



# Further Support to Refugees and IDPs

**Republic of Serbia**

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## Legal Aid Handbook

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## Section 1 - Introduction

This manual has been drafted as a practical guide to assist practitioners in the provision of legal aid to [internally displaced persons](#) (IDPs) from Kosovo and Metohija<sup>1</sup>. It does so by incorporating lessons learned from several other existing and previous assistance programmes that have been involved in property restitution, access to justice and similar problems affecting Kosovo IDPs.

When this document is read online, the links underlined and in blue text can immediately be accessed by holding the Ctrl key and clicking on the link.

The framework of this handbook has been drafted in accordance with local and international legislation and practical methods of providing assistance to these vulnerable groups. This methodology is also encouraged in the [Principles on Housing and Property Restitution for Refugees and Displaced Persons](#), (Pinheiro Principles)<sup>2</sup>. The [UN Guiding Principles on Internal Displacement](#) (Guiding Principles)<sup>3</sup> also state that the **national authorities** have the responsibility to provide protection and humanitarian assistance to displaced persons within their jurisdiction.

The situation for Kosovo and Metohija IDPs is distinguishable from that of many other IDPs, in that here the State has limited legal authority and influence in the area where the IDP is originally from. However, in this case the State **does** have the ability to assist these IDPs in realizing their rights by cooperating, participating and even supporting legal aid projects like the present one.

The Pinheiro Principles directly addresses situations like the one in Kosovo and Metohija, where the UN exercises the effective powers of the State, and emphasises that the UN transitional authority maintains primary responsibility to implement international human rights law, as described in the Principles.<sup>4</sup>

The major difference in this in this handbook, compared to most others, is the special attention given to the actual provision of legal aid through **representation** of IDPs before courts and other institutions in Kosovo and Metohija, which differentiates the legal aid being provided under this project to IDPs from other legal aid offered in Serbia to this group.

### The current situation in relation to property rights for IDPs from Kosovo

The UNHCR reports approximately [205,000 IDPs](#) from Kosovo and Metohija living in Serbia<sup>5</sup>, not including approximately [21,000 “Internal” IDPs](#) living in Kosovo<sup>6</sup> or the approximately [16,000](#) displaced from Kosovo and Metohija living in Montenegro.<sup>7</sup> The [Kosovo Property Agency](#) has listed on its website that there are over 40,000 property claims filed with it, out of which over 21,000 have been decided. In 2004 approximately 21,000

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<sup>1</sup> All references in this handbook to Kosovo and Metohija are done so in respect to Article 182 of the Constitution of the Republic of Serbia. All references to Kosovo includes the entire region of the province including Metohija

<sup>2</sup> UN Doc. E/CN.4/Sub.2/2005/17, Principle 22.3

<sup>3</sup> Contained in the annex of UN document E/CN.4/1998/53/Add.2 dated 11/02/1998.

<sup>4</sup> UN Handbook on Housing and Property Restitution for Refugees and Displaced Persons, page 19.

<sup>5</sup> UNHCR Serbia website [www.unhcr.org.yu/utills/File.aspx?id=326](http://www.unhcr.org.yu/utills/File.aspx?id=326) including breakdown by municipality

<sup>6</sup> Internal Displacement website [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/E2928D405B865F3D802570B8005AAF37?OpenDocument#sources](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/E2928D405B865F3D802570B8005AAF37?OpenDocument#sources)

<sup>7</sup> President of Montenegro website <http://www.predsjednik.cg.yu/eng/?akcija=vijest&id=2389>

compensation claims for property were filed by IDPs, most of which had their legal process [suspended](#) by the UNMIK Department of Justice until September 2008. The legal process for some of the suspended claims has started in some municipal courts. It is important to note that a significant number of the compensation claims are not related to the KPA claims, as many deals with property that was destroyed following the arrival of NATO forces in June 1999.

### **Places frequently visited to resolve claims**

Most IDPs continue to suffer from a lack of access to institutions in Kosovo, either due to objective or subjective reasons, in order to be able to address their property concerns on their own. As a result, there have been several measures made over the tenure of UNMIK in order to address this lack of access; including the establishment of [Court Liaison Offices](#) in areas that help facilitate access for vulnerable ethnic groups' to courts. However, this service is not provided to legal representatives who are working for IDPs. In addition, the Kosovo Property Agency had offices stationed in Belgrade, Kragujevac and Nis, until their closures in June 2008, the offices remained closed for over a year before re-opening under a UNHCR umbrella.

There are a small number of NGOs that provide limited forms of legal aid to IDPs on property related problems (e.g. obtaining documents). But with the exception of the legal aid Project there are none mandated specifically to assist in property issues.

### **Practical Application of Legal Aid**

The current structure of the present legal aid Project is based on a model set up by the Danish Refugee Council Project on legal aid in 2008.<sup>8</sup> The **mandate** of the present Project is to provide legal aid and information to IDPs from Kosovo and Metohija, as well as refugees from Bosnia Herzegovina & Croatia. Representation is predominantly provided in the Courts and Quasi-Judicial organs of Kosovo and Metohija, through the application of local and international laws, conventions and principles.

Any attempt to provide a comprehensive legal aid program for IDPs and refugees will have fundamental several requirements;

- the set up of field offices throughout Serbia in areas with significant numbers of IDPs and refugees;
- regular field visits to reach those who have difficulty in accessing established legal aid offices;
- establishment of an intake process, including criteria for eligibility of legal aid and identification of the types of legal aid that can be provided;
- establishment of a transparent and uniform application process, including forms and procedures that will protect both the client and the provider of legal aid;
- identification of the main types of problems affecting IDPs and refugees;
- identification of the various institutions mandated to deal with specific issues;
- acknowledge and address the potential security problems with representing clients in Kosovo and Metohija;
- an appreciation for the special need for confidentiality of client documents and professionalism throughout the case;
- detailed recording of statistical information on the caseload and work completed;

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<sup>8</sup> Established by the European Agency for Reconstruction "Implementing the "Legal Assistance Programme to the Institutions of the Government of Serbia dealing with Refugees and IDPs"

- prepare and widely disseminate an information campaign to reach affected groups.
- free access to courts, cadastre and other offices throughout Kosovo and Metohija.

## **Established Levels of Legal Aid**

The Project has categorized (3) three progressive levels of legal aid that is provided to IDPs and two levels to refugees. Each level involves a different set of activities. These levels are outlined hereunder:

### **Legal information/advice**

Basic legal **information** can be provided immediately by the Legal Aid officer, without preliminary approval, including on issues falling outside the mandate of the legal aid Project. It includes information to the client on the appropriate venue in which to file documents/claims or information on a specific court procedure. To the extent possible, the Legal Aid officer will assist in contacting directly the appropriate institutions/organizations. An applicant contacting the Legal Aid office and requesting basic legal information needs only to complete an [application form](#) for internal legal aid purposes.

Legal **advice** requires a more thorough understanding of the claimant's legal problem and includes advising the client on issues such as availability of legal remedies, trial preparation, legal options, tactics (e.g. who to sue, what to ask for, on which grounds, with which institution, etc.)

### **Legal Assistance**

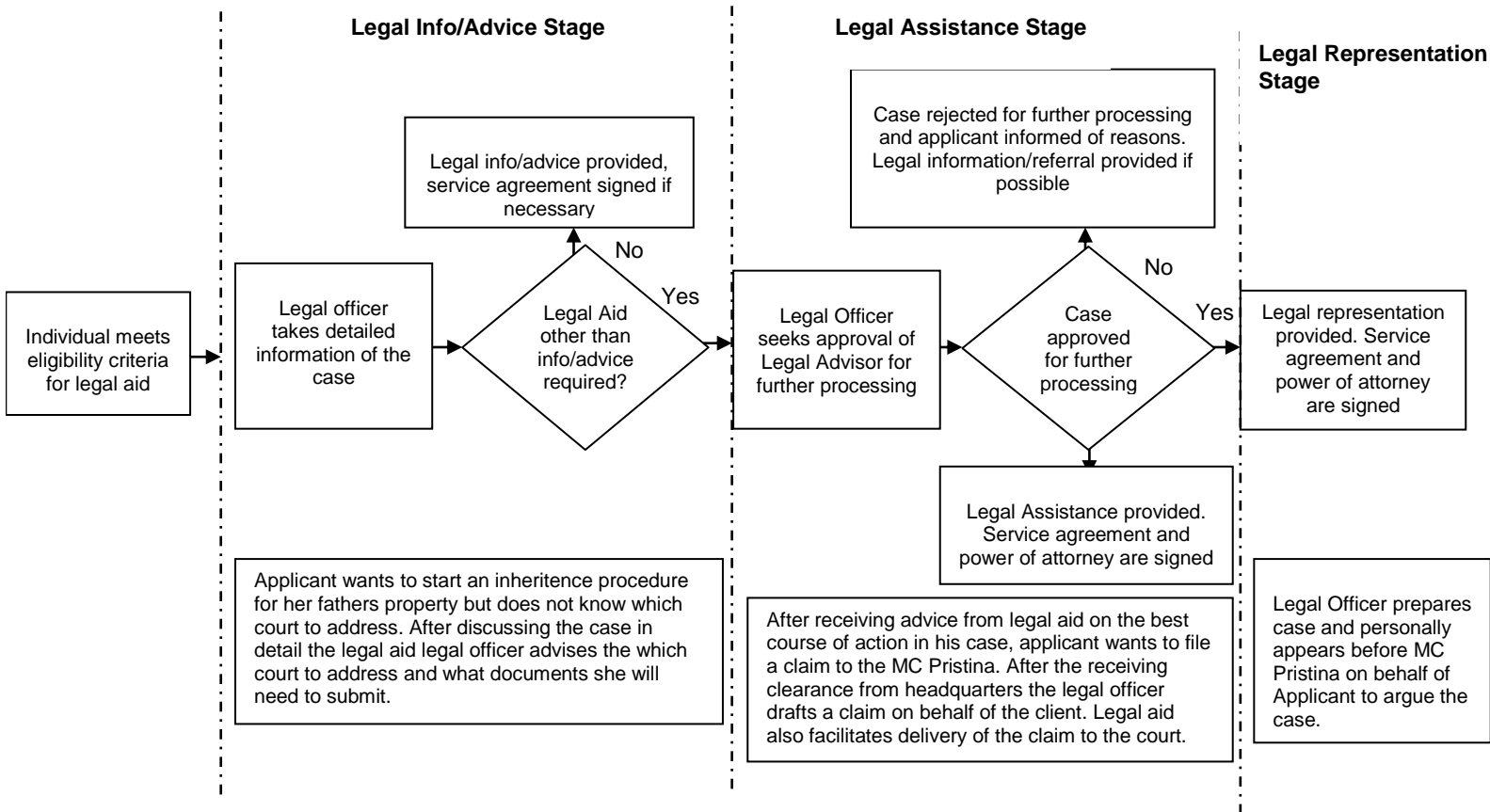
Legal assistance requires an actual agency-relationship between the client and the Legal Aid officer. It includes providing direct assistance in drafting and submitting claims, lawsuits, letters as well as in collecting evidence/documents. When it is determined that legal assistance is required, the Legal Aid officer prepares a **case brief** outlining the facts and the issues surrounding the case and requests the approval of the Team Leader to provide legal assistance. Once approval is received, a [Legal Aid Service Agreement](#) is signed, outlining the specific assistance to be provided to the client.

### **In-Court representation**

Depending on the case, in-court representation is provided, before courts of first instance, the Supreme Court of KiM, and other relevant bodies. Criteria for accepting in-court representation cases include the potential of the case to set a precedent and the merit of the case. Once approved by the Team Leader, the Legal Aid officer can represent the client at the approved level.

In order to protect the Legal Aid officer from obligating him/herself to represent the client at levels not acceptable to the Project, approval for representation must be registered for each stage of representation separately. For example, permission may be granted for legal aid representation at the Municipal Court level, but will need a separate approval for representation at the District Court level.

## Flowchart of Assessment & Levels of Legal Aid Provided



## Section 2 - The Legal Aid Process

The legal aid process consists of the following major processes; application for legal aid, review of application, assessing the merits of the case, acceptance/rejection of case, provision of legal aid, closing the case. Within each process are several sub-processes that are further explained within their respective headings.

### ***Applications for legal aid***

Legal aid must be formally requested by an individual which, depending on the legal issue and on his/her situation, may or may not become a client. In those cases not fitting the mandate of the programme, individuals seeking assistance are generally referred to other organizations with a relevant mandate. Likewise, a variety of organizations and institutions refer legal cases to the programme if these do not fit their mandates or capacities. The programme (see further) is working with a wide network of organizations which may regularly refer IDP/refugee clients. In addition, the programme assists ongoing processes – such as the UNHCR IDP registration – with the aim to facilitate the resolution of legal cases often pending for years.

Individuals can apply for legal aid **in-person**, via the Project website, by telephone, including via a toll-free **telephone** number, although the latter two possibilities are preferred as they enable the lawyer to explain to the client what to bring at the initial interview.

Most applications for legal aid will be received directly from individuals who have learned about the Legal Aid services through the information material prepared by the Project Team, the media or other sources.

To apply **in-person** for legal aid any person can approach any legal aid office and complete an application for legal aid. In addition, field visits are carried out throughout Serbia to facilitate access to legal aid for those persons who cannot come to legal aid offices.

Thanks to the cooperation the Project has with the [Ministry for Kosovo & Metohija](#), NGOs and other organizations, a number of cases have been **referred** to it for legal aid. This is done either by virtue of the mandate of the project, as in the case of the Ministry of Kosovo & Metohija, or through other arrangements, as in the case with NGOs. In addition, the Danish Refugee Council has transferred all case-files to the present Project, as it has come to the end of operations. Once it has been determined that a case referred to legal aid is within the mandate of the Project, the client involved in the case will be contacted to ensure that the transfer of the file is done with his/her permission, and to formally sign an approval for the case to be transferred to and be represented. Full details of where the case came from (i.e. which organization) must be recorded in the case file in order to be able to follow up with the previous organization, if necessary, on outstanding or other issues related to the case. Additionally, it will assist in identifying the effectiveness of partnerships with outside organizations.

### Common Referrals To Other Organizations

Requests by refugees from Croatia for documents --- [IDC](#) 011-245-2199  
Requests by IDPs only for documents --- [Praxis](#) 011-344-4486  
Requests by refugees from Bosnia --- Balkan Center for Migration 011 322 0987  
Requests by refugees from Croatia for legal aid – Center for Peace Legal Advice and Psychosocial Assistance +385 32 413 319

### Outreach to persons that have difficulty in accessing legal aid

There are many instances where an client is unable to access any of the established legal aid offices for various health, financial or other reasons. It is the inherent responsibility of any legal aid provider to ensure that potential claimants be able to access the service. Particular attention should also be paid to vulnerable categories, whose overall situation and specific needs, including information needs, generally prevent them from accessing legal aid services.

To address such access issues the Project's Officers conduct regular **field visits**, when possible. Throughout the project there have been several scheduled field visits for an established period of time in order to facilitate access. In addition to regular field visits, ad-hoc visits are also scheduled on an "as-needed" basis. Each legal aid office is encouraged to establish contacts with IDP/refugee focal points in areas where IDPs/refugee may have difficulty in accessing any of the established offices in order to facilitate their access to these offices.

Client is an elderly IDP living in a collective center in Kragujevac who requests assistance in collecting a judgment from municipal court in Pristina as he is unable to go to Kosovo on his own. In order to facilitate access the officer obtains a power of attorney from the client in order to collect the judgment.

Utilizing the **network of municipal trustees** is also helpful, as they are often in regular contact with IDPs/refugees and are spread throughout Serbia. By coordinating efforts with local trustees in different municipalities, municipal authorities, or even displaced Kosovo and Metohija municipalities, the legal officer can schedule appointments with displaced persons during a field visit. This has the added benefit of building on the mandates of these organizations.

Directly informing these target groups through the **strategic dissemination** of information material, and selected appearances on specialized press and broadcasting media is also necessary, as it manages to reach persons not directly in contact with trustees or other organizations. Printed material should be also be disseminated to organizations that may have contact with IDPs, so that they have an introduction to the mandate and what legal aid can and cannot do.



## Organizations that the Project would work with

[Eneca](#)

Fond za Mikrorazvoj  
Roma Democracy Centre

[Grupa 484](#)

[UNIJA - Union of IDP Associations](#)

Minority Rights Centre

Roma Association from Bela Palanka

[Initiative for Development and Cooperation](#)

[Ecumenical Humanitarian Organization](#)

## Applications via telephone

There are many instances where individuals request only basic legal information/advice, which may be provided via telephone including calling the toll-free number of the Project. The individual can call at any time during working hours. The procedure for receiving and handling such requests is explained under the heading “providing legal aid via-telephone” below.

## Recording information from the legal aid applicant

The legal aid [application form](#) was created to ensure that the most important details of the applicant/client and the case are recorded. In addition to the information requested in the application form the interviewer should get as much detail about the case as possible. There are many important reasons for thoroughly and accurately recording the details of the applicant/client;

- You want to make sure that you can contact your client again easily.
- You need a detailed record of the allegations, as these will form the basis of your cases and assessment of the legal issues.
- Gathering much detail is a great start to having an organized file.

An initial record should contain as much of the following information as possible most of which is already highlighted in the application form, which follows;

- **The contact details of the applicant/client.** You will most probably need to contact the person by telephone and in writing in the future. It is best to have all possible avenues of contact recorded – for example, where a person has two addresses, or two mobile telephone numbers, record both. This also includes e-mails, where possible. If there’s no address then get one of a relative or friend.
- **Name of the Applicant/Client.** Both the first name and surname of the complainant should be recorded, and where there is more than one client (for example a husband and wife), or the complainant uses different names (a nickname or alias), record all the names.
- **Date of birth.** It will make it easier to identify them, especially if you come across two clients with the same name.
- **Date of first contact.** This may be the date on the letter of complaint, or when the complainant first called you, or when the matter was referred to you by another organisation.

