred from the UNMIK Municipal Representative to the Municipal Assembly President. Participants in the MWG are local municipal authorities, NGOs, Kosovo Police Service, displaced persons representatives, UNMIK, UNHCR and the OSCE. In addition, the new Manual incorporates a “Protocol on Voluntary and Sustainable Returns” signed by UNMIK, PISG and the Government of Serbia. The Protocol establishes a mechanism for the provision of reconstruction assistance to voluntary returnees at the municipal level within 60 days from the date displaced persons stating their intention to return. This mechanism has, however, not been implemented yet.

The emphasis of return process structures on inter-institutional co-ordination is a result of the lessons learned showing non sustainability of the projects. For example, the Kosovo Serb return project to Osojane/Osojan²² was the first ever to be implemented Kosovo-wide in 2001. However, there continues to be virtually no interaction between the returnees and the neighbouring communities due to the failure to implement a co-ordinated project supported by all actors.²³ The first “Manual on Sustainable Returns”, issued in 2002, reflects this lesson and places a strong emphasis on sustainability. The returns process to the village of Videjë/Vidanje (Klinë/Klina Municipality), represents a good example of constructive co-ordination between the CCK and other actors implementing the return project.

In its assessment of the functioning of the returns structure, the OSCE has identified various areas that need further attention:

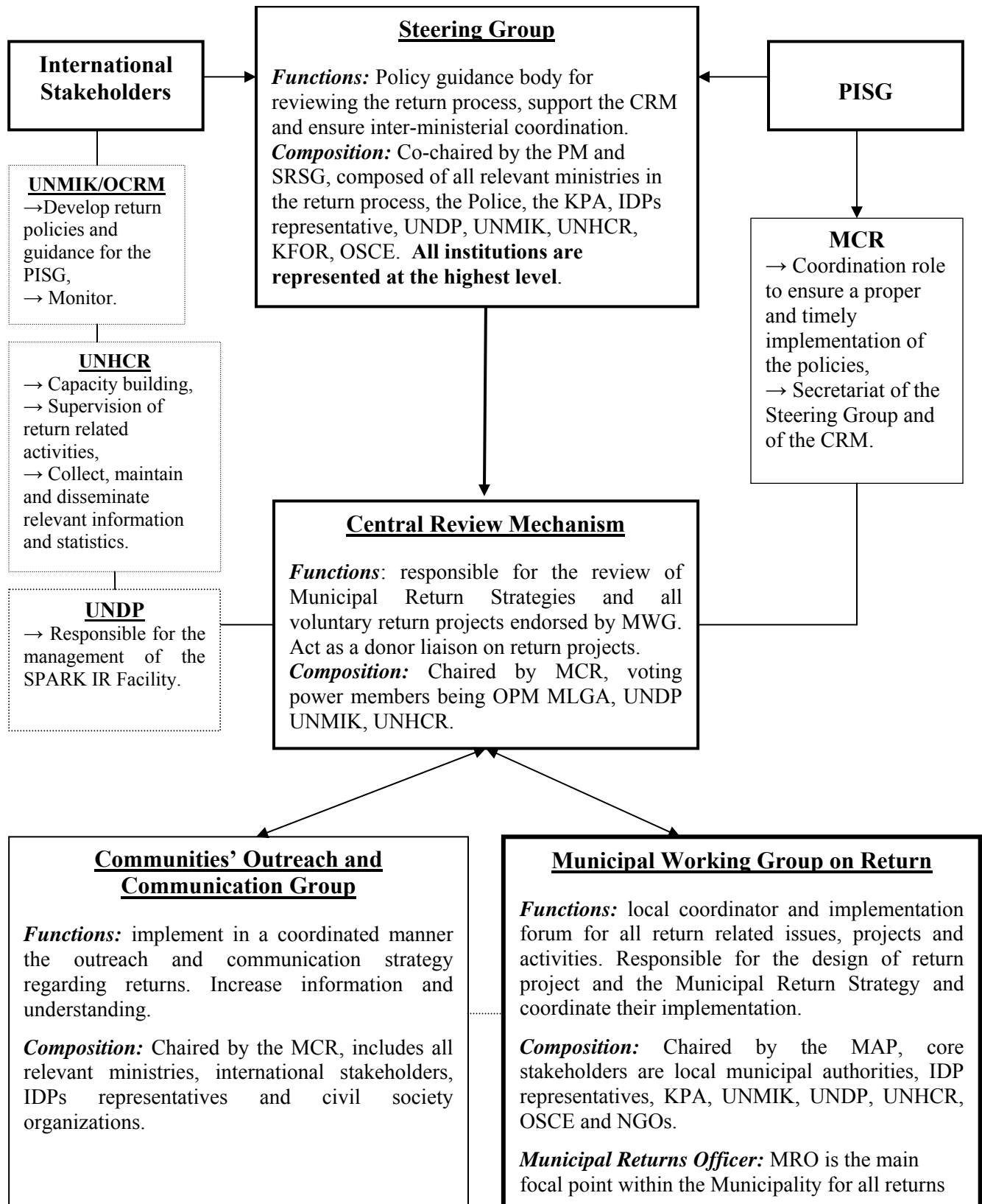
- a) lack of funding;
- b) need for property rights verification;
- c) need for procedural guidance on housing and land allocation;
- d) integration of Municipal Returns Strategies in Municipal Development Plans;
- e) displaced persons’ participation; and
- f) measures to improve access to housing of displaced persons where they live.

²¹ UNMIK and PISG Revised Manual for Sustainable Returns, July 2006.

²² In 2004 Kosovo Serb returnees in Osojan/Osojane received prefabricated houses with the assistance of CCK. CCK donated funds to build 64 prefabricated houses in the Osojan/Osojane valley as agreed with UNMIK.

²³ For an analysis on sustainability elements of returns in Kosovo see International Crisis Group ‘Return to Uncertainty’ report, 13 December 2002. Available at <http://www.crisisweb.org>.

