

# Resolving Kosovo's housing crisis: challenges for the UN Housing and Property Directorate

by Scott Leckie

Armed conflict in Kosovo in 1998-1999 led to the destruction of tens of thousands of homes and the mass occupation of abandoned homes as refugees were repatriated.

This housing crisis came after a decade of widespread violation of housing rights. Throughout the 1990s, discrimination against the Albanian majority was manifested in irregular tenancy arrangements, arbitrary forced evictions and restrictions on property transactions: factors which substantially contributed to the subsequent conflict.

The enduring post-conflict consequence is uncertainty about rights to occupy and to legitimately own a considerable proportion of the housing stock in Kosovo. There is no Kosovo-wide housing rights policy. The severity of housing and property problems is exacerbated by illegal occupation of land and property owned by departing Serb and Roma residents, lack of legally secure tenure and title for the majority of Kosovo citizens, absence of adjudicative measures for redress of violations and unchecked further daily violation of the housing and property rights of minority groups. Effectively addressing key housing and property issues will be a fundamental challenge of the United Nations Mission in Kosovo (UNMIK) in the months and years ahead.

## Establishment of the Housing and Property Directorate

Initially the UN moved relatively rapidly on property issues. In October 1999 UNMIK repealed two particularly draconian laws of the Federal Republic of Yugoslavia (FRY) which had placed discriminatory restrictions on the rights of

people to buy or sell their homes. The following month UNMIK established a Housing and Property Directorate (HPD), staffed and managed by the UN Centre on Human Settlements (Habitat). This is the first time that Habitat has been involved in creating such an institution. The HPD, which is to have a staff of 110 people, faces the daunting task of rectifying past housing rights violations, resolving the complex issues of disputed residential rights and developing an inventory of abandoned private, state and socially owned housing. A counterpart Housing and Property Claims Commission, comprising two international experts and one local expert in housing and property law, is to be responsible for adjudicating claims submitted to the HPD.

Though not yet fully staffed or financed, the HPD already has its hands full. More than nine months after the end of the NATO-led war, the HPD has barely begun the gargantuan task of offering Kosovans recompense for a decade of housing and property rights violations. Despite delays caused by financial and bureaucratic obstacles and recalcitrance from hard-line Kosovans, the process which has begun - the repeal of unjust housing laws and creation of an entirely new institution to resolve housing and property problems - is a welcome development. If the HPD succeeds, then Habitat's Kosovo programme may serve as a model for future initiatives in similar circumstances where housing and property rights of refugees and IDPs are under threat.

UNHCR and the European Union are jointly responsible for winterization of houses and house reconstruction. Habitat's programme is comprised of several elements in addition to the coordination of the HPD, including the massive task of re-establishing a system of cadastral<sup>1</sup> and property records in Kosovo and administrative systems for municipalities. Habitat is also working to collate and analyse housing and property legislation, repeal discriminatory housing and property laws, develop proposals to ensure local legislation is compatible with international standards, advise the international military force on housing security matters and facilitate solutions to housing and property disputes. Above all else, Habitat has sought to ensure housing security for all ethnic groups and to promote the rights of return and restitution so that all refugees and IDPs are able to return to their original homes.

Each of these housing and property activities is vital for the restoration of a semblance of normalcy in Kosovo and in other fragmented post-conflict societies. It may be helpful to set out the main issues that the HPD is likely to face in creating a society where wanton violation of property rights and destruction and demolition of property becomes a thing of the past.

## Consequences of discriminatory housing legislation

Housing and property discrimination against the Albanian population of Kosovo was widespread under Yugoslav rule. This process was first formalized in 1990 when the authorities retroactively annulled sales of property to Albanians by departing Serbs.<sup>2</sup> Adoption of the 'Programme for Establishment of Peace, Liberty, Equality, Democracy and Prosperity in the Autonomous Province of

Kosovo<sup>3</sup> consolidated the dominance of the minority Serb population. The Programme systematically outlined how repression was to be achieved in a number of policy areas, among which were housing and property. With the abolition of autonomous government in June 1990, housing and property sectors in Kosovo became bastions of ethnic discrimination. A host of legal instruments formed the politico-legal basis for the adoption and application of further laws that have had profound consequences for property owners in Kosovo and constituted one of the major contributing factors to the conflict itself.