- **Reference number.** The matter may already have a reference number if it was referred to you by another organisation or if it was tasked to you by the MKiM. This needs to be recorded for ease of reference in case the other organisation contacts you about the case or vice versa.
- **Deadlines.** If the matter was tasked to you it may have a deadline that you need to take note of. Also note if there are any statutory time limits in which you or the complainant must take action.
- **Legal Officer.** This identifies who received the complaint and is responsible for following it up.
- **Ethnicity.** This information is for statistical purposes only. The applicant/client has the option of not answering this question.
- **Languages spoken.** This will help you to prepare communications with your client as it will alert you to in cases where you may need a translator.
- **Name of the respondent or opposing party.** Both the first name and the surname of the person, or name of the organisation. The complainant must identify one or more respondents. If the respondent is a business or organization, the respondent must be identified by its corporate name. If the respondent is a government agency, then the government employee (if known), the office and organization should be named as respondents.
- **Type of case.** This will provide ease of reference during follow ups as well as assist in identifying legal trends.
- **Case referred to.** If you are referring the case to another organisation record the name of the organisation you are referring the matter to.
- **Description of the circumstances of the case.** The case brief can be cut and pasted in this section. It should highlight the significant details of the case.
- **Date next action required.** There should always be a date of next action planned in order for a case not to lay dormant. A case that has been sitting dormant for an extended period does not resolve the problem of the client. If no further action is required the case-file should say so.
- **Any related cases.** There may be related cases both involving the same client or for similar properties with similar problems in the area, this information should be highlighted so that an effective strategy can be made to address systemic problems.
- **Related issues.** As was noted under related cases, the identification of related problems helps to identify trends, which will help us in future planning of a methodology to address them.

The basic information of a client must be recorded even in instances where basic information/advice has been given. The information collected in such instances can be limited to basic identification (name, last name, contact details and case brief).

In **determining whether legal aid has been provided after meeting with the client**, the litmus test is to ask “whether the individual is in a better position or better informed after meeting with a legal officer.” If the answer is “yes” then that person has been given legal aid and there should be some record indicating that persons’ contact with Legal Aid. Additionally, this will assist in the event that the individual returns at some time in the future. It is important to get the contact details of the client, as it may be necessary to contact that person in the future. If the client does not have a telephone number then get the telephone number of a relative or friend through whom we can contact the client.

**Providing basic legal information or advice** to an individual will most likely not require the intake of many (or any) documents. The application for legal aid, along with any corresponding documents must be stored in a binder together with similar cases in chronological order. An **index** of the cases should be created at the front of the binder, so as to keep the file organized. The index should include both the name of the client and case

number, and cases should be filed in chronological order. The front page of each application for legal aid should have the case number written on it.

**Index at front of info/advice binder**

Case Number	Client Name	Date of Application	Legal Officer

## Criteria for providing legal aid

The Project mandate is limited to providing legal aid to IDPs and refugees with a demonstrated financial need. In establishing whether a person is to be prioritised for legal aid, the Legal Officer will have to determine whether the following **personal** and **case-related** criteria are met:

### Personal Criteria

In deciding whether the claimant meets the personal criteria for receiving legal aid, the Legal Aid officers review the following information:

- The applicant must be displaced from Kosovo and Metohija, Croatia or Bosnia.
- The applicant must be unable to solve his /her legal problem alone and is limited in access to justice.
- The applicant must be in a disadvantageous situation, including:
  - Sub-standard living condition (i.e. collective centre, renting, etc.)
  - Employment status and income level
  - Number of dependants
  - Number of household members with income
  - Health condition

### Case-related Criteria

The legal matter and the legal service requested must be within the scope of the legal aid services that can be provided by the Project:

- The case must involve a dispute in Kosovo and Metohija or require assistance for someone from Croatia or Bosnia;
- The case must have **merit**. It must have a certain prospect of success or legal purpose. As part of the review the legal officer will review whether the case has been a long standing one. This is explained in more detail as to what is a frivolous claim.

A ***frivolous/vexatious claim*** is one made without any legal **merit**. In some cases, such an action might be brought in bad faith for the purpose of harassing the defendant. It is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

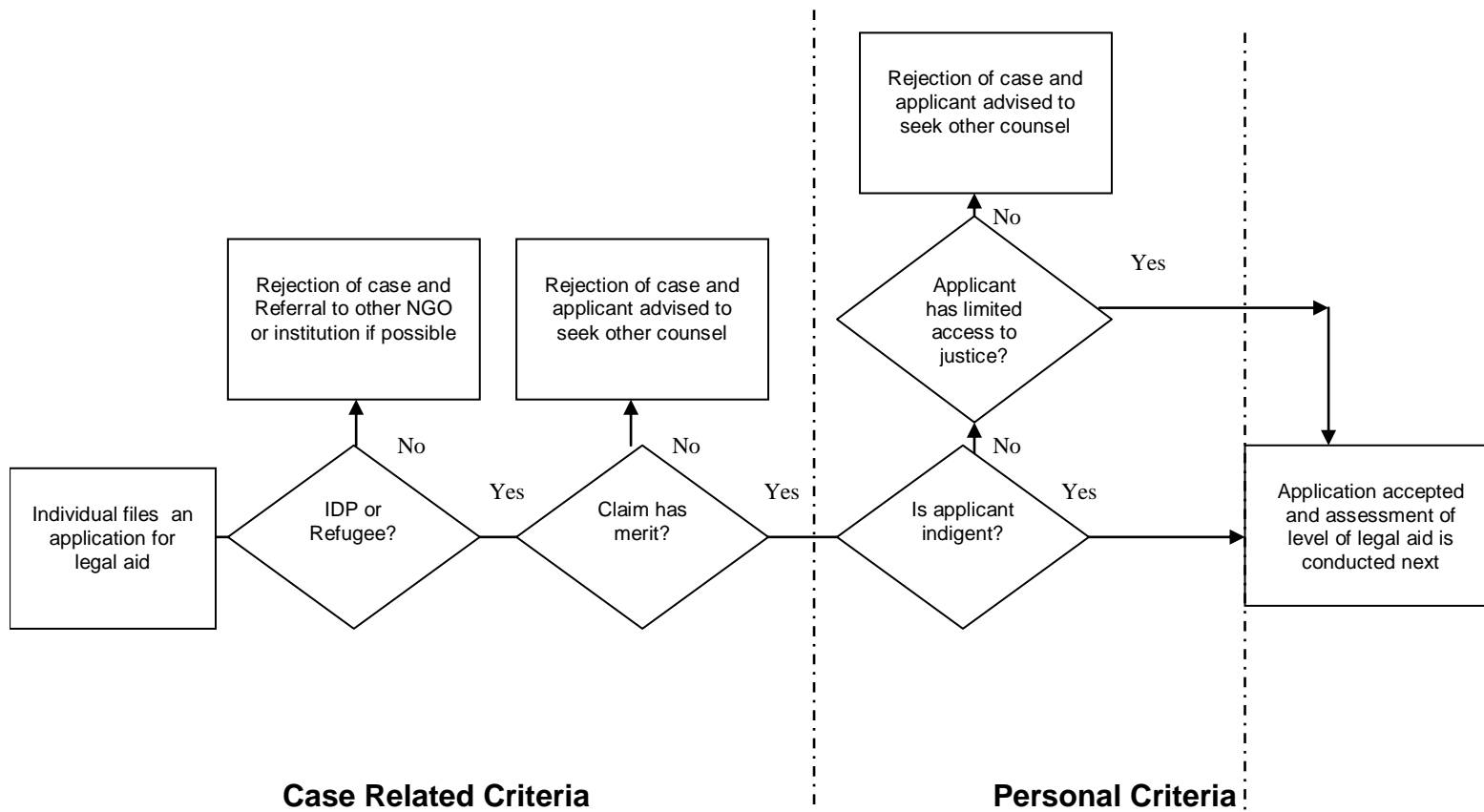
Frivolous claims not only waste time of the courts but may also end up costing the client. Courts have the ability to charge court costs to the losing party in cases. This will end up with either the client being required to pay court costs or the legal aid provider, which would have been able to spend the time and funds on non-frivolous claims.

Legal Officers must ensure that the cases which they take on have merit in order to avoid their cases from being labelled frivolous by judges. This is not always easy, as many clients may have genuine problems from which they seek redress and may not be adequately informed on how to proceed in the case. It is the job of the legal officer to fully inform the client of his/her rights and legal avenues to seek such redress.

The cost of bringing merit-less claims to courts will not only negatively affect the client and Project financially but also the professional reputation of the legal officer, the legal aid project and EU Funded Projects. A flowchart explaining the process is shown below.

## Flowchart of Assessment of Eligibility of Client/Case for Legal Aid

### Assessment Conducted by Legal Officer Upon Receiving an Application for Legal Aid



## Approval/Rejection of Cases

With the exception of information/advice, which can be given without establishing an agency relationship with a client, approval must be sought by the legal aid officer to provide legal aid assistance or representation. The approval must be obtained by a management level lawyer upon reviewing the facts and factors of both the case and the client. This process insulates the legal officer from criticism by the applicant and provides an effective and impartial review of the merit of the case.

All applicants for legal aid are to be informed whether or not the case is accepted by the legal aid officer and a record is made in the case tracking report and database for reporting purposes. If the case is accepted, the applicant is required to sign a [Legal Aid Service Agreement](#) outlining the type of services to be provided by the Legal Aid officer.

In **instances where legal aid is refused**, the failed applicant will be assisted with referral, when possible. The Legal Aid officer will have a referral sheet containing contact details of organizations that applicants can be referred to, including other legal aid providers, international organizations in Serbia, government agencies, courts, and NGOs. A list of some of these organizations are provided at the end of the toolbox.

## Section 3 - Methodology

### Opening letter to Client

When representing a client a lawyer needs to ensure that they are diligent in putting **everything** in writing. This protects the client, the legal officer and provides clarity to all parties. Legal officers have at least a dozen different ongoing cases and some clients may not be very educated, so it is important that all details of what kind of service is going to be provided be put in writing. It helps the lawyer with a reference of what was agreed upon, and it helps the client know exactly what the lawyer can and cannot do for them. This is best effectuated in an opening letter to the client which formally states, in plain language, what services are going to be provided and anything relevant you may have said during the interview. Additionally, it helps provide an accurate record if the case is handed over to another lawyer.

**SAMPLE OPENING LETTER REFERRING CLIENT  
TO OTHER ATTORNEY FOR OTHER MATTERS**

(CLIENT NAME)  
(CLIENT ADDRESS)

(DATE)

Dear (CLIENT FULL NAME)

It was nice to meet you on (DATE). This is just a reminder that we will be able to represent you with your property claim. Please note that we will not be able to represent you on your (STATE ISSUE) or any other issue not indicated in the service agreement that was signed between you and the legal aid project on (DATE).

The fact that the legal aid Project is unable to assist you with any other issue not related to the property claim does not necessarily mean that such a case is without merit. We express no opinion on any cases other than your property case with which we are assisting you.

We have attempted without success to locate another legal aid provider to assist you with your other claims. If you should wish to continue to pursue legal action in relation to your non-property related claim you should contact a private attorney. He or she may be able to advise you concerning the merits of the case and how your case should be initiated. (IF POSSIBLE TO RECOMMEND SOMEONE WHO MAY BE ABLE TO ASSIST THE CLIENT THEN THAT INFORMATION SHOULD BE PUT HERE ALONG WITH CONTACT DETAILS.)

Thank you.

Respectfully,

(NAME OF LEGAL OFFICER)  
Legal Aid  
(CONTACT INFORMATION)

## **Client Counselling**

When a person has come to legal aid for assistance they consider their problem to be very serious and are looking for help. All cases, big or small, need to be taken seriously. What are the basics of client counselling? Basically, you want to give the client what information he or she needs to know in order to make an informed, intelligent decision about a course of action. Put another way, you should be giving that client what **you** yourself would like to know before expending a major amount of time, worry and effort into any substantial undertaking.

Effective counselling includes the ability to gather all relevant details from the client, including all strong and weak points on their case. Clients are often egocentric when it comes to their case and often forget to provide all details unless properly interviewed.

- **Tips to effective client counselling**

**Time Considerations.** All clients are asking subjectively “how long will the case take?” While you cannot be exact in your guidance, you should be able to give some estimate for what length of time will be involved in resolving this dispute. What could delay the resolution? What will the opposition likely do that will resolve the problem quickly or prolong it? Your client should appreciate a realistic assessment and the factors that go into it. Few clients want to hear that something is going to be resolved quickly only to discover that the process will be much longer than promised.

**Focus the interview.** With the legal aid workload ever increasing you will not have unlimited time to meet with a client. So, at the start of the office visit, try to organize the interview. Tell the client at the outset what is to take place, how you want him/her to outline the problem for you, how you’ll be happy to provide advice or get information on what can be done, and why he/she should jot down any questions she has while you’re talking so you can answer them at the end. Should she start wandering off the subject, gently bring him/her back to the issue at hand.

**Be patient.** A good Legal Officer is always a good listener. Despite what was just said above, remember that there must be a fine balance between “keeping it moving” and trying to be considerate regarding the needs of the client to vent frustrations or to “tell his/her story.” This not only allows the relevant facts and details to come out, but it also lets clients pour out their feelings. Remember that sometimes our clients just need someone to listen to them.

**Get Complete Facts.** Wait until the client has completed explaining the problem before you start giving advice. Don’t jump right in and give an answer until the client has had a chance to explain everything, as advice shouldn’t be based on partial facts. Be sure you ask, inquire and probe until there are no more facts to come out. Wait until you think that the client has finished and then ask, “Is there more?” Then, and only then, proceed with your advice. There’s nothing worse than going to court and learning about facts that the client forgot to tell you.

**Advise fully.** Always listen to what the client is asking or requesting. When the client is fully informed about the length of time it will take to process a case and the options/alternatives available he/she can then make informed decisions as to what action to take.

**Follow-Up Appointments.** Full advice, is sometimes impossible in a short amount of time. If you only had 15-20 minutes available to meet with the client use one or more follow-up appointments to get the details, provide full advice, ask additional questions or provide feedback on solving the problem. You might require the client to bring additional documents to the next meeting or additional people to sign the legal aid service agreement.

**Retain records.** Keep accurate records. That means keeping track of when the client met with you, what she said, what documents she presented, what the problem is, how you advised, what course of action was agreed upon, whom you called or wrote (or e-mailed) and, with each successive contact phone call or interview, the same or similar information. Get copies of relevant documents so you can review them.

## **Telephone Counselling**

Legal Aid offices regularly receive enquiries by the telephone, asking about the services provided and requesting legal information. In instances where the individual requires basic information (e.g. where to file a claim) it is acceptable to provide information or basic advice. Promises to provide legal assistance or representation, the 2<sup>nd</sup> and 3<sup>rd</sup> levels of legal aid, should not be made over the telephone.



When providing legal info/advice over the telephone it is important to record the name of the client and complete a legal aid application. The details of advice given must be recorded in the event there becomes a need for follow up or if the client calls again in the future.

#### **Tips to effective telephone counselling;**

- Never answer the phone saying “Hello” but “EU legal aid Project, can I help you”;
- Inform the person to whom he/she is talking to;
- Find out the name of the client who seeks information;
- Note the time of call;
- Address the client and their problem with respect;
- Take detailed notes during the conversation;
- Get acquainted with the problem presented by the client;
- Use open ended questions during the conversation (e.g. who, what, when, where) to illicit a better explanation of the problem;
- Inform the client about the services provided and the kind of information they may get;
- If the case requires the review of documents or a higher level of legal aid, schedule an appointment for the individual to meet in person to discuss the problem;
- If the case is beyond the mandate of the Project, try to direct the client to a competent institution. A list of organizations is located at the end of the toolbox.

#### **Filing of a case with the local courts in Kosovo and Metohija**

Due to the nature of the claims being filed and the status of the clients being represented one can expect that there are going to be many difficulties associated with filing of claims with the local courts in Kosovo and Metohija. This includes, but is not limited to: security issues, refusal to accept documents from Serbia proper, refusal to provide documents in the Serbian language and in some instances, perhaps bias/prejudice and even conflict of interest.

It is the duty of the advocate to enthusiastically represent their client to the best of their ability even under the most extreme difficulties. This means to ensure that there is no room for mistake with these courts and following up on the status of the case regularly. Legal Aid providers must ensure that they have valid powers of attorney when making submissions to the local courts on behalf of clients. While courts currently accept such documents drafted in courts in Serbia proper, they will not accept them from any of the courts displaced from Kosovo and Metohija. There have been recent instances where courts in Kosovo and Metohija refuse to accept powers of attorney certified in Serbia proper from any court.

Practitioners should get in the habit of requesting in advance, in writing, the presence of a court translator to provide translation during hearings and for transcripts to be translated into Serbian. There are several provisions of the applicable law that guarantee the language rights in Courts of parties.<sup>9</sup> Nevertheless, many cases have been postponed in the past due to failure to coordinate the services of a translator in advance.

#### **Court/Case costs, who pays them**

In most cases legal aid will cover the cost of filing fees with courts for clients that cannot afford to pay these costs.

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<sup>9</sup>Article 5 of the *Law on Realization of Equality of Languages and Alphabets of Nations and Nationalities*, Official Gazette of the SAP of Kosovo, No. 48/77, Section 5 of UNMIK Regulation 2006/25 *On the Framework for the Justice System in Kosovo*.