Fig. 1. Return and reintegration process structure.



a) Funding of return and reintegration projects

The costs estimates of return projects in Kosovo are amongst the highest worldwide. At the same time the quality of project planning and implementation process needs to be improved in order to respond to real needs and to make projects cost-effective. As an example, in 2006, the MCR spent considerable funds on returns projects, which did not result in any physical return. Thus, a shortfall of 13 million Euros affected 15 out of the 17 projects approved by the Central Review Mechanism in 2006. All of them are being re-evaluated to bring down the costs.²⁴

In order to address oversight of the MCR spending, UNMIK established an internationally supervised Budget Authorisation Committee in 2006. Moreover, on the initiative of the MCR, a “Community Development and Stabilization Policy Framework” was approved in January 2007 to ensure an operational framework for municipalities to access funds for returns and reintegration.

b) Property Rights Verification

The process of verifying property rights over destroyed property is necessary to avoid interferences with property rights. While the Revised Manual for Sustainable Returns does not contain a set of property rights verification procedures, the enclosed Tri-Partite Agreement (TPA) places the responsibility of proving his/her rights before the implementing agency Non-Governmental Organization (NGO).²⁵ The TPA also ensures the consent of the property right holder to the conduct of the construction works, a legal requirement for them to take place. The Revised Manual does not provide additional guidance to MWGs on property rights verification. Thus, municipalities are implementing the procedures in an *ad hoc* way. Some municipal authorities are taking care of the property rights verification themselves, independently of the MWG process and following unclear procedures (i.e. Directorate on Geodesy and Cadastre Podujevë/Podujevo and Obiliq/Obilić, or Municipal Community Officer and/or Municipal Returns Officer in Prishtinë/Priština). In other instances, property verification is directly undertaken by the implementing agencies.²⁶ In Pejë/Peć, for example, the verification of property rights largely follows the guidelines from Section 2.3.3 of the UNMIK 2002 Housing and Reconstruction Guidelines and the Housing Reconstruction Manual 2004 (for March 2004 Riots related cases).²⁷

The OSCE has monitored a case in which property rights verification did not take place, nor TPAs were signed prior to construction. This is the case of the returns project in the village of Zoqishtë/Zočište (Rahovec/Orahovac). In May 2005, the MWG was informed that the MCR had issued a tender for the reconstruction of 44 houses in Zoqishtë/Zočište.

²⁴ UNMIK Office of Communities Returns and Minority Affairs, End of Year Activity Report, 2006.

²⁵ See Article 5, Tri-Partite Agreement.

²⁶ NGOs are also involved in legal aid support apparently like in Prishtinë/Priština where it provides support in case of court dispute or HPD/HPCC procedure.

²⁷ In Pejë/Peć municipality, according to EAR figures, 8,147 houses were damaged and 5,080 were reconstructed by the end of 2005, both minority and majority owned.

This action by the MCR completely disregarded the work conducted by MWG during the previous years, as well as property rights verification considerations.²⁸

c) Beneficiary Selection

A transparent and accountable beneficiary selection process is necessary to ensure that the right to return of all those displaced is equally protected. Adequate models for property rights verification and beneficiary selection are spelled out in the 2002 UNMIK Housing and Reconstruction guidelines.²⁹ These criteria, formerly used by Municipal Housing Reconstruction Committees (MHC) were used since 2003 by some of the MWGs, although not consistently. Some municipalities such as Pejë/Peć, continue to implement the MHC for the provision of housing reconstruction assistance to non-minority reconstruction projects.

The Revised Manual on Sustainable Returns contains a set of recommendations regarding beneficiary selection criteria.³⁰ These amendments now allow the provision of assistance for the reconstruction of a pre-1999 secondary residential properties. According to the Revised Manual on Sustainable Return, housing construction assistance should not be granted if a member of the household owns a residential property in Kosovo which the members of the household can freely access.

In practice, beneficiary selection takes place in an ad hoc manner, and does not always respect the principles of transparency and non-discrimination. In this regard, the OSCE has observed instances in which beneficiary selection is undertaken by the Municipal Returns Officer in an ad hoc manner and then discussed with village leaders who then decide which of the potential returnees is eligible, allegedly based on whether the villagers consider that the person has committed crimes during the conflict.³¹

For example, in Klinë/Klina Municipality, a displaced person complained to the UNMIK SRSG against the rejection of his request to return by the Municipal Returns Officer due to the fact that the villagers of Shtupel/Štupelj associated him and other members of his family to the crimes committed in the area during the conflict. This is however not an acceptable practice, as it leads to arbitrariness and possible discrimination. Moreover, it

²⁸ In December 2004 Arbeiter-Samariter-Bund (ASB) presented to the MWGR a return project that envisaged the reconstruction of 40 houses for Kosovo Serbs IDPs from the village of Zoqishtë/Zočište. The project was the outcome of two years of G&S visits, G&I visits coupled with meting between IDPs and receiving community. Local authorities, including MWGR members as well as local representative of Kosovo Serbian community were highly supportive of the process. The ASB project was primarily designed to ensure long-term sustainability to returns, including social services provisions, education, interethnic dialogue. Goals which would go far beyond the mere physical reconstruction of the houses.

²⁹ Section 3.3 of the 2002 UNMIK Housing Reconstruction Guidelines prioritise for assistance ‘vulnerable families of all ethnic origin with a clear right of ownership or occupancy of houses damaged or destroyed by conflict act before, during or after the war in 1998-99. Moreover, it is suggested that the MHC should not include on their priority list the families which have not an intention to live permanently in the village, neither the ones who left the village on a voluntary basis before the conflict’.

³⁰ See Annex I, Revised Manual on Sustainable Return.

³¹ See letter of individual displaced person to the UNMIK SRSG, 19 May 2006.

undermines the awareness of the inhabitants on the rule of law and the authority of the judiciary to determine responsibility for crimes.

In other instances, the OSCE has observed direct influences by donors on the elaboration of beneficiary lists. In Prizren, for example, the CCK provided the list of potential beneficiaries to ASB NGO for the reconstruction project of 60 houses in the Župa/Zhupa valley.³²

In all, guidance to the MWG on beneficiary selection procedures is necessary to avoid arbitrariness in the selection process and protection of the right to return without discrimination.

d) Housing and land allocation

While return to place of origin is always the primary goal of return projects, the new Manual foresees the possibility of local integration (in the area where the displaced person lives) and/or resettlement (in a location different than their site of displacement and previous home) if obstacles against return to the place of origin cannot be overcome.³³ The Manual states that “all efforts (...) must be made to remove existing obstacles with regard to the return to the places of origin (...)”. However, “if such obstacles (...) can not be removed through feasible and reasonable efforts”, the internally displaced persons “will be enabled to settle or locally integrate in freely chosen alternative places”.³⁴

The Manual does not contain, however, concrete procedures to be followed in such cases for the allocation of land and housing reconstruction assistance or the provision of housing units to the displaced in areas other than their home of origin. On 27 February 2007, for example, the Rahovec/Orahovac Board of Directors discussed the request of an IDP from the village of Bratatin/Bratutin asking the Municipality to allocate his family a parcel of land located in Velika Hoča/Hoçë e Madhe. Due to the lack of procedures for these cases, the Board of Directors asked the Department of Cadastre and the Office of Public Lawyer to assess possibilities.

³² The CCK also has its own criteria requirements that must be met by any individual or family in order to be a beneficiary of a CCK-funded project. In Lipjan/Lipljan, for cases of individual return CCK applies the criteria established by the Commissariat which includes: 1) the person has to be registered by the Commissariat as a refugee/IDP; 2) the person should be registered with the Red Cross; 3) should possess an ID card issued by the Ministry of Internal Affairs of the Republic of Serbia; and 4) the actual return of the person to Kosovo should be verified by two witnesses.