In the early 1990s, some 135,000 Albanians were dismissed from their jobs on grounds of ethnicity.<sup>4</sup> As occupancy rights in socially

owned housing (the predominant form of housing in the early 1990s) were almost invariably linked to employment, large numbers of Albanians were thus evicted from their homes. Many of

the properties Albanians were forced to leave were re-allocated to Serbs and Montenegrins on preferential terms. In addition to losing the roof over their heads, evicted Albanians also lost financial assets deposited in employment-linked housing funds and any right to buy the socially owned apartment they lived in which they had accumulated during years of employment.

As a consequence, there are now many instances where both an Albanian and a Serb possess documentation ostensibly giving both parties the right to occupy or own the same property. Resolving such disputes is bound to figure prominently in the work of the HPD. Albanians who have re-occupied the flats they consider to be theirs will seek legal recognition of their rights. Serb occupants who have fled may also seek the right to return, lodge a claim with the HPD or agree to a facilitated sale or compensation.

### Unofficial transactions

The Law on Changes and Supplements on the Limitations of Real-Estate Transactions, together with persistent discrimination directed against the Albanian population of Kosovo, resulted in a large number of highly irregular

housing and property transactions between 1989 and 1999. Many were neither officially sanctioned nor legally registered. Under this law (repealed by UNMIK Regulation 1999/10 in October 1999), ethnic considerations were uppermost. Both ethnic groups felt discriminated against. Serbs were prohibited from selling property in order to discourage and restrict Serb emigration while Albanians who complied with the law had requests to buy and sell property routinely denied. The effect was to drive housing and property transactions underground with the result that today many legitimate occupants and owners do not possess any legally recognized documents other than an unofficial 'contract' between the parties. Private real estate transactions between members of

different ethnic groups were so restricted that it was virtually impossible for a Serb to buy an Albanian

home and even harder for an Albanian to buy from a Serb.

To circumvent these restrictions Albanians often used trusted Serb middlemen to facilitate unofficial transactions. This practice gave the misleading impression that the middleman was the owner as it was his or her name that featured on contracts of sale. In other instances, 'fictitious' lawyers were involved in drawing up equally 'fictitious' contracts, which were similarly not officially recognized by the land registry.

The number of such irregular housing and property transactions during a decade of underground transactions makes any determination of legitimate ownership exceptionally complicated. Land, housing, tenure and property records in Kosovo are incomplete and substantially inaccurate. A fair system designed to regularize these informal contracts will need to be developed to protect the rights of the legitimate owners and occupants of housing and property which changed hands in this way during the 1990s. Many people will have difficulties proving ownership or tenancy rights over a particular house, apartment or plot of land.

These problems have been worsened by the deliberate destruction of cadastral records by Yugoslav forces prior to and during the NATO bombing campaign and by the subsequent confiscation and transfer to Belgrade of a large volume of these records.<sup>5</sup> Preliminary estimates indicate that more than 50 per cent of property records are no longer in Kosovo.

### Unlawful secondary occupation

The HPD needs to scrutinize ownership certificates issued by the FRY authorities during the NATO bombing campaign. These documents transferred 'ownership' rights to homes temporarily vacated by Albanian refugees or IDPs. The legal problems involved should not be onerous as UNMIK Regulation 1999/1 declared null and void any official documents or laws approved by the FRY Government from 24 March onwards.

Since June 1999 many Serb and Roma families have been forcibly evicted or otherwise compelled to leave their homes. A large number of houses and apartments owned or occupied by Serbs and other minorities have been unlawfully occupied by returning Albanians and other illegal occupants. All over Kosovo there have been reports of arbitrary occupation of primarily Serb-occupied housing and property carried out in a common pattern of intimidation, physical assault or even murder. Frequently unlawful occupiers simply cover or remove Serbian nameplates and write their names on the door of a dwelling they want to confiscate. In some instances KFOR troops have intervened to restore legitimate residents to their homes. KFOR troops are required to report forced evictions and unlawful entry and have where possible sought to halt these activities but they claim - not without reason - that they have neither the manpower nor the intelligence capability to be 'everywhere at once'. Even in cases where those guilty are arrested, the lack of detention centres has meant that they are generally neither prosecuted nor incarcerated.