Under the applicable law in Kosovo and Metohija, court fees are required in several instances (i.e. where the claimant is demanding monetary compensation). The same law allows for the court to waive such fees upon the request of a claimant if he/she can prove that he/she is indigent.

Previously under the *Law on Court Fees* (OG SAPK 12/79) (Art 17), the exemption from the obligation to pay court fees should be granted based on the rules set forth by the provisions of the *Law on Contested Procedure* (OG SAPK 4/77). It prescribed that the responsible court should make a decision on the request of the party to be exempted based on the information on his/her financial status (Article 172 Para 1).

In 2008 UNMIK drafted an [Administrative Directive](#) whereby the [Kosovo Judicial Council](#) (KJC) would uniform the court fees in Kosovo and Metohija.<sup>10</sup> In November 2008 the KJC published an [Administrative Instruction](#) on Court Fees. Section 7 of this regulation deals specifically with the waiver of court fees for indigent persons. Section 7.2(b) is particular interesting in it's wording; *"the judge assigned to the case shall presume that a person cannot afford to pay a fee... The person can provide evidence that he or she is receiving legal aid from a District Legal Aid Bureau."* This refers to legal aid formally established by UNMIK Regulation 2006/36, however it would be prudent for the legal aid lawyer to argue that the recipient of legal aid from the Project should be entitled equally under the law to the protections provided for persons receiving institutionalized legal aid.

### **Getting international judges appointed to a case**

There have been a number of times where clients request that their cases be heard by international judges. The primary reasons for such requests revolve around a lack of confidence in the local judiciary in being objective.

There are pros and cons to bear in mind when deciding whether to request an international judge in a case.

#### **Pros**

- Non-biased review of case
- Professional judgments
- Limited intimidation of judge by outside influence<sup>11</sup>

#### **Cons**

- Long wait for translations (weeks/months)
- Lack of understanding by international judges of local laws
- Frequent transition of international judges out of mission
- Slower processing of case
- Difficult to meet judges
- Translation difficulties at hearings

The process in requesting an international judge is straightforward and is outlined in UNMIK Regulation 2000/64, Section 1.1 and 2000/6. While the laws refer to criminal cases, the courts have inferred this to include civil cases as well, given the similar pressures that local judges can face in such cases as much as in criminal cases. It is recommended that the request be in the name of the client, and if possible, accompanied with a supporting letter by

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<sup>10</sup> UNMIK Regulation 2008/4 Section 2.

<sup>11</sup> See OSCE Report; Intimidation of the Judiciary: Security of Judges and Prosecutors, April 2010

anyone that would be able to persuade the court to accept the appointment of an international judge (i.e. an international organization/official, local judge/prosecutor). The new laws on getting an international judge appointed to a case includes Law No. 03/L-053 On the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo and Metohija.

Not every request for an international judge to hear a case will be approved, given the limited number of international judges and the desire to develop the capacity of the local judiciary. Using the argument that the case is taking too long is not sufficient grounds. There must be a good reason for requesting an international judge; inter-ethnic dispute, organized crime, open bias by the local judge are good examples. There is existing case law involving property disputes that can be cited in the letter, if the circumstances are similar to the one involving your client;

- Case of Sami Lushtaku, which involved an international judge to execute the verdict of the Municipal Court of Priština in evicting the illegal occupant, case number 461/2004;
- Municipal Court of Klina, involving the fraudulent sale of an IDP property, case number; C. No. 48/04
- Municipal Court of Istok, involving the fraudulent sale of an IDP property, case number; C. No. 165/2006

If you have a client who has a case before an international judge then it would exponentially help if documents submitted to the Court were in English, even though the law allows for submissions to be in Serbian/Albanian. Also, an English speaking lawyer should appear before the judge, in order to be able to clearly present the case without having the risk of potential mistakes in translation by translators. This will expedite the processing of the case over others.

#### **An example of the advantage of being able to speak the judge's language**

There is a Priština based lawyer who is often hired when a French speaking judge is appointed to the case. When presenting cases he can speak to the judge without a translator. The same holds true for another one of his colleagues, who speaks English. Conversely, one of the few Serbian lawyers in Kosovo, requires a translator whenever he wants to communicate with a judge and is unable to speak with them personally or informally.

#### **Filing cases with the Human Rights Advisory Panel**

The UNMIK [Human Rights Advisory Panel](#) (HRAP) may only deal with a matter after all other available remedies for the alleged violation have been pursued. The HRAP has a mandate to hear complaints of violations of human rights committed by the United Nations Mission in Kosovo. **The deadline to file complaints with the HRAP was 31 March 2010, no new complaints are accepted. However, complaints that were filed before this deadline continue to be processed.** Complaints must have been filed within a period of six months from the date on which the final decision was taken. The Advisory Panel will first examine the admissibility of a complaint. If it considers that the complaint is admissible, it will examine the merits and adopt an opinion. The opinions of the Advisory Panel will contain a finding as to whether there has been a breach of human rights. They can also contain, where appropriate, recommendations.

The opinions of the Advisory Panel will be submitted to the SRSG. The SRSG then decides whether and how to act on the findings and recommendations of the Advisory Panel. The decisions and opinions of the Advisory Panel as well as the decisions of the SRSG will be made public. Previous legal aid projects have been successful in obtaining a decision in their favour by the HRAP.

### Practical Points to keep in mind when presenting cases before the HRAP

#### Use of Language

The committee has made it clear that they are limited in resources. The Committee will accept claims and documents in Serbian, Albanian and English. However, in reality the translation process will slow down the processing of the claim by up to several weeks/months. It is better to submit claims with translation of supporting documents to English, if possible, to expedite the process.

#### Persuasive authority and dicta

The judges of the HRAP indicated that citing the European Convention of Human Rights articles and case-law of previous similar cases would certainly help the case submitted before them. Advocates should include as part of their argument such cases and clearly state which right has been violated according the ECHR.

Relevant case law before the Human Rights Advisory Panel that would be of assistance to lawyers providing assistance to IDPs as precedential authority includes the case of Miligoric et al. It is important to note that the HRAP decisions are only advisory, and it does not have the authority to execute these decisions.

### **Filing claims against KFOR**

In cases involving property occupied by KFOR the process gets very complicated, due to the immunities from any legal process provided to KFOR under [UNMIK Regulation 2000/47](#). Each contingent follows its own rules for compensation claims where KFOR has usurped property. Persons with claims against the larger contingents (e.g. France, U.S., Germany) will need to file a claim directly with those forces at their main bases.

Client filed a claim at French KFOR HQ for occupation of her shop by French forces. The claim is forwarded to Paris where a decision on whether to provide compensation is made. If the client receives an unfavorable verdict, she can appeal to a three (3) person panel comprised of a local, a representative of French KFOR and a representative from the French government. The panel is advisory and must be unanimous in order for their decision to be sent to Paris. Unfortunately, the French government rep is duty bound to follow instructions from HQ in Paris.

Clients who have claims against smaller contingents (e.g. Czech) will need to have his/her claim filed at the KFOR headquarters located in "Film City" in Pristina. The office is called the "Izmir" building and is located at the entrance to the compound. Further information for property claims with KFOR at 038 503 603 ext 2793, mobile 044/310-185. Other questions of a legal nature can be addressed to the legal unit of KFOR at ext 2087.

There has been a great deal of negative experience in dealing with some KFOR contingents (e.g. Greece, Germany) which typically refuse to pay. There have been cases where some contingents have paid compensation to property right holders (e.g. Spain, U.K.)

It is recommended that in cases where a clients rights are being violated and KFOR fails to take responsibility for its actions that the lawyer appeal to the embassy of the responsible contingent in Belgrade with the hope of exerting political pressure. A copy of such an appeal should be sent to relevant human rights organizations (i.e. [Amnesty International](#), [Human Rights Watch](#)).

## **Effective Use of the European Convention of Human Rights**

Whenever possible, it is recommended to cite relevant articles of the [European Convention on Human Rights](#) in addition to the local laws when advocating. This is especially true when arguing before the HRAP or before an international judge, as they recognise the ECHR and its case-law to be precedential. The relevant articles of the Convention as it relates to property cases are:

**Article 1 of Protocol 1**-Protection of property

**Article 2 of Protocol 4** -Freedom of movement

**Article 6** - Right to a fair trial

**Article 13** - Right to an effective remedy

**Article 14** - Prohibition of discrimination

A number of relevant cases relating to the rights of IDPs, refugees in relation to restitution and claims have been attached as an annex at the end of this handbook.

## **Section 4 - Property Related Legal Claims and Issues**

Given the significant number of cases related to property, as well as its effect on resolution of displacement, special attention is given to this area with key issues highlighted and methodologies for addressing them.

Court proceedings should be initiated and followed through in the first and second instance levels requiring legal representation before courts, administrative and other quasi-judicial bodies in Kosovo and Metohija. The ability to determine the length of the proceedings – thereby envisaging the timelines for the closure of individual cases - is difficult under the current circumstances due to the contested legal framework, the lack of review mechanisms (such as the yet-to-be-formed Special Panel of the Kosovo Supreme Court to deal with KPA-related appeals), recurrent violations of procedural law<sup>12</sup> and unreasonably lengthy civil trials<sup>13</sup> by the Kosovo and Metohija courts.

### **Most Frequent Types of Property Cases**

The following breakdown categorizes the most common property problems that continue to affect IDPs from Kosovo and Metohija. There is no common approach in addressing all of these problems; some need to be addressed in Court, others by the Kosovo Property Agency and others still by other organizations. The categories of common property

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<sup>12</sup> See OSCE Mission in Kosovo, Litigating Ownership of Immovable Property in Kosovo, March 2009.

<sup>13</sup> For example, civil trials for the annulment of fraudulent contracts before the Municipal Court of Klina initiated in 2004 took over 5 years for a first instance judgment (e.g. Radivoje Isailovic C. No. 46/04, initiated in 2004).

problems are explained along with examples of real cases, with advice on how to proceed in these cases.

## **1. Post-HPD Cases**

There have been several instances, following a decision of the Claims Commission of the Housing and Property Directorate and subsequent eviction, where a property has become **re-occupied**. Efforts to get the police to evict the illegal occupants are often difficult and some may require court intervention, which slows the process even further.

A client received an HPD decision confirming his property right on his home in Peć in 2003, and was given the keys to his property. He never returned to his property due to security concerns and lack of employment prospects. A few months later, he was informed by a neighbour that his property was once again illegally occupied. He informed the KPA of the re-occupation and was told that the issue is now out of their mandate.

A multi-pronged approach may be needed to address such cases, including involvement of UNMIK, EULEX and the OSCE Human Rights and Communities Division, requesting the support of the KPA and filing a claim in municipal court. Contacting the KPA is also advisable to get a formal response from them and to obtain evidence of exactly when the illegal occupant was evicted. It may also be advisable to try to get the KPA to evict the illegal occupant on the basis of a failure to timely inform the property right holder of the eviction or for failing to effectively secure the property following the eviction.

In rare instances will police evict the illegal occupant for breaking the HPD seal and re-occupying the property, however, one should still talk to the local station commander to try. The police are sometimes effective in at least allowing for an escorted visit to the property to talk to the occupant, which may be effective in resolving the problem. It would be prudent also to contact the local public prosecutor to request criminal charges be brought up against the illegal occupant for re-entering the property and breaking the HPD seal. This would not only put significant pressure on the occupant to leave the property, it would also discourage re-occupation as the re-occupation is a violation of the provisional criminal code.<sup>14</sup> Notes of what the police and the public prosecutor do say or do must be recorded for the case file, as well as to assist the project report on the effectiveness of contacting these bodies.

## **2. Ongoing KPA Claims**

The transition to the [Kosovo Property Agency](#) following the closure of the Housing and Property Directorate, in 2006, enabled IDPs to file claims for agricultural and commercial property as well as residential property. The law also allows for alternative forms of relief for the successful claimant, including eviction, placing the property under administration, a lease agreement, seizure of unlawful structures, auction and compensation.<sup>15</sup> The deadline for persons to file claims with the KPA is now closed and no new claims are taken. Clients in this category will most likely seek follow-up on existing claims or appeal to the Supreme Court of Kosovo.

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<sup>14</sup> UNMIK Regulation 2003/26, Provisional Criminal Code of Kosovo, Article 226

<sup>15</sup> UNMIK Regulation 2006/10, Section 15.2

A client has a plot of farmland along the Priština – Skoplje highway which has been illegally occupied and turned into a gas station. He filed a claim to the KPA in 2005 and has received a decision from the KPCC rejecting his claim, stating he did not provide sufficient proof of a property right. He originally submitted a copy of the purchase contract and an old possession list, the occupant did not contest the claim. He wishes to file an appeal to the Supreme Court of Kosovo.

Under the applicable law, appeals in KPA cases are heard by the [Supreme Court of Kosovo](#) with mixed local and international panels.<sup>16</sup> To date however, there have been no cases appealed to the Supreme Court, which is mainly because the KPA is currently focusing on processing uncontested claims. Legal officers will prepare cases that will go before the Supreme Court on appeal, as well as inform IDPs of their rights to file an appeal, should they so wish. Depending on the case, it may be prudent to follow up with the attorney representing the respondent to try and mitigate the situation through a resolution between the client and illegal occupant. The fact that the claim exists puts the illegal occupant under pressure, as he/she often knows they have no legal right to the property and do not know what kind of remedy will be awarded by the court. This may induce the occupant to be amicable to resolve the dispute out of court.

### **3. HPD Compensation Cases (C vs. A)**

There are many cases where the Housing and Property Claims Commission (HPCC) of the HPD ruled that that **both** the IDP and the illegal occupant have a property right for a contested property. As a result, both parties were found to have a property right and while one party is awarded possession, the other **should** receive compensation. To date no compensation has been paid in any of these cases to IDPs.

A client worked for a socially owned enterprise in 1993 and received an occupancy right to an apartment in Priština in 1995, he later purchased the property in January 1999. He fled Kosovo in June 1999 and the property was subsequently illegally occupied. He filed a claim for the property with the HPD in 2001. The illegal occupant also filed a claim for the property, stating that he lived in the apartment until 1992 and was discriminatorily evicted.

In sum HPCC ruled that both the client and the respondent had a right to the property, as the illegal occupant had lost the property as a result of discrimination. It awarded possession of the flat to the respondent, with the requirement to pay a certain value for the property, and that the client be paid an amount in lieu of occupation. Neither has the occupant paid anything as required under the order nor has any amount been paid to the client.

### **4. Fraudulent Property Transactions**

Generally, the fraudulent ways in which residential, agricultural and commercial properties belonging to IDPs are sold include fabricated powers of attorney signed to a third party to sell the property, contracts of sale fraudulently drafted, fake identification cards used during

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<sup>16</sup> UNMIK Regulation 2006/10, Section 13.

the signing of contracts. In certain circumstances, the [Provisional Criminal Code of Kosovo](#)<sup>17</sup> provides an injured party with the right to bring a property/compensation claim in the course of a criminal proceeding.

A client who is an IDP in Kraljevo, inherited a house in Istok from his father, who died in 2001 in Kraljevo. In 2007 he found a buyer for the house and commenced the procedure for selling it. During the process it was discovered that the house was sold in 2003.

Upon closer inspection it was discovered that the seller of the house was his father (who was 2 years dead on the date of the sale of the property). Neither the signature nor the identification card number were authentic. To make matters worse, the property was re-sold in 2006 a second time to a third party.

There are obvious legal challenges to obtaining a successful criminal conviction compared to getting one in a successful civil suit (i.e. the standard of proof is greater in criminal cases) and successful civil judgments are sufficient to nullify the fraudulent transaction. However, it would be prudent to file both criminal charges at the same time as filing a civil claim for the invalidation of the fraudulent property transaction. Criminal cases are processed more quickly in courts than civil cases, and a successful judgment can be used to support a civil claim for damages, a conviction against a party involved in a fraudulent property transaction can be used in potential future cases against the same party, who may be involved in other fraudulent transactions. Criminal charges are also naturally better motivators than civil suits for illegal occupants to settle cases informally and vacate the property in question. Lawyers must be careful when filing in both civil and criminal court, as there have been instances where local courts have postponed hearing civil cases until the criminal ones are completed.

For a number of reasons it may be advisable to request an international judge in these types of cases.

It is important to note that in 2001 UNMIK drafted a [regulation](#) which, although not drafted specifically to deal with fraudulent transactions, does indirectly provide some protection against such cases.<sup>18</sup> In practice the regulation required the approval of the municipal administrator for property transactions between different ethnic groups. The wording of the regulation reflects that it is intended to have a limited but indeterminate life span. A judge would in theory be able to invalidate a transaction that occurred during UNMIK's tenure that did not have the approval of the municipal administrator. In principle this means that a property sold before 2008 should have an approval of the UNMIK municipal administrator.

## **5. Inheritance Cases**

Inheritance cases for properties in Kosovo and Metohija are simple, yet very important court procedures. While such cases are more of a procedural nature, they remain a stumbling block for many IDPs unfamiliar with the process.

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<sup>17</sup> UNMIK Regulation 2003/26, Article 107

<sup>18</sup> **UNMIK Regulation No. 2001/17** on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo



Our client's mother died in 2007 in a collective center in Belgrade. She owned an apartment in Dragaš. The client is the only surviving relative and would like to start an inheritance procedure for the apartment.

He has a copy of the possession list from the cadastral agency in Prizren dated 2004 with an UNMIK stamp.