³³ Not only the Manual addresses the right to adequate living standards and the possibility to settle or locally integrate in a freely chosen alternative place, but also the Protocol on Voluntary and Sustainable Return, signed in June 2006 between the UNMIK, PISG and the Government of Serbia, acknowledges that the successful return of IDPs is based on three elements: ensuring safety of returnees; returning property to the displaced persons and rebuilding their houses; creating an environment that sustains returns. Moreover, it “recognizes the IDPs' right to freely choose their place of residence”. The Protocol also paves the way for direct dialogue among municipalities (hosting and receiving) and helps ensure that returnees rights are protected.

³⁴ Revised Manual for Sustainable Return, page 8.

Moreover, in certain cases, the implementation of ad hoc procedures has resulted in interferences with displaced persons' property rights. In Rahovec/Orahovac, the CCK provided temporary shelter (through the Municipal Community Office) between 2001 and 2005 to displaced families from Pejë/Peć and Prizren in their location of displacement (Upper Rahovec/Orahovac and Velika Hoca/Hoçë e Madhe) by authorizing the occupation of uninhabited Kosovo Serb homes.

Despite the fact that recently some of the families that remain in these houses have agreed to pay rent to the owners, the CCK exceeded its competences and interfered with the property rights of the owners, who saw their residences occupied without their express consent. Approximately 7-10 houses remained occupied as of December 2006.

In Prishtinë/Priština Municipality, CCK has often worked outside of existing return mechanisms. It is important to note that most projects that the CCK has been involved in are not actually return projects, but mostly local integration initiatives or temporary solutions as a response to an emergency situation such as the March 2004 violence.

In other cases, like the project Novi Badovac/Badofc (Gračanica/Graçanicë), the implementation of a reintegration project resulted in construction on municipal land without the relevant land use, urban and construction permits. There, the CCK funded the installation of 16 prefabricated houses to accommodate IDPs, mostly originating from neighbouring municipalities. Unfortunately, the municipality was not initially involved in this process, despite the fact that the concept paper for the second part of this project includes the full involvement of the municipality and other actors as suggested in the Manual for Sustainable Return. At present, the project foresees the construction of 70 houses for IDPs and social cases in Novi Badovac/Badofc. The concept paper was endorsed by the MWG and approved by the CRM on the 25 January 2007. However, the allocation of land has not yet been approved by the municipal authorities.

In this sense, a positive example of co-operation among relevant stakeholders can be found in the "Roma Mahalla Co-ordination Mechanism", created by the international community to help implement the return project of displaced Roma, Ashkali and Egyptian individuals to a large destroyed informal settlement in the centre of the city of Mitrovicë/Mitrovica. A "Protection and Legal Issues Unit", co-chaired by the Municipality, has – during 2006 and 2007- addressed land tenure. It defined selection criteria for beneficiaries and helped to verify property rights, including the drafting of long-term lease agreements of socially owned property, later approved by the SRSB.

e) Co-ordination with the KPA

Co-ordination with the Kosovo Property Agency (KPA) in the returns structures is foreseen in the Revised Manual through the participation of the KPA in the Steering Group. At the local level, KPA is expected to participate in the "Project Teams" as expert. The KPA is however not explicitly foreseen to participate in the sessions of the MWGs and KPA officials do not always attend Municipal Working Groups on return despite invitations to do so by Municipal Return Officers. Although there is no mandatory obligation on KPA side to attend, their participation certainly supports outreach activities towards displaced persons as well as expertise on project teams.

UNHCR co-ordinates regularly with the KPA, particularly in terms of organising Go and See Visits (which afford the opportunity to the displaced to gather first-hand information on living conditions prevailing in their place of origin).

f) Municipal Returns Strategies and Municipal Development Plans

One aspect of municipal government responsibilities in the returns process is reflected in the mandatory drafting, adoption and implementation of yearly Municipal Returns Strategies (MRS)³⁵. The MRS is an important tool that enables municipalities to assume responsibility for overall returns. Better access to housing and protection of property rights is one of the features that is supposed to be reflected in the MRS. Some municipalities do include references in this regard, like in Podujevë/Podujevo, Lipjan/Lipljan and Prishtinë/Priština, although apparently in vague terms. However, in most of the municipalities like in Pejë/Peć, the MRS seems to be nothing more than a list of ongoing projects and statements rather than a feasible strategy with a set of actions to achieve a pre-determined goal.

The revised Manual encourages municipalities to incorporate their MRSs in their Municipal Development Plans (MDPs) and overall budget planning. The MDPs are mid-term projections of the development of the municipality. Such incorporation would benefit community development in minority and/or returnee areas in terms of infrastructure, education, health and other services.

g) Displaced persons' participation

The participation of displaced persons is important to ensure that return projects are successfully implemented. Displaced persons representation is foreseen both in the MWG and, at the central level, in the CRM and the Steering Group, which is to meet quarterly in co-ordination with the Stability Tracking Mechanism and Kosovo Standards and European Partnership processes.

Displaced persons are an integral part of the core composition of any MWG as this is the main forum for them to engage in a dialogue on returns issues, request assistance to return and it is the principal local implementation co-ordination body with primary responsibility for return projects design as well as sustainability of the process.

In practice, participation of displaced persons in the return process varies from one municipality to the other. The participation of IDPs association/representatives has been presented as active in some municipalities (Podujevë/Podujevo, Fushë Kosovë/Kosovo Polje, Prishtinë/Priština and Pejë/Peć) through participation of associations, NGOs and even village representatives in the MWG. However, this contribution is not systematic. In addition, in order to engage displaced persons in Serbia proper, UNHCR chairs an “IDP Working Group” with the participation of NGOs, international organizations, donors and IDP representatives.

³⁵ The Municipal Returns Strategy should provide a return framework with clear objectives and activities.

h) Access to housing of displaced persons in their current place of residence

The lack of minority returns and the displacement provoked by the March 2004 riots in Kosovo has meant that large number of people had to find alternative accommodation. Displaced persons have either accommodated themselves in collective shelters and/or occupied private and/or public properties with or without the owner's consent.

International human rights standards oblige state authorities to ensure that displaced persons enjoy adequate housing conditions and are protected from unlawful evictions.³⁶ The reality on the ground is distant from this goal. As an example, most of the displaced persons from Obiliq/Obilić are living in private rented houses or the homes of relatives. There are no plans to resettle them or provide access to housings. Requests for housing by displaced persons, forced returnees and others accumulate in the municipalities. In Fushë Kosovë/Kosovo Polje, for example, there were 600 pending requests for shelter at the municipality in 2006.³⁷

There are approximately 330 displaced persons living in Gjilan/Gnjilane Municipality according to UNHCR estimates. As an example of the harsh conditions, there are nine Kosovo Serb families (29 persons) living in a refrigeration plant in Šilovo/Shillovë (Gjilan/Gnjilane). Concrete plans in the municipality to improve the housing conditions, ensure returns or resettlement are lacking.