### Coercive sales and rentals

Since July 1999 evidence has also emerged of forced evictions (primarily of Serbs and Roma but also sometimes of Albanians) using falsified documents.

## *housing and property sectors in Kosovo became bastions of ethnic discrimination*

Legitimate owners and tenants are shown bogus documents as a means of forcing them out. Often these coercive evictions are accompanied by an 'agreement' in which victims are compelled, on pain of violence or death, to sign that they have disposed of property or tenancy rights 'willingly and without any pressure'. There are also reports that counterfeit title deeds are in circulation, designed to deceive KFOR and their civilian police counterparts into allowing occupiers to remain in illegitimate possession.

### Compensation

Another issue that will need to be addressed by the HPD is the provision of compensation for those whose property has been damaged and who have been victims of human rights violations. International pressure is sure to demand that the FRY compensates victims of human rights violations directly attributable to the FRY or para-military forces under its control.<sup>6</sup> This responsibility and obligation of the Yugoslav state to compensate victims will continue even if the Milosevic regime is replaced. How this will be implemented in practice and what the role of the HPD is to be remain to be seen.

### Undamaged housing stock

A great deal of information has been collected on housing damage and destruction in Kosovo.

While it is generally agreed that 50 per cent of the housing stock was either destroyed or seriously damaged, far less is known about the number of undamaged housing units. It is not known how much intact housing is within each tenure type (private, socially-owned, social, cooperative, etc). The HPD plans a Kosovo-wide investigation leading to compilation of housing-related statistics on access to water, electricity and solid waste services, property prices, access to housing credit, the scale of homelessness and building repair and maintenance needs. Without such information development of a comprehensive and pro-active housing policy will not be possible. UNMIK will need to have reliable information on the existing housing stock in order to determine which, if any, properties will need to be acquired by UNMIK so that it will have access to sufficient property to provide alternative accommodation for those currently in illegitimate possession. As all people need protection against homelessness (even if they are unlawful occupiers), it will be important for UNMIK to identify and allocate such

accommodation. It will not be able to do so until a clear picture of available housing stock emerges.

### Need for transparent legal and regulatory framework

Discriminatory laws and regulations and the traumas of the conflict have led to a situation where there is neither a hous-

ing policy nor a clear legislative framework in place in Kosovo today. Though the HPD will have many vital functions designed to regu-

larize the housing and property sector, there is still no nascent local institution designated to take eventual responsibility for monitoring transactions, protecting people from forced eviction, organizing social housing construction, issuing building permits, allocating land for housing and guaranteeing housing security. This lack of institutional clarity is disturbing when considered in terms of rights such as security of tenure, protection against eviction, the peaceful enjoyment of possessions and protection against arbitrary deprivation of

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property which are set out in international human rights law. Basic legal components to enshrine these property rights in local legislation are required in Kosovo.

In the light of the events of the past decade (during which few new housing units were constructed) there is a need for a concerted effort to streamline Kosovo's housing law and policy and bring them into line with international standards. An attempt should be made to consolidate housing and property rights into a single piece of legislation, the Kosovo Housing and Property Rights Act. The initiative of drafting and implementing such a law would ensure participation by the Kosovo people and further enable the development of a consolidated law guaranteeing housing and property rights set out in international law.

The regularization of housing and property policy, legislation and practice in Kosovo constitutes a fundamental feature of the larger aim of establishing a stable and democratic society, built on the foundations of justice, the rule of law and the protection and promotion of human rights. Unless viable solutions can be found to these problems, ethnic and political tensions will continue, economic development and the establishment of democratic institutions will be severely hindered and the threat of future conflict will linger. Given the lawlessness and irregular climate in which housing and property relations are currently transacted and the ongoing legacy of discrimination and destruction, the urgency of remedying this situation cannot be over-emphasized. Failing to redress these issues will only contribute to increased insecurity, threaten attempts to realize housing and property rights and destabilize the peace-building process. It is to be hoped these lessons learned in Kosovo can be applied in other contexts of refugee and IDP return.