These cases are dealt with by initiating procedures before the courts in Kosovo and Metohija or in Serbia proper, depending on the territorial jurisdiction of the court as regulated by the [Law on Inheritance](#)<sup>19</sup> and the recently promulgated [Law on Out Contentious Procedure](#)<sup>20</sup> and (which notably did not bring significant changes to the inheritance procedures). The laws basically say that the procedure can be heard in the municipality where the property is located or in the municipality where the owner died.<sup>21</sup>

Legal Officers who have had similar cases in Kosovo and Metohija have come across staff at courts and cadastral officers who have refused to accept documents from institutions in Serbia proper.<sup>22</sup> It is recommended to initiate the inheritance procedure before the relevant court in Kosovo and Metohija to avoid a potential non-recognition of the Serbian court decision by the relevant Cadastre office, which would demand the re-initiation and double procedure and slow the process down significantly. This does not, however, mean that a process done in a court in Serbia proper is not legal, but in the interest of judicial expediency it is recommended to use a Kosovo court as the venue. Following the determination of the court, a submission requesting the initiation of an inheritance procedure needs to be filed including relevant documents. In-court representations at this level remedy the lack of access to Kosovo courts and contribute to the effective resolution of these cases.

## **6. Mass Compensation claims filed in 2004**

Between June and December 2004 **over 18,000 civil & criminal claims** were filed by the legal department of the Coordination Centre for Kosovo and Metohija (CCK) on behalf of IDPs. The claims were lodged against UNMIK, KFOR, the Provisional Institutional Self Government (PISG), various municipalities and, in some cases, against named individuals. A great deal of the claims involved property claims of various natures (claims for utilities/rent/damage done while properties were occupied as well as destruction of property).

However, the Department of Justice of UNMIK immediately suspended the processing of these claims until a solution on how to process them could be determined. Some of these claims have been unfrozen following an instruction by UNMIK in late 2008 to begin processing the cases again. As a result hearings have begun in some municipalities but not in others. A copy of all instructions involving the order suspending and subsequent lifting of the suspension are available [here](#).

<sup>19</sup> Law on Inheritance in Kosovo, Law No.2004/26

<sup>20</sup> Law on Out Contentious Procedure for Kosovo, Law no. 03/L-007

<sup>21</sup> Law on Out Contentious Procedure for Kosovo, Art. 14 & 128, Law on Inheritance in Kosovo, Art. 147

<sup>22</sup> Discussed at legal aid working group, 14 July 2011, in Belgrade

Client owned a home that was destroyed in Peć in July 1999. He filed a claim in the Municipal Court of Peć against KFOR and UNMIK for the damage, citing it was their responsibility to maintain a peaceful environment under UNMIK Regulation 1999/2 and UN Resolution 1244.

The Department of Justice of UNMIK froze the claim, among others, temporarily until a solution for such claims could be found as the courts were not capable of handling such a large caseload. To date UNMIK has not unfrozen the claims.

As a result, the approach in dealing with these types of cases will depend on what stage the case is.

A further challenge has occurred with the passing of an [Amendment on the Law of Public Financial Management and Accountability](#)<sup>23</sup>, which effectively suspends the processing of these compensation claims for up to 180 days or until the Ministry of Justice of Kosovo notifies the court in writing that it is assuming representation on behalf of the government or public authority. This law can be viewed as something similar to the UNMIK instruction in 2004 to stay the processing of these cases, which the HRAP ruled to be in violation of Article 6 § 1 of the ECHR, which in relevant part reads as follows: "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ...hearing within a reasonable time by [a] ... tribunal ..."24 Also, it could be argued that this law detrimentally effects IDPs and ethnic Serbians in particular in violation of Article 14 of the ECHR. While a claim may be filed with the Constitutional Court in Kosovo it will take a long time to process.

## **7. Compensation for illegally occupied properties**

These types of cases are sometimes associated with post-HPD and KPA cases, as they often follow decisions by the HPCC or KPCC. However it is not mandatory for such cases to stem from such verdicts. There have been several instances where an IDP sues an illegal occupant for rent, conversion of property, damages and other tort related claims. These cases were also effective in establishing the framework for mediation between illegal occupants and property right holders in resolving disputes. Indeed, in several instances where a court would find for the plaintiff for damages the illegal occupant would be more amicable to an out-of-court settlement in exchange for withdrawal of the claim.

Client owned a property in Peć that was illegally occupied from June 1999 until August 2007. She eventually received a positive decision from the HPCC for the return of her property in 2003. She has learned that the same illegal occupant has occupied the property the entire time.

She wishes to file a claim in the Municipal Court of Peć and has requested compensation from the illegal occupant for use of the property (rent, utilities and costs).

These cases must be filed with the municipal court where the property is located. It would be practical to provide the court with a copy of the HPCC decision and request from the KPA a

<sup>23</sup> Amendment to the Law on Public Financial Management and Accountability, Kosovo Assembly Law 03-L-221, Article 25.

<sup>24</sup> Human Rights Advisory Panel [Decision, Petko Miligoric 38/08, 24 March 2010](#)

copy of the response interview of the illegal occupant in order to prove the length of the illegal occupation. These claims can sometimes be joined with other property claims.

## **8. Illegal Occupation**

These types of cases involve those who did not file cases with the HPD or missed the KPA deadline. This may have happened for a number of reasons (e.g. fear or a sale that never materialised).

Client owns a home in Obilić that is illegally occupied. He has been told that if he filed a claim with the HPD or KPA his home would be burned like all his other neighbors' homes. Now he has missed the KPA deadline and wants help in restitution of his property.

At present, the only option a client may have is to address the local court, which may not be such a bad thing, given the slow processing of KPA decisions, and frequent re-occupations of the claimed property. If deemed useful the possibility exists for the case to be heard by international EULEX judges. It would also be prudent to file a claim with the local prosecutor in the case and request criminal charges be brought up against the illegal occupant, as there are motivations under the criminal law for the illegal occupant to leave the property in exchange for the suspension of criminal proceedings.<sup>25</sup>

## **9. Registration of Property in Cadastral Books**

Relatively simple administrative processes like registration of property into cadastral records can be difficult due to one or several factors such as a lack of freedom of movement (subjective or objective), resistance by cadastre staff, missing records, and complicated filing procedures or other obstruction. Registration naturally follows many procedures like inheritance, restitution after a fraudulent sale or even registration of transfers of ownership from prior to the conflict. The cadastral officials in Kosovo and Metohija usually refuse to recognise documents from the displaced cadastres, which has proven to create general hardship for IDPs.

Client inherited a house in Gnjilane from her mother in 1998. He has a valid decision from the court and wants to register it with the local cadastre.

In addressing such cases it is important to contact the relevant cadastral office in the municipality of the property in question directly. Any problems associated with the obtaining of documents or registering of a property should be addressed to the local court and information of these problems might be forwarded to the OSCE, EU and other monitoring bodies.

## **10. Other Types of Property Problems**

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<sup>25</sup> UNMIK Regulation 2003/26, Provisional Criminal Code of Kosovo, Article 226

This includes various miscellaneous types of property problems; including KFOR occupation of property, temporary representative cases, property cases of significant value to judicial precedent.

Client is an IDP living in Merdere. From 1999 until 2003 KFOR had occupied his farmland in Podujevo on the Kosovo boundary.

He wishes to file a claim against KFOR for using the land and preventing him from using it.

The approach to use in each case will depend on the type of problem the client is facing. The examples given in the breakdowns above should be a good guide on how to proceed with other types of cases.

## Section 5 – Making a complaint under the Anti-discrimination law

During the intake of an application for legal aid the legal officer may become aware of an instance of discrimination directed against the claimant. It is important first to determine whether evidence exists to prove a claim of discrimination from a legal perspective. This requires documenting the information provided by a complainant or complainants and their application of the legal test for discrimination.

While Kosovo and Metohija does have an Anti-Discrimination Law (ADL) on paper and it was promulgated years ago, to date there has been little or no reference to actual implementation of this law. While the anti-discrimination law is broad and covers many areas the focus here will be housing and property related.

### Types of Complaints

It's important to note that there is often a detrimental effect tied to a discrimination claim. An **access to justice complaint** arises when a person or group of persons complain that they have encountered barriers in gaining access to courts. The complainant may face **Tangible** barriers (like lack of transportation, threats to safety or security or security, language or physical obstacles). They may also complain of **intangible** barrier (such as delay, uncertainty in the law, lack of confidence in the fair application of law, or limited information on the law and their legal rights).

A **civil rights complaint** is a claim that a person has been discriminated against on a prohibited ground by infringement of a protected activity.

The test summarised below is the test for discrimination under the [European Convention on Human Rights](#), art. 14, but its elements are common to discrimination tests under most international human rights instruments as well as European Union law. It is important for the legal officer to understand and apply this test to field issues to identify potential discrimination issues.

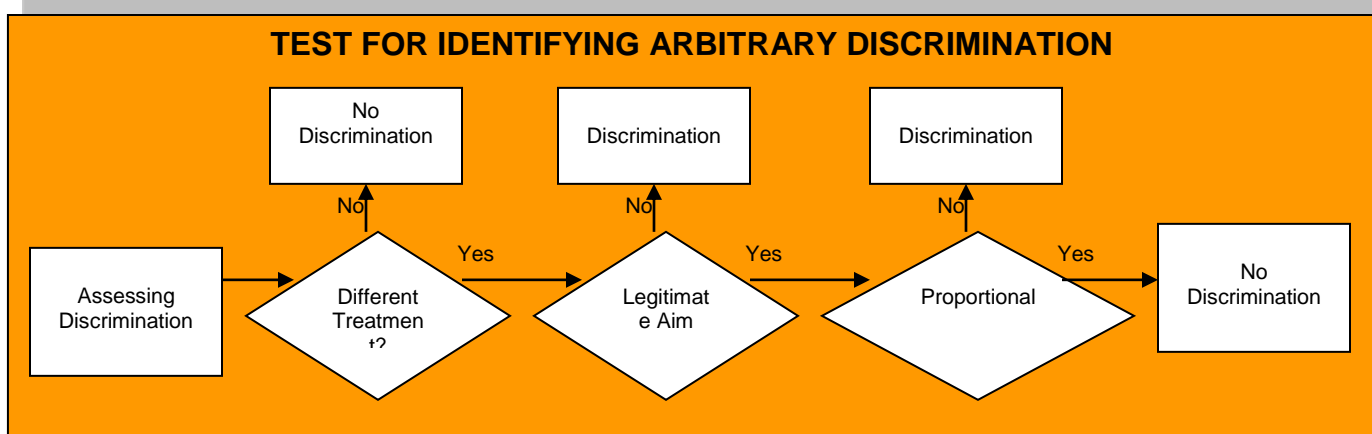
The Penultimate Question a legal officer should themselves ask is whether conduct on the part of governmental authorities could amount to arbitrary discrimination (versus permissible differentiation) on their part where both parties are in a comparable situation?

Thus, when a legal officer discovers evidence of government actors treating an individual or group less favourably than another individual or group where both parties are in a comparable situation, he/she should apply the following test to determine if discrimination has occurred:

**DIFFERING TREATMENT?** - Has an individual or group of individuals been treated differently (i.e. less favourably) by governmental authorities than others **who are in a comparable position**? (If “yes”, go the next step; if “no” there is no arbitrary discrimination)

**IS THERE A LEGITIMATE AIM?** - Does the State have a **legitimate aim** in treating the individual or group of individuals differently i.e. does the state have a reasonable and objective justification for the differing treatment, considering the aim of the differing treatment and the effect that it will have? (If “yes” then go to the next step; if “no” then there is arbitrary discrimination in violation of art. 14 of the ECHR)

**ARE THE MEASURES THE STATE EMPLOYS TO ACHIEVE THE AIM PROPORTIONATE?** - Even if the State does have a legitimate aim in treating individuals or groups of individuals differently, are the means use **proportionate** to the aim to be achieved? . Thus, under international human rights standards, the State can restrict an individual’s or a group of individuals’ rights only so much as is necessary to achieve a legitimate objective, AND NO MORE. (If the answer is “yes, it’s proportionate” there is not arbitrary discrimination. But if the measures that the State takes are not proportionate [i.e. they are more than is necessary to achieve a legitimate aim], then a case of arbitrary discrimination has been established.



**Prohibited grounds** include ethnicity, race, religion, nationality, language, social origin, birth, property, sex, gender, sexual orientation, marital status, mental or physical disability. However, the categories of prohibited grounds are not closed and may include other similar or analogous grounds. Those could include family status as example. The complainant may self-identify with one or more vulnerable groups.

**Protected activities** include employment and vocational training, membership in and Employment organization (such as guild or trade union), education, housing, health and social welfare, welfare, access to goods and services, access to public places, personal security, participation in public affairs (such as voting or standing for office) and fair treatment by the courts.

**The Complaint Format**

Each complaint must contain information regarding;

1. the identity of the complainant or complainants;
2. the identity of the respondent (*aka* person or agency responsible); and
3. The circumstances that triggered the complaint.

### **Drafting a complaint**

The person making a complaint is the **complainant**. This applies whether the person is making a complaint for him or herself or on behalf of another person or group or class of persons. Like all information provided, the complainant's name must be legibly recorded.

The complaint must identify or name one or more **respondents** – the person or organization whose behaviour is objectionable. For example, if the complaint alleges that he or she was harassed by an employee in the cadastre then both the employee and the cadastre should be named as respondents. If the respondent is a business or organization, the respondent must be identified by its corporate name. If the respondent is a government agency, then the government employee (if known), the office and organization should be named as respondents.

Under the ADL the scope of the protection is any right protected by law. Clearly indicate the provision of the applicable law under which discrimination is alleged to have occurred. Also be careful to note multiple forms of discrimination e.g on the basis of ethnicity and gender.

**Fair treatment by the courts** requires that all persons have equal access to justice before an independent and impartial tribunal providing an effective mechanism for their legal and civil rights. Discriminatory treatment occurs when two parties are not treated equally or there is open bias against one party.

**Housing** includes residential tenancy, temporary or permanent accommodation and the sale of real property and includes terms and conditions in relation to contracts in that regard. Discrimination in this area occurs when there is preferential treatment given to one party over another by either a public housing authority, court, or other body.

**Access to goods and services** refers to all goods and services ordinarily made available to the public by any person, government agency or private corporation or even a non-governmental organisation where they are employed by the state e.g. an NGO under contract with a Ministry to distribute humanitarian assistance. (i.e. assistance in rebuilding)

**Discrimination in services** occurs whenever a complainant or other service provider has **arbitrarily** denied services to a person on the same terms and conditions that they provided to other members of the public. The only exception to this would be permissible differentiation mentioned above (legitimate aim and proportionality).

Access to public places extends to all places ordinarily made available to the public by any person, government agency or private corporation.

**Discrimination in access to public places** is alleged to occur whenever a complainant believes, for example, that a court, municipal office, municipal government, or other person maintaining a public place has denied access (or failed to make them accessible) to a person in the same manner or degree that it is to other members of the public.

**The following are not likely to be related to cases involving property issues but are still protected under the law**

**Employment** means any employment – related activity or vocational training and includes refusing to hire, firing, and the terms or conditions of employment.

**Employment discrimination** is alleged whenever the complainant believes that the respondent would not hire a person, train them, fired them, or treated them in a discriminatory way at work.

**Health and social welfare** means all services ordinarily provided to members of the public by government or other agencies.

**Health and social welfare discrimination** may be alleged when the complainant believes that the respondent has refused to provide government or other public services to a person. It may also arise when the same terms and conditions as other members of the public.

**Education** includes all instructional services, whether public or private, at the primary, secondary, and college or university level.

**Education discrimination** may be alleged when a complainant believes that a person has been discriminated against by a refusal of admission, decision to suspend or expel, or regarding the terms and conditions of study, attendance or participation.

**Participation in public affairs** includes voting, standing, for elected office or serving on public or community boards and community boards and commissions.

**Discrimination in public affairs** is alleged to have occurred when a complainant believes that a person has been denied an opportunity to participate in such a complainant believes that a person has been denied an opportunity to participate in such activities of their membership in a vulnerable group.

Discrimination is prohibited on the **grounds** listed in the *ADL* and international conventions. The complaint must identify the grounds upon which it is believed the person applies (e.g., ethnicity, nationality, language and religion).

The following forms of discrimination are proscribed under the ADL

**Direct discrimination**

**Indirect discrimination**

**Harassment**

**Instruction to discriminate**

**Victimization**

**Segregation**

The complaint must include a full description of the circumstances alleged to constitute discriminatory treatment. Each incident that is believed to be discriminatory must be included and each incident must be related to the areas and **grounds** described in Part C and Race in part D of the ADL.

The claim must explain:

- What the person did that the complainant believes is harassment or discrimination or both;
- When and where the conduct happened;
- How the alleged harassment was related to race.

The complainant must state whether there are any other legal proceedings

That deal with the same or related circumstances set out in Part E of the Complaint Form. this will be the case, for example, where a union or employees' association has started

grievance procedures or if a complaint has been filed with another administrative body (e. g., a municipality, government ministry, court or tribunal) that relates to the same or related circumstances to those set out in Part E of the Complaint Form.

### **Where to file the complaint**

While there is limited information on where complaints can be filed. In the interest of the client it would be prudent to file complaints with the municipal court in the municipality where the alleged violation took place. The court is the only body in Kosovo and Metohija with the power to execute judgments and order pecuniary and non-pecuniary damages. However, it would be prudent to check within the Ministry of Justice or Ministry of Public Services to see if there is a designated office where a discrimination complaint could be filed.