Out of 587 displaced persons who arrived in Zvečan/Zveçan after the violence in March 2004, 353 are currently accommodated in collective centres in two unfinished buildings and the village of Mali Zvečan/Zveçan i Vogël. In addition, 51 families (with a total of 234 members) are now living with relatives in the area.

i) Forced repatriation

Western countries are increasingly forcing Kosovo individuals living in their territory to return to Kosovo. Forced return is, prima facie, incompatible with international human rights standards, as it can lead to violations of the principle of non-refoulement.³⁸ Asylum seekers whose application are rejected and third national residing illegally in EU member states are also entitled to minimum guarantees. The European Union indicated in several documents (2002 Green paper on a return community policy of illegal residents; council Directive 2002/55/EC 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and) the necessity to establish minimum standards for repatriation procedures and thus comply with human rights standards. In this regard, article 19 of the European Charter of fundamental Human

³⁶ See, for example, Principle 18 of the Guiding Principles on Internal Displacement: Regardless of the circumstances and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (...) basic shelter and housing'.

³⁷ Interviews with the Municipal Returns Officers of Prishtinë/Priština; Obiliq/Obilić and Fushë Kosovë/Kosovo Polje, April 2006.

³⁸ See Article 33 (1) of the United Nations Convention relating to the Status of Refugees and Principle 15 of the Guiding Principles on Internal Displacement.

rights prohibits collective expulsions (see also Article 4, Protocol 4 ECHR). Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular state. This provision is especially relevant in light of temporary protection afforded in the event of a mass influx of displaced persons as it has been the case with Kosovo refugees in 1999. Once temporary protection ceases states may forcibly return individuals in their country of origin if conditions exist for a safe, and dignified return. When protection ends states shall in specific cases consider any compelling reasons which makes return impossible. They shall extend the residence of the persons who have special needs such as medical or psychological, and whose children are minors and are attending schools in a member state so that they can complete the current school period. In any case where children are involved it is worth noting that the Convention on the Rights of Children contains a set of obligations aiming to protect children interests.

Following international standards and the position of UNHCR, UNMIK is not supposed to accept the repatriation of individuals belonging to groups at risk, such as Kosovo Serbs, Roma and Kosovo Albanians in a minority situation, and continues to screen Ashkali and Egyptians individuals subject to possible repatriation. During 2006, the overall number of persons involuntarily repatriated from other countries reached 3,598.³⁹

There is no Kosovo wide housing strategy in place to address the needs of forced returnees (Kosovo individuals forcibly returned from other countries). Moreover, municipalities are not always informed about the incoming forced returnees. Officials consulted in Prishtinë/Priština and Fushë Kosovë/Kosovo Polje stated to the OSCE that they had no information on forced returns.⁴⁰ UNMIK is currently developing a strategy on reintegration in the context of the discussions on the Status transition.⁴¹

3. Housing and property restitution process

In a post conflict situation, claim mechanisms need to be in place to restore the rights of those who lost their property and/or possession as a result of displacement.⁴² Pursuant to principle 29 (2) of the Guiding Principles on Internal Displacement, “competent authorities have the duty and the responsibility to assist returned or resettled Internally Displaced Persons to recover to the extent possible their property and possessions, which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist

³⁹ UNMIK OCRM, End of the Year Activity Report, 2006.

⁴⁰ Interview with MRO, April 2006. Interview with Municipal Deputy President of Fushë Kosovë/Kosovo Polje, April 2006.

⁴¹ The OSCE is also a member of the Repatriation and Reintegration Working Group.

⁴² International law does not provide a standard model of claim mechanism; however there has been a growing recognition lately that the restitution or compensation of properties is a cornerstone of a peace building process and a sustainable return strategy. Consequently, provisions for the resolution of property and land problems have been included in several recent peace agreements or related documents, among others the Dayton Peace Agreement (1995) or following the resolution of the conflict in Abkhazia the subsequent Georgian Draft Law on Restitution of Housing and Property to the Victims of the Georgian Ossetia Conflict. See ABA CEELI: Analysis of the Draft law on Restitution of Housing and Property to the victims of the Georgian-Ossetian Conflict, 30 August 2004.

these persons in obtaining appropriate compensation or another form of just reparation”.⁴³

The realisation of property rights in the return process of displaced persons implies a two fold process: access to claim mechanisms and effective enforcement of related decisions.

Competent authorities have the duty to support actively this process through positive actions, namely outreach activities towards IDPs, and support the efficient implementation of the relevant decisions. Likewise, competent authorities such as the police, should support this process through preventive measures (i.e., to avoid looting and/or damage to properties).

In Kosovo, UNMIK established the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) to address post-conflict restitution of residential property. The HPCC, thus, is the independent quasi-judicial body to “achieve an efficient and effective resolution of claims concerning residential property”, while the HPD is the administrative body managing the process. The legal framework for the HPD/HPCC was established through UNMIK Regulation 1999/23 and UNMIK Regulation 2000/60, which defined the exclusive jurisdiction of the HPCC for three types of residential claims: Category A claims concerning property rights lost due to discriminatory policies during the period 1989-1999; Category B claims concerning informal property transactions of residential property during the period 1989-1999, and Category C claims, which concern involuntary loss of possession of residential property during or after 1999.⁴⁴

Despite difficulties encountered by the institution the first years, HPD/HPCC largely fulfilled its mandate. Thus the HPD/HPCC has implemented 28,828 decisions concerning residential property claims (98.9 % of the total case load of 29,160 claims). The remaining 332 decisions will be implemented in the coming months.⁴⁵ The reason for the delay in implementation is that the decisions in question were pending reconsideration by the HPCC. It is worth noting that in these cases “implementation” does not mean that the claimants have repossessed (and/or returned). It means that either:

- a) the owner has settled privately and no longer needed HPD services (which usually implies a sale);
- b) the property is destroyed so administration not needed;
- c) the property is being administered by HPD;
- d) the case is dismissed; or
- e) the owner has taken possession.

⁴³ See also Article 2, Principles on Housing and Property Restitution for Refugees and Displaced Persons E/CN.4/Sub.2/2005/17.

⁴⁴ See UNMIK Regulation 1999/23 On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission and UNMIK Regulation 2000/60 On Residential Property Claims and the Rules of Procedure of the Housing and Property Directorate and the Housing and Property Claims Commission.

⁴⁵ Source: KPA website (<http://www.kpaonline.org>).