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This article is based on the more detailed *Housing and Property in Kosovo: Rights, Law and Justice: Proposals for a Comprehensive Plan of Action for the Promotion and Protection of Housing and Property Rights in Kosovo*. Copies can be obtained from the author at [sleckie@attglobal.net](mailto:sleckie@attglobal.net)

- 1 Legal term defined as "showing the extent, value and ownership of land".
- 2 Noel Malcolm Kosovo: *A Short History*, 1998, Papermac, London, p346.
- 3 *Official Gazette of Serbian Socialist Republic*, 15/90 of 30 March 1990.
- 4 The Programme set out many grounds for dismissal, among which was that: "All of those who have participated in demonstrations, shall be discharged immediately from managing posts in enterprises and social institutions." (Para 17)
- 5 Indicating the importance attached to housing and property records, the Yugoslav Justice Minister announced in July 1999 that the records of people and property for Kosovo were "removed to safer areas" and that "According to property records, the Serbs own around 70 per cent of the property in Kosovo which does not suit the Albanians who are of a separatist orientation and part of the international community". (*VIP Daily News Report*, Issue No 1559, Belgrade, 28 July 1998)
- 6 Interestingly, Article 123 of the Yugoslav Constitution states that: "Everyone shall be entitled to compensation for damages sustained as a result of unlawful or improper actions of an official or state agency or organization which exercises public powers, in conformity with the law. The state shall be obliged to pay compensation for damages. The injured party shall have the right, in accordance with law, to demand compensation directly from the individual responsible for the damage."

### Workshop on Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem (14-15 July 1999: Ottawa)

The question of Palestinian refugees represents one of the most difficult issues to be addressed in permanent status talks between Israel and the Palestinians. This workshop, organized by the Palestinian Refugee Research Net/International Development Research Centre, examines only one element of what must be a much larger package of elements comprising a comprehensive solution to the refugee issue. The workshop was convened in the view that compensation is important, and that discussions of the topic can be sustained among technical experts without in any way compromising the other inherent rights of the refugees.

The workshop report is available at [www.arts.mcgill.ca/mepp/prtn/prcomp3.html](http://www.arts.mcgill.ca/mepp/prtn/prcomp3.html) and includes links to workshop papers. Printed copies are also available. Contact: Eileen Alma, Project Assistant, Middle East Initiatives, Program & Partnership Branch, IDRC, PO Box 8500, Ottawa, ON K1G 3H9, Canada. Tel: +1 613 236 6163. Email: [ealma@idrc.ca](mailto:ealma@idrc.ca)

## COHRE publications

The following publications are all available from: COHRE, 83 Rue Montbrillant, 1202 Geneva, Switzerland. Tel/fax: +41 22 7341028. Email: [sleckie@attglobal.net](mailto:sleckie@attglobal.net) Website: [www.cohre.org](http://www.cohre.org) Please add \$5.00 for postage and handling.

### Sources Series (US\$15.00 each)

- No 6: International Events and Forced Evictions, Dec 2000
- No 5: Women and Housing Rights, May 2000
- No 4: Legal Provisions on Housing Rights: International and National Approaches, 2nd ed, April 2000
- No 3: Forced Evictions and Human Rights: A Manual for Action, 2nd ed, Oct 1998
- No 2: Selected Bibliography on Housing Rights and Evictions, March 1993

### Global Surveys on Forced Evictions: Violations of Human Rights

- No 7: July 1998, US\$10.00
- No 6: Aug 1994, US\$10.00
- No 5: June 1993; No 4: Aug 1992; No 3: Feb 1992; No 2: Aug 1991; No 1: Aug 1990 [free photocopies; please add \$5.00 p&p]

### Country Reports

(US\$10.00 each) on: Latvia (Jan 2000); Solomon Islands (May 1999); St Vincent and the Grenadines (Nov 1997); Japan/Kobe (Feb 1996); Palestinians/East Jerusalem (Sept 1995); Philippines (Nov 1993).

### Books

- Leckie S *When Push Comes to Shove: Forced Evictions and Human Rights*, 1995, Habitat International Coalition, 139p, US\$15.00.
- Leckie S *Destruction by Design: Housing Rights Violations in Tibet*, 1994, COHRE, 199p, US\$20.00.