## **Section 6 - Mediation**

### **Mediation and Negotiation as a tool for the advocate**

**Alternative Dispute Resolution ("ADR")** refers to any means of settling disputes outside of the courtroom, it involves mediation, arbitration and other ways of resolving conflicts. From a cultural and historical perspective this has been a longstanding practice in the region, where parties often make **out of court settlements** to resolve disputes. In some cases, the result of such settlements is respected more, as the solution was worked out between the parties, as opposed to ordered by an outside party.

By no means does this mean that a legal officer should seek an informal settlement, as this may create difficulties in the future for the client. A negotiated settlement of dispute between parties whereby the settlement is recorded and reflected in court is an effective form of negotiation. Negotiation does not necessarily mean seeking a compromise by both parties. In addition to resulting in sub-optimal outcomes for both sides, a court order actually can harm relationships as compromises may lead to dissatisfaction, misunderstandings and even conflict, which will have a negative impact on potential returns.

One thing that has proven to be true in property disputes is that illegal occupants are much more amicable to negotiation when there is a pending HPD/KPA claim or court process filed against them. It is during **this** stage that they are willing to discuss informal ways of resolving the dispute, rather than facing a potential civil or even criminal judgment against them. There is an old saying by lawyers; “nothing moves without pressure”. The filing of claims against another creates that pressure. This is why responding parties often agree to settle claims outside the court process. Among other things, it prevents the embarrassment to the illegal occupant of losing a court case and removes the uncertainty associated with a court judgment.

It is also true that there are many instances where a respondent becomes more belligerent **after** a court judgment is made against them and re-occupy properties or cause some other sort of hardship out of spite. This is another reason to try to resolve the dispute out of court whenever possible.

It would be prudent for the legal officer to weigh the option of contacting the attorney of the respondent in order to discuss an alternative to the formal adversarial process. The client knows best what he/she wants and may even know what the other side wants. In addition to expediting the process by **years** potentially, the legal officer is helping the client to resolve



their displacement peacefully. Should the responding party be belligerent and offer something unreasonable the client can easily refuse and continue the court process unabated.

It is imperative that lawyers keep themselves abreast and be trained in mediation/negotiation prior to trying to seek any form of alternative dispute resolution. Otherwise there is a risk of negotiating with parties who have such training, which may prove detrimental to the client.

For cases before the Kosovo Property Agency there are various forms of alternatives available to claimants with successful final verdicts as outlined in [UNMIK Regulation 2006/10](#), Section 15.2 (They include eviction, placing the property under administration, a lease agreement, seizure of unlawful structures, auction and compensation.)

## **Section 7 - Professional Responsibility & File Management**

### **Professional Responsibility**

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. As an **advisor**, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As **advocate**, a lawyer zealously asserts the client's position under the applicable law. As a **negotiator**, a lawyer seeks a result advantageous to the client. As an **evaluator**, a lawyer acts by examining a client's legal affairs and reporting about them to the client. These duties are inherent, given the high level of trust a client bestows upon the lawyer and the significance of the service being provided. They are derived from the established norms and rules of professional responsibility within all modern legal systems.

This section outlines the **duties** of the lawyer to both the client and to the handling of the clients' case.

### **Inherent duties of legal professionals providing legal aid**

#### **Duty to inform**

- Fully inform the client of his/her rights and options to allow client to make informed decisions;
- Promptly respond to reasonable requests from the client;
- Promptly relay settlement offers from opposing parties;

#### **Duty of care**

- Competence, legal knowledge skill;
- Preparation of case;
- Must not neglect legal matter;
- Must not take on matter lawyer knows he is not competent to handle.

#### **Confidentiality**

- Absent consent of client, he/she must not reveal information relating to representation of client (except to prevent client from committing criminal act (e.g. sell property they know that is not theirs).

#### **Safekeeping Property**

- Client's records/documents to be kept separate from others;
- Records to be securely stored.

### Detailing the legal aid provided in each case

In order to get a complete picture of the content of the work of the legal officer, the workload and the needs of clients, the legal officer must **detail in the case file**, and when possible in the database, the different actions taken in the case. This includes drafting and/or filing claims with courts, accompanying or assisting the client in trial, drafting letters etc... This information needs to be reported in order to prove the work done for each case, ease the transition of cases between lawyers and protect the people working on the case. Also, it will assist in highlighting the different types of legal aid needed.

**Detailed** and **thorough** file management is required for several reasons:

- 1) *Provide adequate proof of your case* – To seek a remedy in your case, whether from the courts or by conciliation/mediation, you will need to provide evidence of your case. Make sure that nothing is missing from your file records or else you could end up with a hole in your case.
- 2) *Accountability and transparency* – You have a professional duty to exercise a certain standard of care and to be accountable for your work. For example, if a client complains that you have not been working on their case properly, if you have detailed records you will be able to demonstrate that you have fulfilled your professional responsibilities.
- 3) *Efficiency of your work* – All of us forget things. If you keep good file records you will be able to quickly find out the status of your case and what the next steps should be so that you do not waste time becoming reacquainted with a case that you have not been working on for a while.
- 4) *Institutional memory* – If you are suddenly unavailable it will be very difficult for whoever takes over your files to work out what is going on unless you have made good file notes.

### What should be recorded in a file?

Every action and document relating to the case. This includes:

1. *Date and details of face-to-face interviews with clients, witnesses and other parties related to the case*

Radno Vremena na Predmet/Time Sheet		
Pravni Službenik/Legal Officer _____		Klijent/Client _____
Broj Predmet/Case No. _____		
Datum/Date	Vreme/Time (od/by .1 hr/sat)	Opis/Description

2. *Date and details of telephone calls and conversations* – This includes instances where you call someone and they do not answer the telephone. You need to be able to demonstrate that you fulfilled your professional responsibility by making every effort to contact the person.

#### **Zapisnik Razgovor / Record of Conversation**

Datum/Date: \_\_\_\_\_ Vreme/Time: \_\_\_\_\_ Predmet/File: \_\_\_\_\_

Ličan razgovor /Personal Conference: \_\_\_\_\_ Telefonski poziv/Telephone Call: \_\_\_\_\_

Kontakt iniciran od / Contact Initiated By: \_\_\_\_\_ Razgovor sa / Conversation with: \_\_\_\_\_

Broj telefona/telephone number: \_\_\_\_\_

Informacije zatrazene / Information requested \_\_\_\_\_

Informacije date / Information given: \_\_\_\_\_

Akcija/ Action: \_\_\_\_\_

Od / By: \_\_\_\_\_

3. *All incoming and outgoing letters*
4. *Conversations with colleagues and supervisors about the case* – It is good to have a record of the decisions that were made in relation to the case and how they were made. You can demonstrate that you were following your supervisor’s instructions.
5. *Emails relating to the case*
6. *Research conducted in relation to the case* – Copies of relevant provisions of the law or other relevant material
7. *Details of actions that other colleagues have taken in relation to the case* – For example if one of your colleagues has a conversation with your client, make sure that they provide you with a file note of their conversation.

Each of your files should be organized identically, to create an ease of reference when working on different cases frequently. This way it is easier to identify any missing documents. It also assists in effective management of the case file.

### Examples of file notes

16/1/06

10:00 Called client to find out whether he has a copy of the letter he wrote appealing the decision of the municipal court of Prizren rejecting his property claim. Client did not answer. (10 minutes)

13:30 Called client again. Spoke to his wife who said he was away until the end of next week. (10 minutes)

27/1/06

11:20 Called client. He says he has a copy of the letter & will send it. (15 minutes)

15/2/06

Received copy of client's letter (copy of letter filed). Researched the relevant Law. Spoke to Sasa about whether the grounds for rejection stated in the letter fell within the applicable law. Sasa says he isn't sure but will check with Dule. (2 hours)

16/2/06

Asked Sasa if he has checked the applicable law with Dule. Sasa sent email (copy filed). Dule thinks that there needs to be more proof of the ground for rejection for it to fall within the applicable law. (1 hour)

File **folders should be organized** in a manner that makes them easy to find. The name of the client along with the case number must be on the file folder. All documents related to the case should be kept in the folder in an organized, **uniform** fashion. This eases the review process of files and transition from one lawyer to another and also during transition of legal aid to its successor organization.

For **information/advice cases** there should be a separate binder(s) containing all such cases. The binder should be clearly marked and **indexed** with the names and case numbers of each case. For other cases, which are much larger, the case folders must be clearly labelled on the front of the file and stored in successive order by case number. This helps in review of the completeness of the casework and that all cases are accounted.

### **“Bates Stamping”**

A common method of securing and keeping track of documents that are submitted during litigation is by using a **“Bates”** method of numbering documents. This means that each page submitted by the claimant is stamped with successive numbers which the registry/clerk of that court certifies that each page has been received. A copy of what was submitted is saved by the legal aid office, either electronically or physically. This practice is especially invaluable in post conflict courts, where there is serious concern by claimants and even international observers in the quality of the judiciary.

Some office supply stores sell stamps that rise in subsequent numbers automatically, however if that is not an option it may be prudent for the legal officer or assistant, if available, to number each page by hand. If any documents happen to unexpectedly disappear then the claimant has proof of which documents were submitted.

## **The confidentiality of file documents**

**Confidentiality** is the duty to keep certain information secret. Apart from the legal requirements for client information to be kept confidential, maintaining confidentiality is an important factor in building relationships of trust with others. Trust between a client and an advocate is essential. It is difficult to properly assist clients if they do not feel comfortable to truthfully reveal all the circumstances of their case.

The right to privacy is generally viewed as a right to limit how far society can intrude into a person's personal affairs. There are many aspects of privacy, but in the context of legal or office work the main concern is information and communication privacy.

The Legal Aid Offices are frequently visited by members of the public and its offices are easily accessible. To ensure the confidentiality of all court documents, legal aid relies on the cooperation of all staff to take extra care when in the custody of sensitive information. No confidential information of clients is to be shared with anyone outside of the offices without the express consent of the client.

Extra care should be taken that copies of court documents are not left lying around hallways, corridors or on the photocopier. Offices should always be locked when they are left unattended. Offices where documents are kept should be separate from those for which outsiders, including clients, have access and doors between the two should normally be locked.

The type of information that needs to be confidential includes:

- Personally sensitive information;
- Names of individual clients, witnesses or staff members;
- Address and telephone details of clients, witnesses or staff members;
- Information relating to a client's complaint;
- Statements from complainants or witnesses.

Keep information confidential and secure by:

- Not discussing client-related matters with anyone outside of the personnel authorised to know about this information;
- Keeping work files in secure storage (locked cabinets or offices);
- Keeping confidential information in electronic format secure with password protection;
- Conducting client interviews in a private location;
- Returning all documents to their files when you are finished with them;
- Destroying (by shredding) all confidential information when it is no longer required; and
- Not using paper with confidential information for recycling.

## **Confidential information**

The nature of the work of legal aid requires confidentiality of all cases at all times. This means that cases should not be discussed outside of the office without the express written permission of the client. No private information on case files should be discussed with any person or organization outside of the legal aid project. This includes sensitive data included in case tracking reports or databases.

Confidentiality is based on respect for an individual's right to privacy. There are legal as well as social reasons to protect confidentiality and privacy.

Many countries have specific laws which protect personal information in certain contexts. For example there are laws preventing lawyers, doctors, and social workers from disclosing personal information without the consent of the person that the information relates to.

There are good **social reasons** to protect a person's privacy. Human relationships rely on a certain level of trust that when personal information is shared it will be kept confidential. This is important both to individuals and to society in general.

Unauthorized disclosure of information gained through your employment may be considered to be misconduct and malpractice. Such misconduct may lead to employment disciplinary proceedings, including dismissal.

## **Conflicts of Interest**

A **conflict of interest** may arise where your interests (or the interests of your family or friends) compete with the interests of the organization you work for. In the case of a legal aid project a conflict of interest typically arises if the interests of a legal officer competes with those of a client. Conflicts of interest should be avoided as they threaten the credibility and integrity of your work.

Such competing interests can make it difficult for someone to fulfill his or her duties fairly. Even if there is no evidence of improper actions, a conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly and can damage the image of the legal aid provider.

More generally, a conflict of interest can be defined as any situation in which an individual is in a position to exploit a professional or official capacity in some way for their personal (or someone that they are related to) benefit.

Everyone must strive to avoid any appearance of a conflict of interest in the performance of their duties. An appearance of a conflict of interest can be just as fatal to the public's respect for the work performed as an actual conflict of interest.

The best ways to handle conflicts of interest are to avoid them entirely. This is done in two ways, disclosure and recusal.

If at any time a staff member believes that a conflict of interest may exist he or she must immediately report their concerns (**disclose**) to the attention of his/her supervisor. The supervisor will decide whether a potential conflict of interest exists, and if so, how it may be remedied.

Any staff member with a conflict of interest is (ethically) expected to **recuse** themselves from (i.e. abstain from) work where such a conflict exists.

Examples of situations where a conflict of interest may arise:

- You are on a recruitment interviewing panel where one of the interviewees is your good friend.

- A client asks you to investigate a case involving a business that your relative partially owns.
- Using your position as a legal aid provider to solicit IDPs seeking assistance.

Often clients give you gifts or offer to provide you with **gifts or favours** as a way of thanking you for your assistance, however sometimes these are intended to influence your work. Even if this is not the reason for the gift or favour, your acceptance of a significant gift can have the appearance of an attempt to influence and, like conflicts of interest, undermine the credibility of your actions. Acceptance of significant gifts is therefore not appropriate.

Examples of gifts or favours:

- Money
- Discounts
- Sexual favours
- Offer to help one of your family members to get a job

## Conduct

All staff shall act at all times in a manner that promotes public confidence in the dignity, integrity, effectiveness and impartiality of the legal aid project. All staff shall observe high standards of professional and personal conduct, respect and comply with the law, perform his/her duties impartially and diligently and avoid any conduct and situation that could lead to their integrity and impartiality being questioned.

Everyone working in legal aid has a **duty of care** when dealing with clients. This means that we are obligated to help them to the best of our ability within our mandate.

If you don't know the answer to a question by a client, **do not make something up**. Do not simply turn the client away. Say that you will either find out the answer or find someone else to refer the person to. Tell the client to come back if the referral that we made turns out not to be helpful.

Dealing with **difficult clients** is not easy, but it is important to keep in mind their difficult circumstances. Clients approach you for help because they have a problem. This usually means that they are under a lot of stress and have encountered conflict situations with other people and organizations. As a result, clients can sometimes be aggressive, emotional or even distressful.

- Listen to the problem allowing the person to tell their story fully. People are often frustrated by the feeling that nobody cares about their problem.
- Demonstrate empathy and understanding. Exercise active listening techniques. This is where you demonstrate that you understand what the person is saying by reflecting what they are saying to you in summary form.
- If a client continues to be difficult it may be necessary to terminate the conversation or the assistance.
- It is important to maintain a professional and calm manner when faced with a difficult client.

## Professionalism

Working in an office environment means that you and your co-workers have an obligation to conduct yourselves in a professional manner.

- Personal emails and telephone calls should be kept to a minimum during work hours.
- If you don't have any work to do, ask your supervisor what you need to do next – don't surf the internet all day.
- Keep working to regular working hours.
- Keep personal problems out of the office.
- You are a part of a team. The success of your team and your organization in reaching its goals is reliant on your full participation and reliability.
- Do not keep others waiting. If you are going to be late, let the supervisor know.
- You have a responsibility to your co-workers. A negative attitude of one person in the office affects other co-workers and the effectiveness of the team.
- Co-workers should treat each other with a certain level of respect. People who do not necessarily get along in social settings must still be able to work together. This can only be achieved when co-workers (including supervisors) should treat each other with a certain level of respect. This means that no personal insults are acceptable. Everyone should have an opportunity to express their points of view, and have inclusion in decision-making.
- All staff members are expected to dress in a professional fashion suitable to the profession for which they represent. More formal dress is expected when conducting interviews and during meetings.

### **Reporting misconduct**

What to do if you discover one of your colleagues or supervisor is acting unethically e.g. accepting bribes or stealing?

What responsibility do you have to your supervisor if they ask you to do something unethical?

All staff have a duty to act ethically at all times. Unethical and illegal behaviour negatively impact the office, the legal profession, as well as the organization as a whole. If you become aware of any misconduct that is being conducted you have a duty to inform your supervisor immediately. Failure or refusal to report misconduct is a failure to perform one's duty.

### **Recycling**

If there is no confidential information in the document it can be used as scrap paper for printing documents that are not going to be sent externally or for drafts. You will reduce the cost of paper for the office as well as be doing your part to help the environment.

### **Non-discriminatory practices**

Discrimination is where someone is treated less fairly than other people on the basis because of a characteristic they possess. All persons coming into contact with legal aid whether it be a client, colleague or someone else should be treated in a non-discriminatory manner.

### **Sexual harassment in the workplace**

Sexual harassment is unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances.

Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing;
- suggestive comments or jokes;



- sexually explicit pictures, screen savers or posters;
- unwanted invitations to go out on dates or requests for sex;
- intrusive questions about an employee's private life or body;
- unnecessary familiarity;
- insults or taunts based on your sex;
- sexually explicit emails or SMS messages;
- behavior which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Sexual harassment is **not** sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. Sexual harassment is a legally recognised form of sex discrimination.

### **Closing the Case-File**

It is important to send your client a letter of advice at the conclusion of your case. Even if you have already given the same advice to your client over the telephone or in person, a formal letter provides clear proof that you have fulfilled your professional responsibility to advise your client of their options.

An advice letter should contain the following elements:

1. A statement of what the case was about
2. A summary of what help the client was seeking
3. The actions that you undertook to assist the client
4. The relevant provisions of the law applying to the case
5. The outcome of your efforts
6. The options available to the client, including referral
7. An invitation for the client to contact you if they need further assistance or clarification.