Fig 2. Implemented Claims / June 2007

Area	Total	All Claims					A/C - Claims				B-Claims
		withdr.	Rej. HPD	Dismissed HPCC		Closed Claimant Request	Destroyed Property	Reposs.	Under Admin	w/o Phy. Imp.	Granted Ownership
				No Juris.	No merrits						
Kosovo Wide	28829	2187	65	160	2712	2218	10154	5199	3513	2226	395
% of claims	98.9	7.5	0.2	0.5	9.3	7.6	34.8	17.8	12	7.6	1.4
% of implemented	100	7.6	0.2	0.6	9.4	7.7	35.2	18	12.2	7.7	1.4

The mandate of the HPD/HPCC was designed to deal exclusively with conflict related residential property claims. While immovable property, which was associated to a residence fell within the HPD/HPCC's mandate, privately owned agricultural and commercial property was left out of the process.

This gap in the protection of the rights to housing and property restitution was only addressed recently. In 2005, the Special Envoy of the UN Secretary General, Mr. Kai Eide, in his Comprehensive Review of the Situation in Kosovo (the "Kai Eide Report") identified illegal occupation of agricultural and commercial property as one of the major factors hindering returns in Kosovo and thus requiring urgent intervention. In a parallel process of local empowerment, the international body entrusted to resolve conflict related property disputes, the HPD/HPCC was succeeded by the Kosovo Property Agency (KPA), an independent local institution with the mandate of resolving all outstanding residential, commercial and agricultural private immovable property disputes related to the conflict.⁴⁶

The KPA is thus formed by an Executive Secretariat, a Supervisory Board and a Property Claims Commission (PCC) as a quasi judicial body. The participation of the PISG in the administrative oversight and policy guidance of the KPA is ensured through the nomination by the Prime Minister of Kosovo of two of the members of the Supervisory Board. As for the claims dispute resolution the PCC shall reach a decision on the claimed property in relation to title, property use rights and lawful possession rights. The decisions of the PCC are final if not appealed. Unlike the previous HPD/HPCC mechanism, commission decisions may be appealed to the Supreme Court to be adjudicated by a panel of three judges, two internationals and one local, all authorized by the SRSG. Most importantly, the decisions of the PCC constitute title determinations and therefore successful claimants holding PCC decisions will be able to register their ownership (or right of use) in the Kosovo Immovable Property Rights Register.

a) Access to claim mechanisms

The first step in ensuring full realisation of property rights relies on the existence of a claim mechanism that displaced persons can access. Information on and access to the

⁴⁶ See UNMIK Regulation 2006/10 On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, as superseded by UNMIK Regulation 2006/50.

claim in-take process is ensured through KPA offices, mobile teams within and outside Kosovo, outreach campaigns by the Kosovo Property Agency, non-governmental and inter-governmental agencies, as well as the PISG. As of June 2007, the Kosovo Property Agency has taken 23,629 claims (See Fig 2).

Special efforts have been taken to ensure access to the claim process by vulnerable communities, such as Roma, Ashkali and Egyptians. In this sense, the KPA conducted in February 2007 an outreach campaign to inform displaced Roma, Ashkali and Egyptian persons about the claim process. The KPA expects an additional 1,000 claims as a result of this campaign.

b) Enforcement of claims and impact on return

The resolution of claims constitutes the first phase of the process necessary to restore rights and subsequently encourage and in many cases conditions a sustainable return. However, as mentioned above, the resolution of a property claim does not necessarily imply the return of the displaced. In Kosovo the reality has been rather the contrary as a result of a still high rate of destroyed properties and a low rate of repossession. In 10,108 of the cases, the property was found to be destroyed and therefore no remedy was available from HPD/HPCC. In these cases, the result of the process was a declaratory statement of the HPCC establishing the lawful possession of the successful claimant.

In 3,513 adjudicated cases the claimant chose to place the property under administration and in 1,159 cases the claimant could not be reached. In all, only in 5,199 cases (17.8 per cent) implementation has resulted in a request for repossession by the property right holder, which often signifies the sale of the residence to either the current occupant or otherwise a new buyer.⁴⁷ Out of these, in 3,771 cases a forced eviction was necessary (86.6 per cent) and in 588 (13.4 per cent) cases the occupant released the property voluntarily before a forced eviction was necessary.

In certain cases, the eviction of the occupant is followed by a new unlawful occupation of the residential property. In these cases the applicable legislation allows for an action *ex officio* by the Police to remove the illegal occupant.⁴⁸ However, after reported cases of illegal re-occupation after evictions, the international community prioritised the need to deter re-occupation by the Kosovo Police Service in the “Contact Group’s 13 Priorities for Standards Implementation”. Relevant Standard Operation Procedures were revised to ensure adequate enforcement.⁴⁹ Moreover, the Kosovo Property Agency appointed a focal point to monitor cases of re-occupation in co-operation with the police.

The enforcement of decisions of the PCC over claims related to land will require remedies other than evictions from closed premises, including, but not limited to placing the property under administration, lease agreements, seizure and demolition of unlawful structures, auction, all of which will facilitate and ensure the return of properties to the

⁴⁷ As of April 2007, source Housing and Property Directorate Website (<http://www.hpdkosovo.org>).

⁴⁸ See Section 13.6 of UNMIK Regulation 2000/60 and Section 16.5 of UNMIK Regulation 2006/50.

⁴⁹ See letter of the UNMIK Office of the Legal Adviser to the Police Commissioner (13 February 2007) requesting a revision of the Kosovo Police Service Standard Operating Procedures.

lawful property right holder. By receiving a determination of title, the successful claimants will be able to register the confirmed title, if necessary, in the Kosovo Immovable Property Rights Register.

In this sense, the wide range of remedies envisaged by the KPA in addition to evictions (administration, leases, seizure and demolition, auctions) provide different possibilities to respond to occupation of land. Taking into account the experience of the HPD/HPCC process, administration of land is likely to be the primary method of implementation of PCC decisions.

c) Compensation

International standards foresee the possibility of compensation in cases in which restitution is not feasible. In line with the earlier described “Pinheiro Principles”, as an example, the European Court of Human Rights held in *Cyprus v. Turkey* that the fact that displaced Greek Cypriots owners of property in Northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights constituted a violation of Article 1 of Protocol 1 (Right to Property).⁵⁰ In this regard, in the pending caseload of HPD/HPCC there are some 258 HPCC decisions where there are both an ‘A’ and a ‘C’ successful claims for the same residence. In these cases awards of monetary compensation have been made in favour of the ‘A’ claimants pursuant to Section 4 of UNMIK Regulation 2000/60. This concerns category A claims where the unsuccessful party to the claim should be paid compensation for their loss of a residual property right following the award of possession to the other party (the ‘C’ claimant). Further legislation is still needed to arrange for the necessary determination of the precise amounts in compensation to be paid, and discussions are taking place between UNMIK and the PISG to establish an appropriate mechanism. In principle, the successful party to the claim will be required to pay the compensation, although alternative arrangements are also under consideration.

In approximately 300 cases involving both dismissed A claims and successful C claims the HPCC authorised the regular courts to determine the legal remedies that may be available to the A claimant.

The KPA notified the OSCE and the UNMIK Department of Justice and the relevant court of a case in which the court issued a decision reviewing the decision of HPCC on a C claim, in breach of Section 2.7 of UNMIK Regulation 1999/23 which states that final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.⁵¹ Such cases prove the need for training of the judges and close monitoring by the international community to ensure that the exclusive jurisdiction of HPCC is respected.

⁵⁰ ECtHR, *Cyprus v. Turkey*, 2001.

⁵¹ Letter of the Executive Director of the Kosovo Property Agency, 18 April 2007.

d) Administration of abandoned properties

The KPA has the authority to administer abandoned properties.⁵² “Abandoned” in this sense means “any property which the owner or lawful possessor and the members of his/her family household have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied”.⁵³ The administration of a house or an apartment means that KPA can allocate it on a temporary basis to other persons on humanitarian grounds.⁵⁴

Since November 2006, the KPA has implemented a rental scheme covering all of the 5,046 residential properties currently under KPA administration. To date, more than 3,118 property right holders have included their property in the scheme. 409 occupants are currently paying rent and thus 133.475,61 euros have been collected. Following pressure from the PISG, several banks have agreed to reduce their charges on transfers outside Kosovo. The first payments for the period of September to November were completed in December while the December rents were transferred in early January 2007. The implementation of the rental scheme guarantees income for displaced persons as well as a physical protection of properties. As mentioned above, administration of land is one of the remedies provided for in the KPA framework. The publicity of the land administration possibilities may allow for agricultural investors to lease groups of parcels belonging to different displaced persons and thus promoting both economic development and a regular income to those displaced.

⁵² Section 16, UNMIK Regulation 2006/10.

⁵³ See Section 1, UNMIK Regulation 2000/60.

⁵⁴ There are two ways in which KPA places a property under administration: a) by agreement of the parties in settlement of a claim; by the claimant, following a decision confirming his property right; or following eviction, if the claimant fails to repossess the property within 14 days of being notified of the execution of the eviction. This means that the residence is under administration only for so long as the displaced person wants to do so. If the displaced person decides to return or to sell the property, he or she can request that the administration be terminated. The KPA is obliged then to hand over the property under administration to the successful claimant within 90 days; and b) where no claim has been submitted for the property and it is either vacant, occupied, but the current occupant does not assert any right to the property; or on the request of the owner or occupancy right holder of the property.

Fig. 3. Total claimed properties as of June 2007 by type of rights and property claimed (source KPA website).

Type of Property Rights

Region/Category	Gjilan/ Gnjilane	Mitrovicë Mitrovica	Pejë/Peć	Prishtinë/ Priština	Prizren	Total	% of Claims
Ownership	4946	2681	8054	4326	3416	23423	99.1
User Rights	21	37	49	64	35	205	0.9
Compensation	0	0	0	0	0	0	0
Total	4967	2718	8103	4390	3451	23629	100
% of Claims	21	11.5	34.3	18.6	14.6	100	100

Type of Property

Region/ Property Type	Gjilan/ Gnjilane	Mitrovicë Mitrovica	Pejë/Peć	Prishtinë /Priština	Prizren	Total	% of Claims
Residential	262	152	514	334	235	1497	6.3
Commercial with buildings	95	140	175	254	94	758	3.2
Commercial without buildings	4610	2426	7414	3802	3122	21374	90.5
Total	4967	2718	8103	4390	3451	23629	100
% of Claims	21	11.5	34.3	18.6	14.6	100	100

4. Claims for conflict-related damage suspended in 2004 and other challenges linked to displacement

The right to housing and property restitution establishes that refugees and displaced persons should be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.⁵⁵ Moreover, the institutional protection of the property rights of displaced persons and their right to return requires the effective functioning of the judiciary and the police. This will ensure

⁵⁵ Pinheiro Principles, Section II. The Right to Housing and Property Restitution.

remedies for the unlawful occupation and/or damage to property and will prevent and sanction new unlawful acts.

The protection of these rights in Kosovo is compounded by challenges which are directly related to the particular circumstances of the Kosovo conflict, as well as to displacement, and a judicial system under development. In some instances, these challenges lead to a de facto discrimination of displaced persons and violations of the right to a fair trial (Article 6, ECHR). Of particular importance are:

- a) non-resolution of a number of conflict related damage claims lodged by Kosovo-Serbs against UNMIK, KFOR and PISG;
- b) fraudulent transactions;
- c) irregular use of the office of the temporary representative in civil proceedings;
- d) lack of effective protection of empty properties belonging to minorities and/or returnees; and
- e) lack of adequate notice and compensation in expropriations by government authorities.

a) The claims against UNMIK, KFOR, PISG and individuals suspended in 2004

Immediately after the conflict in Kosovo, a large number of residential and other immovable properties owned by minority community individuals were destroyed. The March 2004 Riots, as reflected in the previous chapter, made the situation even more complicated. In the course of its work, the KPA has identified up to 10,401 destroyed properties. In the majority of these cases, the houses belonged to minority community members who are currently displaced and have seen no remedy for the destruction of their properties.⁵⁶

The individuals affected by destruction of their properties have sought remedy with the Kosovo regular courts: in 2004 thousands of Kosovo Serbs lodged claims in the regular courts requesting, based on applicable legislation, compensation for damage that occurred immediately after the conflict. A considerable number of these claims are lodged against multiple defendants. Thus, the plaintiff is requesting compensation from *inter alia* both UNMIK and/or KFOR, whose personnel benefits from the immunities defined by UNMIK Regulation 2000/47, and which can be considered as falling outside the courts' mandate, and Kosovo Municipalities or individual persons. As of December 2006, the number of such claims amounted to 18,132.⁵⁷

In August 2004, the UNMIK DoJ instructed Presidents of the Supreme, District and Municipal courts not to process these cases pending an adequate solution. The DoJ issued new instructions on 15 November 2005 requesting the courts to process those cases

⁵⁶ See Website of the Housing and Property Directorate: <http://www.hpdkosovo.org/newimplemented.asp>, accessed on the 30 November 2006.