Once legal aid has been provided and the case has been closed the case-file needs to be closed as well. The closing of the file needs to be recorded electronically in the database, but also within the file itself. In addition the following steps must be followed;

- The client must be informed in writing that the file has been closed,
- any original documents belonging to the client must be returned,
- a case closing form must be completed and signed by the supervising attorney;
- the file should be sent for archiving, with scanned copies of relevant documents included in the electronic file.

**SAMPLE CLOSING LETTER TO CLIENT**

(CLIENT NAME)  
(CLIENT ADDRESS)

(DATE)

Dragi (CLIENT FULL NAME)

It was nice to meet you on (DATE). I am pleased that we were able to assist you in your case before the Municipal Court in Klina in invalidating the fraudulent sale of your property.

I have already provided you with a copy of the decision of the municipal court of Klina and have attached the updated possession list of the property from the municipal cadastre. Your file is now officially closed in this office and our representation of you is now concluded. All original documents that you provided for your case have been returned to you. A copy of your file will be archived for the next five years for our records, after which it will be destroyed.

Should you require any further information please feel free to contact this office at any time.

Thank you.

Respectfully,

(NAME OF LEGAL OFFICER)  
Legal Aid  
(CONTACT INFO)

The [case closing form](#) is a tool that ensures that the case has been closed properly. It ensures that all relevant documents are returned to the client, and that the case has been reviewed before being closed. After all the listed requirements in the case closing form have been completed the file gets reviewed by a supervising attorney to ensure completion of the file and that there are no outstanding issues. Once the review is completed and approved the file is officially closed.

The form should be the last document filed into the case and be the first page that is seen when the case file is opened. This will help anyone reviewing the case to immediately know that the case is closed and what the result of the case was.

### Case Closing Form/Zatvarenje predmeta

Ime klijenta/Client Name \_\_\_\_\_ Pravnik/Lawyer \_\_\_\_\_

Trenutna adresa/Current Address \_\_\_\_\_

Vrsta predmeta/Case Type \_\_\_\_\_

Datum otvaranja/Date Opened \_\_\_\_\_ Datum zatvaranja/Date Closed \_\_\_\_\_

Iz razloga sto predmet eventualno može biti uništen, bitno je da svi važni dokumenti budu vraćeni stranki lično ili preko redovne pošte (sa povratnicom). / Since client files will eventually be destroyed it is important that all original and important documents be returned to client in person or registered mail.

Uručivanje predmeta stranki je izvršeno datuma? / This task was completed on what date: \_\_\_\_\_

Predmet je arhiviran, koje godine? / What year was the file archived? \_\_\_\_\_

Predmet bi trebalo da bude uništen koje godine? / Client file should be destroyed in what year? \_\_\_\_\_

Da li je klijent obavešten o zatvaranju i arhiviranju predmeta-na koji način? /

Client was informed that file will be destroyed in closing letter? \_\_\_\_\_

Kog datuma je klijentu poslato zatvoreno pismo sa dokumentima? /

Client closing letter sent on what date? \_\_\_\_\_

REZULTAT/OUTCOME \_\_\_\_\_

Popis od supervisor advokat. Pročitao sam ovaj predmet, speman da budi zatvoren. / Signature of Supervising Attorney – I have reviewed this file. It is ready for closure.

## Section 8 - Statistics/Registering Clients Cases

There is inherent importance to **record** any work involving a significant number of claimants and services provided. This enables effective monitoring of legal trends and patterns in the cases and assist in future planning. It is for these reasons that it is important that legal officers regularly and completely report their activities.

### Weekly Reporting

The weekly report is an important tool to track the progress of legal aid, as well as important trends in property problems and accomplishments. These reports can track the performance of individual offices as well as provide an overall picture where the progress of each office can be compared. The reports should reflect the work completed over the workweek and should be sent together with the case-tracking report.

### Recording case data to the Weekly Report

#### Multiple cases for 1 client

Registering the number of new cases instead of number of clients indicates the workload in a more adequate and proper manner and corresponds better to the actual caseload of the

legal officer. If only the number of clients is registered, the workload is shown too light and does not accurately reflect the real situation.

A client may have many cases; for example, the occupation of an agricultural property in Klina, a fraudulent sale of his property in Pec, and an inheritance procedure for yet another property in Pec. The client has 3 cases, as all the cases are dealt with in separate proceedings.

A **case** must be registered only once and it must be closed when all the actions related to the case are completed. In the example above, the successful completion of the inheritance procedure in Peć would effectively close that case and go into our statistics as a closed case (in this instance, a successfully closed case) without waiting for the other 2 cases to be concluded. Even though there is only one client, there are several distinct and separate actions required to address the case.

### **Examples: Client A has**

#### 1) An **inheritance** case

- meeting with the client
- advising client on the options available
- drafting a claim to a court of law
- phone call from a court
- representing the client in an inheritance proceeding

#### registered:

- a) type of the case :
- b) action taken: representing in a trial
- c) oral advice given
- d) preparing basic written document (POA)
- e) reading documentation and analysis of the case
- f) ...all other activities that made for the client

#### 2) A **fraudulent** property transaction

- assisting in police hearing
- negotiation with a client
- drafting a document to the court of law
- representing in the trial
- filing a criminal complaint

#### registered:

- a) type of the case :
- b) action taken: representing in a trial

#### 3) **Illegal Occupation** of another home

- hearing the clients claim
- assisting in obtaining evidence
- drafting the claim for the municipal court
- appearance at court on behalf of the client

#### registered:

- a) type of the case :
- b) action taken: assisting in drafting a written claim

The categories of cases listed below are the common property problems that have been identified to be affecting the majority of cases. If the IDP client's case fits into one of these categories then add that case to the appropriate column. If the case is not within the identified categories then add the case to the "other" column. Below are short descriptions of the types of cases that fit within each category:

### **Post HPD Cases**

These involve cases where there's an unresolved HPD issue (excluding the C vs A cases for reasons outlined below); these are the cases where there's been a decision by the HPCC but no enforcement, or a decision by the HPCC against the client, a re-occupation after an illegal eviction or some other HPD related problem.

### **A vs C**

A "subgroup" of the Post HPD Cases but differentiated for the following reasons; To date, none of these cases have been resolved by either the HPD or the KPA. While it's straightforward enough for legal aid to push for the enforcement of an HPD decision that was not executed, this problem is not going to be resolved through the regular channels and will require serious advocacy at a multi-pronged level. We need to have a clear picture of exactly how many cases this involves.

### **KPA**

This includes cases where the client has received a decision from the KPA and wishes to appeal to the Supreme Court, as allowed under the law.

### **Mass Compensation claims filed in 2004**

These refer to the compensation cases that were filed back in 2004 that are on hold in the Courts.

### **Compensation Other**

These refer to compensation cases that are not within the 18000 that were filed in 2004. They can include claims for damages following an HPD decision against a known individual or something similar. We need to differentiate these types of cases from the compensation 18000, which for the most part sued KFOR, UNMIK and other bodies for destruction of property rather than bulk them together. With proper counseling, a client has a very good chance of restitution for damages of a property that was illegally occupied.

### **Fraudulent Transactions**

Include all cases where a property was sold through a fraudulent transaction.

### **Inheritance Cases**

Basic inheritance cases.

### **Expropriation Cases**

Cases where IDP properties have been expropriated by the local government in Kosovo and Metohija.

### **Cadastral Cases**

Registration of property in the Kosovo cadastre or other cadastral issues.

### **Illegal Occupation**

This includes all types of illegal occupation. There are some cases that involve illegal occupation of property outside of both the KPA and the HPD. These might, for example, be

people that missed the deadline for submission of claims to the KPA. Definitely worth noting and keeping an eye on for future discussion on the effectiveness of the KPA public awareness campaign and the need for the extension of the deadline.

### **Privatization**

This deals with cases where the company where the client worked that has been privatized by the Kosovo Privatization agency.

### **Other (property related cases)**

This includes other property problems not listed that can be handled.

### **Other (Referral)**

These are cases outside of mandate of legal aid, maybe they're not property cases, maybe they're property cases but not in Kosovo and Metohija. At the end of the day we've referred the client to another organization for assistance.

It is important that that under **no condition** should a legal aid officer tell a legal aid applicant "sorry that's not within our mandate, have a nice day, goodbye". It is the professional responsibility of each lawyer to refer the person to the right organization. If you don't know where to refer him/her find out. If you still don't know where to refer them then call your manager for instruction. Get the contact details of the organization where he she can get assistance and offer to assist the person to contact that organization.

**Cases closed** – Represents the end of the legal aid cycle and a closed file.

Levels of Legal Aid **Provided**. If you haven't provided any legal assistance then don't record anything.

**Information/Advice** – This includes referrals to other organizations that can assist the client.

**Assistance** – This includes basic assistance, obtaining documents and drafting for the client. And, also, all oral legal advice which is not provided by "representation-cases"

**In-Court Representation** This is strictly for in-court representation provided. This does not refer to the fact that you've signed a legal aid service contract. This refers to actual in-court representation provided, which includes submissions on behalf of clients to the Supreme Court, appellate courts and even the HRAP.

You'll have room in another column to report on the number of cases where you've been **approved to provide in-court representation**, which will give a better picture to see the correlation between the number of cases that are opened and are representing and the length of time it takes to process cases. This will help justify longer projects, given that providing restitution in a post conflict environment unfortunately takes many years.

**Outreach Visits** are field visits made to facilitate access to legal aid to persons with difficulties in accessing a legal aid office due to economic or physical impairment. This information helps in identifying areas that may be under-served in Serbia and also shows mobility efforts.

### **Using the legal aid Database**

The legal aid database is the ultimate tool in reporting and recording data. It enables the user to immediately enter information while conducting an interview with the client, which is then immediately integrated into the database and case tracking, thus removing the need to enter data into a weekly report. Information entered into the database is fundamentally the same as what was entered into the weekly and case tracking reports, however, the information is automatically converted, as opposed to manually broken down into statistical data. A separate, comprehensive training manual for how to use the database will be available

### **Monthly/Interim and Annual Reports**

Ensuring that all case data is properly recorded makes it easier to provide future comprehensive reports. These reports are critical in identifying major trends affecting IDPs in their property claims that cannot be detected in single cases (e.g. widespread fraudulent property transactions in Eastern Kosovo and Metohija and where most powers of attorney are made). Such reports help identify areas where significant IDP populations have requested legal aid (e.g. pockets of Southern Serbia like Kursumlija). It is important that legal officers are aware that the information that they provide in their weekly reports are integrated into larger comprehensive reports.

Belgrade Weekly Report						Week of 01 August 2011							
Cases Opened	Total	Post-HPD	C vs. A	KPA	Comp. 18000	Comp. Other	Fraud Trans	Inheritance	Expropriation	Cadastral Cases	Illegal Occupation	Privatization	Other (Referral)
Weekly Total	2	0	0	0	0	0	0	0	0	1	1	0	0
Running Total	87	8	3	11	5	16	13	9	1	9	8	2	2
Cases Closed	Total	Post-HPD	C vs. A	KPA	Comp. 18000	Comp. Other	Fraud Trans	Inheritance	Expropriation	Cadastral Cases	Illegal Occupation	Privatization	Other (Referral)
Weekly Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Running Total	3	1	0	1	0	0	1	0	0	0	0	0	0
Ongoing Cases	Total	Post-HPD	C vs. A	KPA	Comp. 18000	Comp. Other	Fraud Trans	Inheritance	Expropriation	Cadastral Cases	Illegal Occupation	Privatization	Other (Referral)
Running Total	84	7	3	10	5	16	12	9	1	9	8	2	2
Legal Aid Given	Total	Info/Advice	Assistance	In-Court Representation									
Weekly Total	2	0	1	1									
Running Total	84	18	23	43									

<b>Total Number of Clients</b>	81						
Ethnic Breakdown	Serbian	Romani	Gorani	Bosniak	Albanian	Croat	Other
	64	14	3	0	0	0	0
Gender	Male	Female					
	66	15					
<b>No. Cases Approved for Representation</b>	5						

#### Description of this weeks activities

- Meeting with KIRS trustee, Smederevo Municipality, Monday
- Meeting with new clients, Tuesday
- Writing submissions for clients, Wednesday
- Staff Meeting Belgrade team, Thursday
- Meeting with KIRS trustee, Novi Sad Municipality, signing of MOU with EHO, Friday



Total Number of Outreach Visits		Times	Field Visits this Week	Location	Times
Location	Novi Sad	1		Smederevo	1
	Smederevo	1			
	Palilula	1			

### Significant Cases

#### 1. Boris Borkovic case

Client returned to Dobrotin, municipality of Lipljan in 2004. The UNDP built a house for his family. He tried to register his house at Kosovo Cadastral Agency. But the officials of the A/M agency realized that the house was built on the land parcel which is property of Agricultural Company Lipljan. The A/M agency refused to register property of our client. He addressed the problem to the various institutions without success apart from Ombudsperson Kosovo. The steps are to be taken to represent our client before the KTA and probably some court authorities.

### Activities planned for next week

Monday	Tuesday	Wednesday	
Visit to MC Priština in Markovic Case Hearing Klina in Ristic Case	Meeting with Client Petkovic 0900 Meeting with Client Radulovic 1000 Meeting with Client Bogdanovic 1100	Meeting with Client Susmanovic 1400 Meeting with Client Adjanic 1600	
Thursday	Friday	Saturday	Sunday
Hearing in MC Prizren Petkovic case Meeting with client Maksimovic in Gorazdevac	Field Visit to handicapped client Mandic in Kaludjerica neighbourhood. Hearing in MC Mitrovica in Besevic case		

### Miscellaneous

Low toner for printer, need new one asap.

## Section 8 - Security Issues and travel in Kosovo and Metohija

The security situation in Kosovo and Metohija is not always stable and some areas are not as safe as others. It is important to follow safety protocols in regard to security and travel in Kosovo and Metohija. Anyone going to Kosovo and Metohija must take the following precautions;

- Check what the security situation is like in both Kosovo and Metohija as well as within the municipality that you are going to. This includes calling the legal aid offices in Kosovska Mitrovica or Gracanica beforehand to inform them that you are coming. This way they can keep you in mind if there are any security concerns that arise.
- Send a **movement plan** ahead of you to legal aid in Kosovo and Metohija, to ensure that they know where you're going and how to contact you.
- Take a SIM card that works in Kosovo and Metohija. Every legal aid office has a SIM card assigned to it that works in all of Kosovo and Metohija. The cards should be programmed with emergency contact numbers in Kosovo and Metohija.
- Use main roads when traveling in Kosovo and Metohija, do not use small roads unless absolutely necessary.
- Keep a map of Kosovo and Metohija in the vehicle at all times, that way alternate routes can be used in case of emergencies.
- Ensure that you have enough fuel to last you for your entire journey prior to departure. If possible, take a vehicle that has been fully fuelled.
- Always let someone know where you're going.

A list of [emergency contact numbers](#) is provided at the end of this handbook.

### Movement Plan April/May

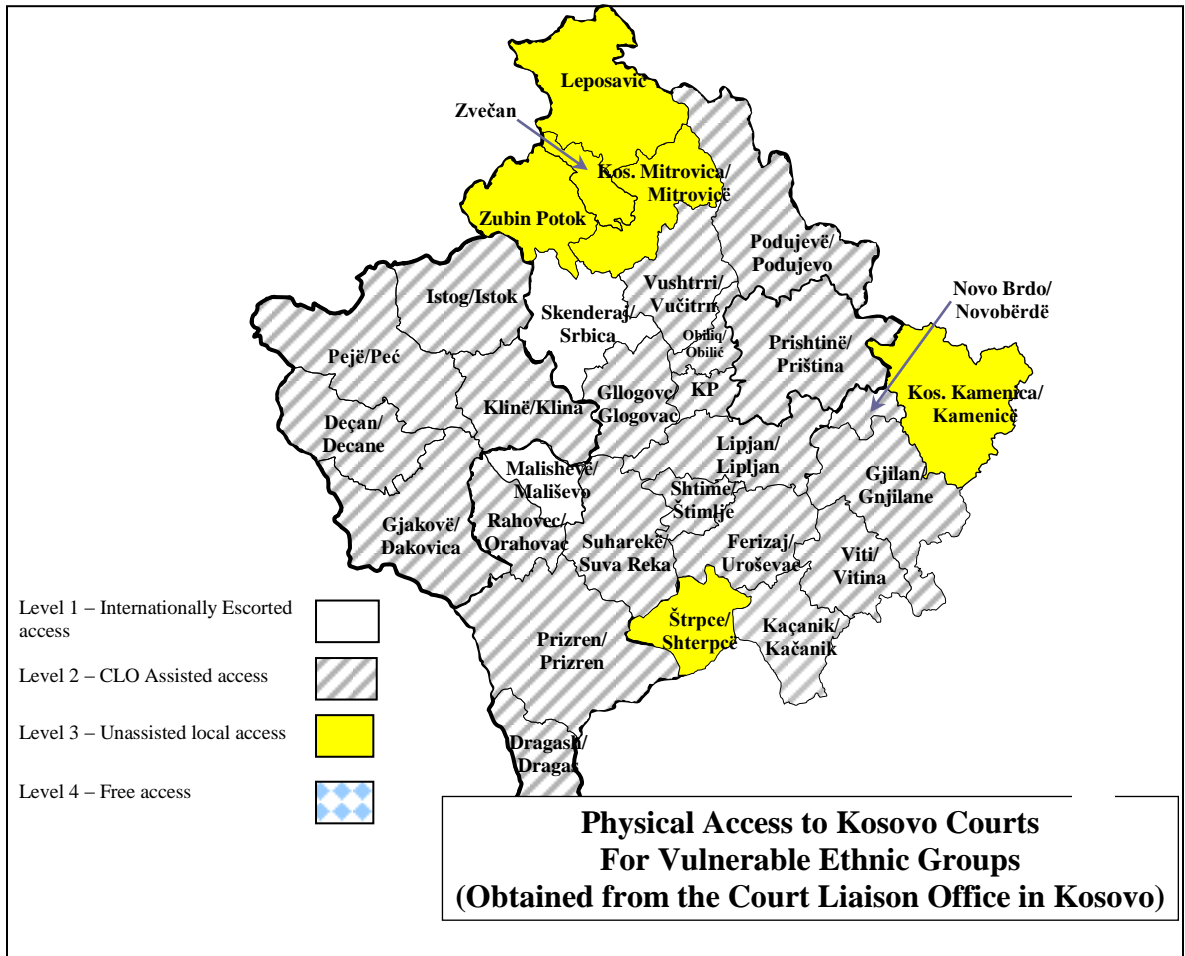
	Trip Dates	Region	Final Destination	Staff Members (with tel no in Serbia/Kosovo)	Overnight Location	Need for Escort	Route through Kosovo	Secure locations
1	29/04/09	Pec/Peja	Klina	Zoran Popovic 064/000 000	Gracanica	No	Merdere (Gate 3), Priština, Gracanica	Gracanica PR
2	30/04/09	Pec/Peja	Belgrade	Dragana Ristic 064/000 000	None	No	Gracanica, Klina, Merdere (Gate 3), Belgrade	Gracanica PR

The Point of Contact is to be contacted by incoming party, upon entry into Kosovo, and again upon exiting Kosovo. Outside office hours, the duty officer must be contacted directly.