⁵⁷ Article 180, Law on Contracts and Torts, Official Gazette of SFRY No. 29/1978, as amended. Special liability under subsection 6 of the Law under Article 180 is defined as: '(1) A State whose agencies, in conformity to existing regulations, were bound to prevent injury or loss, shall be liable for loss due to death bodily injury or damage or destroying property of an individual due to acts of violence or terror, as well as in the course of street demonstrations and public events'.

related to claims for compensation for damages committed by identified natural persons after October 2000.⁵⁸

The reason given by the UNMIK DoJ for this instruction was that the massive influx of claims would severely hinder the work of the courts, increasing their already large backlog of cases. In addition, most of the Serbian plaintiffs would need special security arrangements to access the courts.⁵⁹ The instruction has raised human rights concerns, as it compromises the right of access to court by the Kosovo Serbs plaintiffs as well as their right to have a case adjudicated within a reasonable time.⁶⁰

The instructions have been also interpreted by most judges dealing with civil cases as applicable to the claims for compensation filed against the Municipalities and UNMIK as a result of damages to property occurred during the March 2004 riots (see Chapter 5). Consequently, even though many persons have been convicted for the crime of damage of property committed in respect of acts that took place during the March 2004 riots, the OSCE has not identified any civil case for compensation arising from those convictions. On the other hand there are a few compensation claims for the damages suffered by Kosovo Serbs during the March riots filed against the Municipalities, the Provisional Institutions of Self-Government and UNMIK, but they all remain on hold until the present date, pursuant to the instructions of the Department of Justice.

The problem of pending claims does not only exist with regard to damages suffered by Kosovo Serbs since 1999. In addition, and during the same period of time, more than 2,939 claims of a similar nature were lodged by Kosovo Albanians against the Republic of Serbia and Kosovo Serb individuals for damage suffered during the 1999 conflict.⁶¹ Although there is no instruction by the Department of Justice regarding these cases, they are all suspended given the incapacity of the courts to deal with indemnity claims against absent persons (the current location of most Kosovo Serb respondents is unknown) and the lack of jurisdiction of the Kosovo Courts to try cases against the Serbian State.

The longstanding lack of resolution of these claims (almost three years since August 2004) constitutes a violation of the right to a fair trial.⁶² Moreover, it constitutes a clear breach of the right of all refugees and displaced persons to have restored to them any housing, land and/or property of which they were arbitrarily deprived or to be compensated when such restoration is not possible.⁶³

⁵⁸ Letter of the UNMIK Director of Justice, 24 August 2004 and 15 November 2005.

⁵⁹ See OSCE Legal System Monitoring Section First Review of the Civil Justice System in Kosovo.

⁶⁰ See supra note. This issue also raised concerns within the Ombudsperson Institution in Kosovo, which addressed the matter to the Department of Justice on several occasions. See Ombudsperson Institution in Kosovo, *Fifth Annual Report 2004-2005 addressed to the Special Representative of the Secretary-General of the United Nations*, 11 July 2005, available at <http://www.ombudspersonkosovo.org>.

⁶¹ According to the statistics provided by the Kosovo Judicial Council (KJC), Office for Statistics.

⁶² The ECtHR has pointed out on several occasions that the right of access to court is part of the Right to a Fair Trial (Article 6, ECHR) and shall be rendered effective. See the judgments of the Court in *Golder v. UK*, A 18, 1975 and *Airey v. Ireland*, A32, 1979.

⁶³ See Pinheiro Principles, Article 2.

Currently, the UNMIK DoJ, in co-ordination with other stakeholders (the Kosovo Property Agency, the European Union Planning Team, the Kosovo Judicial Council, the Ministry of Justice and the OSCE) is attempting to find a solution for all of these cases. The aim is to develop a proposal to expeditiously adjudicate the property related cases filed by Kosovo Serbs against KFOR, UNMIK, Municipalities and individuals suspended in 2004 (and related cases), including assistance to courts and judges and elimination of legal impediments as appropriate.

b) Fraudulent transactions

Fraudulent transfers of immovable property occur either through the falsification of personal identification documents or the forgery of authorisations to third parties to conduct the transaction.⁶⁴ After receiving complaints in this direction, the Director of the UNMIK Department of Justice issued an instruction to all Municipal Courts in Kosovo to refer any letter of authorisation for an immovable property transfer issued in Serbia proper to the Department for verification.⁶⁵ This procedure, however, results in considerable delays due to the fact that the Department needs to communicate with the Ministry of Justice in Serbia.

c) Irregular use of temporary representatives

As for the use of temporary representatives, the OSCE has repeatedly observed court practices that lead to violations of the right to a fair trial. This is due to the fact that in a number of cases: a) the courts fail to use available means to locate the respondents prior to the appointment of a temporary legal representative; b) the courts fail to demonstrate that their decision to appoint a temporary representative is necessary to prevent detrimental consequences to the parties which is a precondition for the appointment of a temporary representatives according to the applicable law⁶⁶ c) inappropriate public announcement of the appointment of temporary representatives; d) the plaintiff proposing the name of the temporary representative; e) the temporary representative is paid by the plaintiff; f) inadequate performance during representation.⁶⁷

d) Lack of effective protection of properties belonging to minorities and/or returnees

Another area of concern related to the displacement of property right holders and the process of reconstruction of their houses, is the protection of reconstructed houses from damage and looting. The protection of empty reconstructed properties where the former lawful occupant does not return is especially worrying. In Fushë Kosovë/Kosovo Polje, with the exception of the few houses repossessed or sold, all other houses reconstructed after the March riots were looted. For example, 65 cases of criminal acts of damage and burglaries were reported to Police during 2005, involving 51 of these properties.

⁶⁴ See OSCE LSMS First Review of the Civil Justice System, June 2006, p. 21.

⁶⁵ Justice Circulars DOJ/DIR/344/JH/04 and DOJ/LPD/0371/er/05.

⁶⁶ Article 84, LCP.

⁶⁷ OSCE LSMS Spot Report on 'The Appointment of Temporary Representatives in Property Disputes', April 2005. See also First Review of the Civil Justice System, June 2006, p. 25.

Other cases of damage have been reported throughout Kosovo. One of the most recent and prominent ones took place during September 2006, in two different villages of Klinë/Klina Municipality. On the night of the 11th September 2006, a reconstructed house belonging to a Kosovo Serb in the village Shtupel/Štupelj was severely damaged by an explosion. Few days earlier, a looting incident had taken place in a reconstructed house in the village Klinavac/Klinafc.

Also in Klinë/Klina, the Municipality demolished on the 3rd March 2007 an entire building under KPA Administration following an expropriation procedure. Despite official requests from the KPA to stop the demolition, the Municipality went ahead and demolished the building after notifying the occupant (a temporary permit holder) verbally. A criminal lawsuit is ongoing.

In all, the lack of effective protection leads to a decreased confidence in the Kosovo law enforcement institutions by displaced persons and minority community individuals.

5. The March 2004 Riots reconstruction programme

During the March 2004 Riots minority community owned properties as well as Serb Orthodox cultural heritage sites were targeted. As a result, 993 residential properties and 34 religious buildings were either damaged or destroyed and 398 minority community members suffered damages or destruction to their commercial and/or secondary buildings. Moreover, close to 4,000 persons were displaced from their homes, some of them for the second time, as they had already been displaced in 1999.⁶⁸ The events had a considerable impact on both the implementation of the HPD/HPCC mandate (i.e., HPD Regional Offices were looted) as well as the returns process, which was brought to a virtual halt. The riots negatively affected the physical security of the minority communities as well as the perspectives for socio-economic integration of potential returnees. In all, local and international authorities failed to protect individuals from displacement.

The reconstruction of the March 2004 Riots damage to residences, secondary buildings and commercial premises was entrusted to the PISG.⁶⁹ Thus, during the initial reconstruction period the reconstruction process was led by an ad hoc governmental commission - the Central Inter-ministerial Commission for Reconstruction (CIMC) also known as the “Brajshori Commission”.⁷⁰ Significant progress was achieved until the CIMC ceased to function at the end of July 2005. The CIMC was dissolved in November 2005.

Addressing the March 2004 destruction became higher priority for the government of Kosovo after the countries of the Contact Group included it as one of its “13 points”

⁶⁸ See OSCE Mission in Kosovo report on ‘Human Rights Challenges after the March Riots’, page 15.

⁶⁹ Reconstruction of damaged cultural heritage sites is not covered by this report. Currently, a Reconstruction Implementation Commission (RIC), led by the Council of Europe, is in charge of implementing the repairs.

⁷⁰ Minister Brajshori resigned in November 2004, before the change of Government, and Minister Haraqia was appointed as new chair of the CIMC in December 2004.

(priorities in Kosovo Standards implementation) in mid-2006. The Contact Group, thus, called for the completion of all housing reconstruction in the Kosovo Serb village of Svinjarë/Svinjare (Mitrovicë/Mitrovica) by the end of October 2006 and the reconstruction and/or compensation of commercial property damaged during the riots. In June 2006, at the request of the Prime Minister of Kosovo, the UNMIK SRSG decided that the Kosovo Protection Corps (KPC) would finalise outstanding reconstruction works in Svinjarë/Svinjare and will support the government in the resolution of pending complaints (Kosovo wide) related to the March 2004 riots physical reconstruction. The KPC undertook the works in Svinjarë/Svinjare while the Government established an ad hoc body in charge of reviewing all claims.

In all, as of January 2007, 897 of the residential properties (out of the 993 targeted) had been reconstructed and 289 of the cases involving secondary buildings had been addressed (either reconstructed or compensated). As of January 2007, a number of these complaints have been solved. The remaining 96 non reconstructed houses include 19 properties for which beneficiaries have refused reconstruction assistance, 20 properties in North Mitrovica which are not accessible due to security reasons as well as 57 properties destroyed in the “Podkalaj” neighbourhood of Prizren town for which a special programme has been developed, but is still awaiting funding three years later.

Regarding secondary buildings, there are still 49 pending cases (out of 338 eligible beneficiaries), the majority of which are related to disagreements as to the estimation of the compensation rate set by the CIMC. As for the provision of “start up assistance”, 92 cases out of 635 are pending. Finally, there are still 24 cases, regarding commercial properties which have not been addressed. A PISG-run panel for resolving compensation and reconstruction claims (apart from claims concerning Svinjarë/Svinjare) was established in October 2006 to resolve all outstanding March 2004 Riots reconstruction complaints. The panel’s task was to revise individual claims from beneficiaries as well as from contractors. To date, the panel has limited its review to contractor’s claims and none of the other claims have been reviewed due to budgetary constraints.

The Government is hesitant to allocate further funds to the March 2004 reconstruction programme without indications that such interventions would facilitate the return of the displaced. Currently the Government has no further plans either for post-March 2004 reconstruction or to investigate claims. Available information of the numbers of displaced persons is also lacking. In January 2006, UNHCR estimated that 1,231 persons displaced during the March riots remained in displacement. However, no precise statistics on March 2004 riots displacement have been kept since then.

6. Conclusions

While both the international community and the Kosovo institutions have invested considerable resources and energy in ensuring the protection of the right of displaced persons to housing and property restitution, this has not translated in effective protection of the right, or in substantive sustainable returns. Approximately one third of the HPD caseload has indeed resulted in declaratory decisions over destroyed property.

On the verge of the status transition the protection of the rights of displaced persons to housing and property restitution and to return continues to be a major challenge. The fact that eight years have passed after the end of the 1999 conflict does not preclude the rights of displaced persons over the properties left behind, or their right to adequate living conditions.

In this sense, the implementation of the KPA mandate over immovable private property claims related to the conflict and the effective enforcement of PCC decisions is by far the largest remaining challenge for the local and international authorities. The effectiveness and the sustainability of the process depend on the implementation of the PCC decisions. The full donor funding for KPA should be ensured until the completion of its mandate.

Apart from the KPA claims, all other outstanding conflict related issues need to be resolved. In this sense, an acceptable solution for the conflict related compensation claims stayed at the request of the UNMIK DoJ and pending in the courts is also necessary. The longstanding lack of resolution of these claims (almost three years since August 2004) constitutes a violation of the right to a fair trial. Concerns arising in the regular courts regarding fraudulent transactions and the protection of displaced persons' property rights in civil proceedings need to be addressed as well. In this regard, the mechanisms in place to prevent fraudulent transactions need to be streamlined and made more effective. Also, the appointment of temporary representatives needs to comply with the law and due process requirements.

With regards to the promotion of the right to return, the transformation of returns structures needs yet to bear its fruits, which should translate into the reconstruction of the homes of all those displaced who wish to return. In this sense, displaced persons associations' participation in MWGs needs to continue and be made effective. While the participation of the CCK in the process is overall a positive development, CCK needs to follow the principles and procedures outlined in the Revised Manual for Sustainable Returns. The same applies to municipal authorities, who need to co-operate in providing access to land and housing whenever necessary, as well as in providing reconstruction assistance. The 2006 "Protocol on Sustainable Returns" signed by the Kosovo government, the Republic of Serbia and UNMIK may serve as a model for co-ordination and support to returns at the municipal level. The Municipalities of Kosovo which are hosting displaced persons, particularly in the northern part of Kosovo, need to fulfil their obligations to ensure adequate housing conditions. Thousands of persons continue to live in unacceptable conditions almost eight years after the conflict, and this needs to be addressed.

The March 2004 Riots Reconstruction Program - responding to a crisis which temporarily halted returns and housing and property restitution- has met to a large extent its goals, but it still needs to be finalised as soon as possible by the Kosovo Protection Corps. The PISG run claims panel needs to be more accessible and transparent.

In all, the assessment shows that while the restoration of housing and property rights after a conflict and the physical voluntary return of displaced persons are separate processes, they need a co-ordinated strategy to ensure that they support and reinforce each other.