### Freedom of Movement of IDPs in Kosovo and Metohija

The lack of freedom of movement for IDPs in Kosovo and Metohija is one of the reasons legal aid exists. The Court Liaison Office in Kosovo and Metohija provided the chart below to reflect their assessment of freedom

of movement for vulnerable ethnic groups in Kosovo and Metohija to access courts and other bodies in Kosovo and Metohija.



## Section 9 - A Rights Based Approach to Property for IDPs

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, hereinafter referred to as the [Pinheiro Principles](#), which were drafted by Paulo Sergio Pinheiro, give a thorough explanation on the restitution of property to refugees and displaced persons. Most of the international conventions from which the Principles are derived are directly related to the property problems related to IDPs from Kosovo and Metohija.

### The Right to Private Property

The right of every individual to the peaceful enjoyment of his/her property is enshrined in many international treaties to which Kosovo and Metohija is a party either by law or by virtue of its status as a protectorate under UN administration.

These rights have been highlighted in the Universal Declaration of Human Rights of 1945 (UDHR). Other international instruments of relevance include the International Covenant of Civil and Political Rights<sup>26</sup> (ICCPR) and the International Covenant on Economic, Social or Cultural Rights (ICESCR).<sup>27 28</sup> In addition, the Committees that monitor the implementation of both the ICCPR and ICESCR have elaborated on these rights in greater detail..

## The Right to Housing and Property Restitution

### Restitution

*“All 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 and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.*

*States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.*<sup>29</sup>

Pinheiro states that the term “**restitution**” refers to an equitable remedy (or a form of restorative justice) by which individuals or groups of persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position.”

He goes further into the right for restitution and states that the right to a remedy for human rights violations has perhaps been best articulated in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law* (2005). Furthermore “restitution should, whenever possible, restore the victim to the **original** situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one’s place of residence, restoration of employment and return of property.”<sup>30</sup>

The importance of the right of restitution in the Kosovo and Metohija context cannot be emphasized enough, as it addresses not only the right for return of one’s property but also the right to have one’s life restored. The fact that most of these rights were lost while Kosovo and Metohija was under the administration of the United Nations is significant.

Pinheiro states that the terms– housing, land and property restitution - is a composite term developed on the basis of dozens of legal and other standards that have been adopted in past decades explicitly or implicitly recognizing the restitution rights of refugees and displaced persons.

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<sup>26</sup> ICCPR Article 17.1 “No one shall be subjected to arbitrary or unlawful interference of his (or her) privacy, family, home or correspondence, nor to unlawful attacks on his honor or reputation.”

<sup>27</sup> ICESCR Article 11.1 “The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food clothing and housing and to the continuous improvement of living conditions.”

<sup>28</sup> UDHR Article 17(1) “Everyone has the right to own property either alone as well as in association with others, and that (2) No one shall be arbitrarily deprived of his property.

<sup>29</sup> The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 2.1 and 2.2.

<sup>30</sup> Ibid

These standards are found in many instruments beyond the applicable local laws in Kosovo and Metohija, including international and regional treaty law, other international and regional human rights law texts, international humanitarian law and international criminal law, several UN Security Council and UN General Assembly resolutions, UNHCR Executive Committee Conclusions, UN Commission on Human Rights and Sub-Commission on the Protection and Promotion of Human Rights resolutions and related standards, general comments issued by the UN human rights treaty bodies, various peace agreements ending conflicts, a range of voluntary repatriation agreements concluded between UNHCR, countries of origin and countries of asylum and within the jurisprudence of many human rights bodies including the European Court on Human Rights and others, many of which are mentioned in this handbook.

The principles relating to restitution seem to be structured in a way that states that prior to using any compensation-based solutions to restitution, all efforts to secure return-based restitution must be exhaustively explored and determined to be impractical. This does not include, however, any IDPs, as injured parties, who *consciously and voluntarily chose or express a clear preference* for compensation-based durable solutions on the understanding that this might conclude the restitution process for them, and prevent them from submitting future property restitution claims. This is particularly true in cases of forced repatriation of Roma communities.<sup>31</sup>

Alternatively there could be a situation where a very long period of time has passed since the displacement, and the displaced have rebuilt their lives elsewhere in such a way that they would not want to relocate even if the conditions for return were safe. Unfortunately this is true of many cases of persons who have fled Kosovo and Metohija after 1999 and rebuilt their lives in Serbia proper or elsewhere.

Project Legal Officers will need to be prepared for situations when offers of cash or other forms of compensation are often made to IDPs by those hoping to prevent restitution and return and thereby deceptively extinguishing outstanding restitution claims. This has been the case in many return projects where IDPs have been required to sign “Three party agreements” which state that the IDP will not sue for compensation. More on compensation is discussed under the heading “Compensation”.

### ***Does restitution necessarily mean re-possession of an original home?***

Not always. Restitution may involve a combination of return, facilitated sales of properties to which IDPs voluntarily did not wish to return but which they retained rights over, and where appropriate forms and amounts of compensation were provided. Many possible scenarios can emerge within the context of a restitution process; the central points here, though, remain that displaced persons have a **preferential** right to housing

### **The Right to Adequate Housing<sup>32</sup>**

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<sup>31</sup> See Amnesty International Report; *Not welcome anywhere, Stop the Forcible Return of Roma to Kosovo*, 27 September 2010

<sup>32</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 3(8)

Client had a home in Bresije that was burned down during the riots of 17 March 2004. The home was rebuilt as part of a project involving the local Kosovo government. Upon returning home he found that the reconstruction was done so poorly that the property, while looking nice from the outside, was still inhabitable. He filed suit against the local government for failure to reconstruct his home to a level that would render it habitable.

- “Everyone has the **right** to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>33</sup>
- The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including **adequate** food, clothing **and housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”<sup>34</sup>

It is important to highlight the term ‘adequate’ housing. Adequacy includes: security of residence, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.



**Container Village for IDPs in Gracanica from 2004 - present, is it adequate housing?**

Principle 18 of the [Guiding Principles on Internal Displacement](#) provides that ‘All internally displaced persons have the right to an adequate standard of living’ and that ‘At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: ... basic shelter and housing.’ There are several examples in Kosovo and Metohija where IDP homes have been rebuilt or returned but are not habitable and lawsuits have thus been filed. Others have lodged lawsuits over the failure to reconstruct their homes and are seeking compensation. Advocates should ensure to refer to the right to adequate housing when seeking restitution for destroyed homes or homes that have not been built to a standard that would render them habitable.

<sup>33</sup> Article 25(1) of the Universal Declaration of Human Rights.

<sup>34</sup> Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

Specific statements have been made at the international level with respect to internally displaced persons and their access to adequate housing. For example, the Executive Committee of UNHCR in Conclusion No. 101 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, encourages countries of origin to provide homeless returning refugees with access to land and/or adequate housing, comparable to local standards.

### **The right to voluntary return in safety and dignity<sup>35</sup>**

The duty to enable internally displaced persons (IDPs) to return to their homes ‘in safety and with dignity’ is included in the Guiding Principles on Internal Displacement.<sup>36</sup>

#### **“Principle 28**

*1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.”*

The term **dignity** is difficult to define in the restitution and return context. A good definition within the Kosovo and Metohija context comes from the UNHCR; “In practice, elements must include that refugees are not manhandled; that they can return unconditionally and that if they are returning spontaneously they can do so at their own pace; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including the full restoration of their rights.<sup>37</sup> Obstruction or government inaction which negatively affects the process return is a violation of these rights.

### **The right to choose not to return to place of origin**

*“Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.”<sup>38</sup>*



**Incomplete Secondary Return Site in Novi Badovac**

<sup>35</sup> Pinheiro Principles, Section 4(10)

<sup>36</sup> Principle 28.1

<sup>37</sup> The 1996 UNHCR *Handbook on Voluntary Repatriation: International Protection* and the 2004 *Handbook for Repatriation and Reintegration Activities*

<sup>38</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 10(3)

Client is an IDP from Crkvena Vodica village in Obilić municipality. Her home was destroyed in 1999 and again in 2004 and she lives with her family of 4 in a container in Gracanica. Since her displacement, the demographics of Obilić has changed dramatically from 50% Serbian to 1% Serbian, there is no school for her children in their own language, there are security concerns and the coal mine has expanded ever closer to the village. She has not left Kosovo and wants to locally integrate into Gracanica and has applied to be allocated into one of the homes in a neighbourhood that is being built by the Serbian government in Novi Badovac. The Priština municipal government have stalled the process several times, despite UNMIK involvement. They argue she should return to Crkvena Vodica.

Over a decade since the end of the conflict, there remain several areas in Kosovo and Metohija where it would be dangerous or impossible to provide full restitution to an IDP in the form of returning to their original homes. This may be attributed to security/safety issues, the area has become over-populated over the years, there may be no chance for obtaining an education for children or employment, or the demographics of the area may have changed so dramatically that “home” is no longer home. This problem was recognized by the Committee on Economic, Social and Cultural Rights;

*(f) Location: Adequate housing must be in a location which allows access to employment options, health-services, schools, child-care facilities and other social facilities....Similarly, housing shall not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.<sup>39</sup>*

For a number of reasons, formal assistance by the UNMIK office of returns, the UNHCR, the Kosovo Ministry of Returns and others has rarely been given and no significant returns were effectuated. The meetings with heads of villages in return areas had limited success. However, there are several examples where Serbian government **successfully** implemented secondary displacement projects without the help of the international community. (e.g. Zvecan, North Mitrovica, the Bosniak Mahala and in Novi Badovac). There are several secondary displacement projects that have stalled for years.. As a result of this there are many areas that have shells of homes but no water or electricity and are not habitable for years, for example in Novi Badovac.

If it is not possible to return someone to their home in dignity then alternatives such as secondary displacement are warranted.

It is important to note, that by choosing not to return to his/her place of origin the IDP has **not** waived their right to restitution.

It is a governments' responsibility to ensure that return to one's home is done with dignity and safety. If the government fails to do so, it does not relieve the obligation to resolve the displacement and restitution of the IDP.

***Does restitution necessarily mean physical return and repossession of one's original home or lands or are other intermediate outcomes also considered as durable solutions?***

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<sup>39</sup> Committee on Economic, Social and Cultural Rights during its sixth session in 1991 under General Comment Number 4, *The right to adequate housing*, (Article 11.1 of the Covenant), paragraph 7



Physical return is **not** the only option. First and foremost, it must be recognised that the right to return is not an obligation to return. Return cannot be restricted, and conversely it cannot be imposed. The right to housing and property restitution should not be made conditional on the physical return of someone who has been displaced from their home or place of habitual residence, and that these rights remain valid notwithstanding whether return actually takes place.

In some settings, return may be impossible, irresponsible or illegal due to the security situation or potential threats, but a person with a restitution right may wish to exercise rights over that property without physically returning there, as has been the case with IDPs allowing their properties to be administered by the KPA until they return.

Particularly crucial in these contexts, of course, are the expressed wishes of those holding restitution rights; beneficiaries of these rights can neither be forced to return, nor forced to accept a resolution of their restitution claims.

Pinheiro points out that in the case of IDPs from Kosovo and Metohija, only a small fraction of those with successful restitution claims, some 12% - actually chose to seek physical repossession of their properties; in this instance because of serious security threats were they to return to their legitimate homes. More than 40% of those making restitution claims settled their cases with the current secondary occupant through mediation, which involved selling the property and sometimes leasing or renting the properties in question..

When return is simply not possible or is not desired, the displaced can benefit from restitution programmes that enable them to re-assert control over their homes and lands by selling, leasing or renting out their houses or lands. But it must again be emphasised that such wishes must emanate from the IDPs themselves, not imposed upon them as the lesser of two possible bad choices.

### **Compensation<sup>40</sup>**

*“...displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.”<sup>41</sup>*

Clients' home in Kosovo Polje was burned down in the riots of March 2004. A year later the local government had offered to rebuild his home. In that time all of his neighbours sold their homes, all the previous shops had closed, the demographics of the neighbourhood had changed dramatically and his children moved away to Kraljevo. In addition, the majority of the homes that were rebuilt by the local government were done so poorly that they were completely inhabitable and needed to be rebuilt. Client demanded compensation in lieu of reconstruction so he could rebuild somewhere else, arguing that it was now impossible for restitution in Kosovo Polje.

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<sup>40</sup> Pinheiro Principles, Section 21

<sup>41</sup> Ibid 21(1)

Compensation has been a well established method of alternative dispute resolution and a method for resolving property disputes out of court. In the context of restitution, however, compensation becomes complicated as it also affects the right in claims for restitution and negatively affects return.

As discussed earlier, compensation to IDPs in lieu of returning should only be discussed once all other avenues for return are exhausted, when an IDP *consciously and voluntarily chose or express a clear preference* for compensation-based durable solutions on the understanding that this may conclude the restitution process for them and bar them from making future restitution claims for the return of their property.

The Principles state that compensation is only viewed as an acceptable substitute for the physical recovery of original homes and lands when three key conditions are met: 1. When the restoration of housing, land or property rights is *factually impossible*; 2. When those possessing restitution rights voluntarily prefer compensation-based solutions; and even then, and; 3. Only following a determination to this effect by an independent and impartial tribunal or some legitimate and competent body without vested interests in the matters concerned.<sup>42</sup>

The Pinheiro Principles stress that compensation should not automatically be seen as an acceptable alternative to restitution when actual return-based restitution is made infeasible due to resistance by a certain government or political grouping or because of the unwillingness of the international community to strongly support restitution rights.<sup>43</sup>

The term **factually impossible** mentioned under the first criteria refers to the actual physical damage or destruction of housing, land and property as a result of armed conflict and not to particular political or related obstacles which may prevent a particular restitution case from being resolved on the basis of actual re-possession of original homes and lands. However, it can be used in reference to circumstances where the new purpose to which a parcel of land has been put during the absence of the IDP, now constitutes a public good or brings considerable economic benefit to the area concerned. For example, homes that were destroyed in Obilić in 1999 may be in areas that were completely destroyed in 2005 to compensate for the expansion of the local coal mine.

Combined solutions of both restitution (to the original home or land) **and** compensation (to enable re-building of a damaged or destroyed home) may offer the most durable solution to the plight of individual refugees and displaced persons. In other instances, a remedy of pure compensation (both in-kind and/or cash) may provide the best and most desired method of resolving outstanding restitution claims, as long as the criteria outlined above are subject to full compliance.<sup>44</sup>

### ***Can compensation be offered without first attempting to secure restitution rights?***

Not according to the **Pinheiro Principles**. Restitution should be the primary remedy for reversing displacement, unless it is the expressed wish of the displaced persons to receive compensation *in lieu* of restitution. Compensation cannot be imposed on refugees or displaced persons, and unless it is the remedy preferred by those displaced (on the understanding that the recovery of original housing and properties may be no longer possible), compensation should be reserved for instances where no other remedy is available, and in many other instances, it should be combined with restitution based on repossession as a means of strengthening the likelihood of sustainable repatriation.<sup>45</sup>

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<sup>42</sup> Pinheiro Principles, Section 2

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> Ibid, Section 21.

### ***Is cash the only form of acceptable compensation?***

No. In addition to cash compensation there exist other forms of compensation including land swapping, allocation of other properties and other creative alternatives that must be acceptable to the IDP.

Pinheiro's view on cash from a human rights angle says that "while cash compensation is often viewed as a simple means of settling land, housing and property restitution claims, cash compensation should be reserved only for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as: physical and mental harm, lost opportunities (including education), material damages or loss of earnings, harm to reputation or dignity, costs required for legal or expert assistance, medicines and medical services, and psychological and social services, and lost or destroyed immovable and/or movable assets, including the destruction or damage of one's original home. Even in those cases, cash compensation is generally to be avoided in countries without a functioning housing and land market or secure saving banks. When it is determined that those pre-conditions are met and a refugee or displaced person wishes to receive cash compensation *in lieu* restitution, but there are insufficient public funds to provide this, users of the Handbook should seek to assist the relevant authorities to find alternative means of providing compensation. The obvious first alternative to cash compensation would be the construction - by the State or subsidized by the State - of adequate, affordable and accessible housing which could be made available to returnees or displaced secondary occupants.

Other housing-based or fair alternative solutions might be made accessible through a range of creative measures, including: the provision of alternative land plots, the establishment of a public housing fund which issues government housing bonds, vouchers or individual subsidies which can only be redeemed in relation to the construction of residences; Government assistance for returnees in finding an empty existing flat or in accessing new housing; tax reductions could be given to returnees for a fixed period; returnees could be placed at the head of the official housing waiting list; state land plots could be allocated to the returnees; government bonds in a substantial sum could be provided to returnees; or, returnees could be given favourable housing credits for building materials should they choose to build new housing themselves."<sup>46</sup>

### ***Is destroyed housing exempt from restitution claims?***

Not at all, in fact there are literally tens of thousands of such claims filed by IDPs against the Provisional Institutional Self-Government, UNMIK and KFOR for destroyed housing which were never rebuilt, mostly belonging to non-Albanian IDPs.

### **Right to Freedom of movement**

*Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.*<sup>47</sup>

*States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national*

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<sup>46</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 21

<sup>47</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 9(1)

*security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.*<sup>48</sup>

Client returned to Kosovo and lived in Dečani monastery while she was waiting for execution of an HPD decision to remove the illegal occupant. She required KFOR transport whenever she left the monastery. Before the execution of the HPD decision was effected she ended up selling the home, because she couldn't move around freely and her son couldn't come home as he was a policeman before the war in Peć.

Human rights standards such as Article 13(1) of the Universal Declaration of Human Rights, and Article 12 (1) of the International Covenant on Civil and Political Rights all recognize the right to freedom of movement and residence.



**IDP in Djakovica 100 meters from home**

All persons are entitled to move from one place to another and to establish themselves in a place of their choice.<sup>49</sup> The problem is that the freedom of movement has not been restricted necessarily by any act of the government, but by low level intimidation which has created subjective barriers for IDPs. However, municipal interference with ones property, refusal of government to cooperate with restitution claims and other forms of obstruction are actions/inactions that advocates can raise in courts and before human rights tribunals as violations of the right to freedom of movement. Part of the main reason for the establishment of legal aid for IDPs from Kosovo and Metohija is their lack of freedom of movement within the province. A lack of freedom of movement is also a lack of adequate housing, as mentioned previously, which is actionable in court.

The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place, this covers the entire territory of Kosovo and Metohija. General Comment No. 27 of the Human Rights Committee on freedom of movement notes that 'Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence.....The right to move freely relates to the whole territory of a State, including all parts of federal States.

<sup>48</sup> Ibid, Section 9(2)

<sup>49</sup> Covenant on Civil and Political Rights, Article 12(1)

## Housing Land and Property Records Documentation

*States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.<sup>50</sup>*

Client is seeking assistance in returning his property, which he says was sold fraudulently without his knowledge. Part of the procedure in resolving his property dispute requires obtaining the latest cadastral records as well as history of any changes to the cadastral record since his displacement. The cadastre refuses to provide him with the cadastral record until outstanding taxes are paid (for the period he was in displacement) as well as a 50 euro fee for the documents.

Even a well functioning cadastre can be problematic. In Kosovo and Metohija there has been difficulty with the Kosovo Cadastral Agency, there have been instances where the cadastre has demanded that the IDP pay outstanding taxes before being given property records, despite the fact there is nothing in the law requiring this. There has also been refusal of the municipal cadastres to change records in favour of IDPs when so ordered by the central cadastral agency.

The cadastre often charges a fee for taking out possession lists and providing other documents to IDPs, despite the fact that this is an impediment to restitution and return.

Pinheiro recognises the dangers involved in the process of constructing or reconstructing official records, and the possibility they can be abused by corrupt officials and can equally be used as a motivation to economically or politically strong groups to illegally grab land belonging to refugees and displaced persons and registering it as their own.

## Expropriation and other interference of an individual's right to property

An IDP who was in the process of returning in Peć had his home demolished by the local municipality. The municipality said that this was done as part of an urban plan. However, none of the Albanian homes around the Serbian home were demolished. Indeed, the former UNMIK international administrator and international local community officer both testified in court that the entire process was done without their knowledge.

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A Serbian church was destroyed in the town of Đakovica following the conflict in 1999. In 2008 the municipality ordered the removal of the debris and the construction of a park. The Serbian Orthodox Church, the owner of the property, was not informed of this decision and not given an opportunity to object.

<sup>50</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons, Section 15(5)

<sup>51</sup> Case of Predrag Vasic vs. Municipality of Pec, Municipal Court of Pec, 2005

It is important to note that the “right to property” is not an absolute right. In some instances **public interest** outweighs that of the right of the individual. However, any interference with such property must be balanced and lawful under the applicable law. Also a fair balance must be maintained between the demands of the general interest and the requirements of the protection of the individual’s fundamental rights.<sup>52</sup> This is especially true in the Kosovo and Metohija context, given that many IDPs are likely not aware of expropriation of their property given their displaced status.<sup>53</sup> There have been many instances in post-conflict environments where violation of property rights with an intention to harm a particular ethnic group has been veiled to be within the public interest, unfortunately this seems to be the case in Kosovo and Metohija as well.

Prior to any interference of a private property right there must be effective notice to the property right holder and an opportunity to contest the interference. This is one of the tenants of due process and the right to a fair trial.<sup>54</sup> In the cases where there is an interference of a property right by the local government and a genuine public interest reason has been proven, there still must be fair compensation to the property right holder.<sup>55</sup> The best measure is that the compensation must equal the value of the property.

If the interference/deprivation of the use of private property is found to have been done in violation of the basic rights of the individual, showing neither a public interest requirement, a violation of the right to a fair trial or ineffective compensation then this would be tantamount to “State” sanctioned forced displacement, This is true regardless of whether the IDP was already in displacement, as now the government is directly responsible for creating an impediment to restitution of property and return. This can be interpreted to be a violation of the right to freedom of movement and residence.<sup>56</sup>

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<sup>52</sup> Lithgow et alia v. the United Kingdom, ECHR judgment, 8 July 1986, Series A no. 102, p. 50, para. 120

<sup>53</sup> OSCE Report, *Expropriations in Kosovo* (December 2006).

<sup>54</sup> ICCPR Art 14(1), ECHR Art. 6

<sup>55</sup> Ibid, Akkus vs. Turkey, ECHR judgment of 09 July 1997, para. 30

<sup>56</sup> UDHR Art. 13, ICCPR Art 12(1).

## Practical Annexes

Sources of information relevant to the Legal Aid scope of work (institutions, reports, legal frameworks, contacts, other links, etc) at:

### Agencies

Center on Housing Rights and Evictions	<a href="http://www.cohre.org">www.cohre.org</a>
Commissariat for Refugees and IDPs	<a href="http://www.kirs.sr.gov.yu">www.kirs.sr.gov.yu</a>
Danish Refugee Council	<a href="http://www.drc.dk">www.drc.dk</a>
Displacement Solutions	<a href="http://www.displacementsolutions.org">www.displacementsolutions.org</a>
EULEX in Kosovo	<a href="http://www.eulex-kosovo.eu">www.eulex-kosovo.eu</a>
European Court of Human Rights	<a href="http://www.echr.coe.int/echr/Homepage">www.echr.coe.int/echr/Homepage</a> EN
Housing and Property Directorate	<a href="http://www.kpaonline.org/hpd/">http://www.kpaonline.org/hpd/</a>
Internal Displacement Monitoring Center	<a href="http://www.internal-displacement.org">www.internal-displacement.org</a>
KFOR	<a href="http://www.nato.int/KFOR">www.nato.int/KFOR</a>
Kosovo Judicial Council	<a href="http://www.kgjk-ks.org">www.kgjk-ks.org</a>
Kosovo Property Agency	<a href="http://www.kpaonline.org">www.kpaonline.org</a>
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Ministry for Kosovo & Metohija	<a href="http://www.kim.sr.gov.yu/cms/item/home/sr.html">www.kim.sr.gov.yu/cms/item/home/sr.html</a>
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OSCE in Kosovo	<a href="http://www.osce.org/kosovo">www.osce.org/kosovo</a>
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UNHCR	<a href="http://www.unhcr.org">www.unhcr.org</a>

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Constitutional Framework for Provisional Self-Government

**Constitution Passed by Assembly without SRSG Promulgation of 2008**  
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Mitrovica Justice System: Status update and continuing human rights concerns 10.02.2011

[Privatization in Kosovo; Judicial Review of Kosovo Trust Agency Matters by the Special Chamber of the Supreme Court on KTA Related Matters](#), May 2008

[Report on Expropriations, OSCE, December 2006](#)

[Report on Security of Judges, OSCE, April 2010](#)

## **EUROPEAN COMMISSION REPORTS**

EC 2010 Progress Report, 09 November 2010, SEC(2010)1329

The European Commission Liaison Office to Kosovo

## **REPORT / ARTICLES ON THE KOSOVO JUSTICE / LEGAL SYSTEM**

[American Bar Association, Judicial Reform Index for Kosovo, October 2010](#)

Amnesty International Report, 2010

[Corruption Cases Report, Advocacy & Legal Advice Center, 2009](#)

[Corruption in land administration / land management in Kosovo, Anti-Corruption Resource Center, August 2008](#)

[EULEX Program Report 2010](#)

[Final status for Kosovo – towards durable solutions for IDPs or new displacement risk?](#)

[Internal Displacement Monitoring Center, December 2007](#)

Human Rights Watch: Kosovo Criminal Justice Scorecard, March 2008

[Ombudsperson of Kosovo Annual Report, 2009](#)

Report to the United Nations Human Rights Committee in Geneva in its 87th Session

[Situation of longstanding refugees and displaced persons in South East Europe, Council of Europe, May 2007](#)

OSCE AND UNITED STATES REPORT on witness security and protection in Kosovo. Assessment and Recommendations, November 2007

[Property Rights in Kosovo, A Haunting Legacy of a Society in Transition, International Center for Transitional Justice, February 2009](#)

[Position of Refugees, Internally Displaced Persons Returnees and Asylum Seekers, Group 484, June 2011](#)

**Guiding Principles on Internal Displacement** [www.idpguidingprinciples.org](http://www.idpguidingprinciples.org)

Articles and reviews of the Guiding Principles can be found at the Brookings Institution Project on Internal Displacement: [www.brookings.edu/fp/projects/idp/articles/index.htm](http://www.brookings.edu/fp/projects/idp/articles/index.htm)

**Handbook for Applying the Guiding Principles on Internal Displacement,**<sup>57</sup>

**The Pinheiro Principles** [www.cohre.org/store/attachments/Pinheiro%20Principles.pdf](http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf)

**Relevant Case-Law in the ECHR** [www.javier-leon-diaz.com/docs/Right\\_Case\\_Law.htm](http://www.javier-leon-diaz.com/docs/Right_Case_Law.htm)

### **Legal Framework**

UNMIK Regulations [www.unmikonline.org/regulations/unmikgazette/index.htm](http://www.unmikonline.org/regulations/unmikgazette/index.htm)

Kosovo Local Gazette [www.gazetazyrtare.com/e-gov/index.php?lang=sr](http://www.gazetazyrtare.com/e-gov/index.php?lang=sr)

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<sup>57</sup> [www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5CTJBU?OpenDocument](http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5CTJBU?OpenDocument)



## Useful information about legal aid in general

[European Commission](#)<sup>58</sup>

[Council of Europe](#)<sup>59</sup>

## Links about Serbian IDPs

[Internal Displacement Monitoring Center Report on Serbia](#)<sup>60</sup>

## Presentations and other material of the Training modules

Presentation on the Juvenile Justice Code

Main Trial from the Perspective of a Prosecutor, Judge and Legal Officer

Use of the Audio Recording Equipment and the Common Practice of the Deliberation of Minutes in the Course of the Main Trial

A Practical Introduction to the First Instance Main Trial According to the PCPCK

Trafficking of Human Beings in Kosovo

The Role of the Legal Officers

Jurisdiction and competences of the EULEX Prosecutors in the Districts and in the SPRK the Districts and in the SPRK

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<sup>58</sup> [ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_gen\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_gen_en.htm)

<sup>59</sup> [www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Operation\\_of\\_justice/Access\\_to\\_justice\\_and\\_legal\\_aid/www.lawsociety.org.uk/choosingandusing/payingforservices/adviceonlegalaid.law](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Access_to_justice_and_legal_aid/www.lawsociety.org.uk/choosingandusing/payingforservices/adviceonlegalaid.law)

<sup>60</sup> [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/A6A36317DA8D29A1802570A7004CAB90?OpenDocument&expand=10&link=40.10&count=10000#40.10the](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/A6A36317DA8D29A1802570A7004CAB90?OpenDocument&expand=10&link=40.10&count=10000#40.10the)

# European Court of Human Rights

## Case-law from the European Court of Human Rights & Human Rights Committee

There are some excellent [sources to relevant property case-law](#) in the ECHR at the following website, some of which are highlighted below.

<a href="#">Akdivar and Others v. Turkey (1996)</a> and <a href="#">Damages (1998)*</a>	Involving large-scale evictions, forced relocation and demolition of villages by the Government of Turkey. The Court held that there had been a violation of both Article 8 of the Convention and Article 1 of Protocol No. 1 and ordered the Government of Turkey to pay compensation.
<a href="#">Akkus vs. Turkey, July 1997</a> , para. 30	Involving the expropriation of land and mass evictions by the Government of Turkey in order to construct a dam. The Court held that there had been a violation of Article 1 of Protocol No. 1 and ordered the Government of Turkey to pay compensation
<a href="#">Bilgin v. Turkey (2001)</a>	Violations of ECHR A3 (prohibition of torture), A8, (respect for home, property), A1,P1, and A13 (effective remedy)
<a href="#">Blečić v. Croatia (2006)*</a>	No violation of ECHR A1, P1
<a href="#">Broniowski v. Poland (2004)</a>	Violation of ECHR A1,P1
<a href="#">Brumărescu v. Romania (1999)</a>	Involving housing restitution with respect to a house expropriated by the Government of Romania in 1950. The Court held that there had been a violation of Article 1 of Protocol No. 1.)
<a href="#">Cyprus v. Turkey (2001)*</a>	Regarding Greek Cypriots displaced from northern Cyprus. The Court held that there are continuing violations by the Government of Turkey of Article 8 of the Convention and Article 1 of Protocol No. 1
<a href="#">Doğan and Others v. Turkey (2004)*</a>	Violations of ECHR A8 (home and family life), A13 (effective remedy), and A1,P1
<a href="#">Dulaş v. Turkey (2001)*</a>	Violations of ECHR A3, A8, A1,P1, A13, A25 (right of petition to the Court) (compensation awarded)
<a href="#">Guillemin v. France (1997)</a>	ECHR 50 (Expenditures on the Court)(compensation awarded)
<a href="#">Jantner v. Slovakia (2003)</a>	No violation of ECHR A1,P1 or A14
<a href="#">Jasiūnienė v. Lithuania (2003)*</a>	ECHR A6-1 and A1,P1 violations (compensation awarded) (Case also deals with non-implementation of decisions)
<a href="#">Lithgow and Others v. United Kingdom (1986)</a>	No violation ECHR Arts. P-1, 14 (non-discrimination), 6-1, or 13 (effective remedy)
<a href="#">Loizidou v. Turkey (1996)</a> and <a href="#">Damages (1998)*</a>	Involving the occupation of land and housing by the Government of Turkey in northern Cyprus. The Court held that there had been no violation of Article 8 of the Convention but that there had been a violation of Article 1 of Protocol No. 1 and ordered the Government of Turkey to pay compensation.
<a href="#">Orhan v. Turkey (2002)*</a>	Violations of ECHR A2, A3, A5, A8, A1P1, and A13 (compensation awarded)
<a href="#">Pincová and Pinc v. The Czech Republic (2003)</a>	Violation of ECHR A1,P1 (compensation awarded)
<a href="#">Sporrong and Lönnroth v. Sweden (1982)*</a>	Involving long-term expropriation of property permits, for 23 and 8 years respectively, and the prohibition of construction on the properties in question. The Court held that there had been a violation

	of Art 1 of Protocol 1 due to the long duration in which the property was under threat of expropriation, and therefore construction by the owners was prohibited, even though the expropriation did not take place.
<a href="#">Străin and Others v. Romania (2005)</a>	ECHR A6-1 and A1,P1 violations (compensation awarded)
<a href="#">Valová, Slezák and Slezák v. Slovakia (2004)</a>	Violation of ECHR A1,P1 but no violation of A6-1
<a href="#">Xenides-Arestis v. Turkey (2006)*</a>	ECHR A41 (just satisfaction)(compensation awarded where government sought to compel applicant to file an application again in a newly-established commission
<a href="#">Zubani v. Italy (1996)</a>	Involving the taking of a farm and eviction of its occupants by a municipal government in order that the land could be used for the construction of low-cost and social housing. The Court held that there had been a violation of Article 1 of Protocol No. 1 and ordered the Government of Italy to pay compensation.
<a href="#">Zvolský &amp; Zvolská v. The Czech Republic (2003)</a>	ECHR A6-1 and A1,P1 violations (compensation awarded)
<a href="#">Zwierzyński v. Poland (2001)*</a>	ECHR A1,P1, and 6-1 violations)(compensation awarded)

\*While all the cases listed above are important housing and property restitution cases, the cases marked with an asterisk may be of particular significance for displaced persons from Kosovo and Metohija.

### Human Rights Committee

<a href="#">Dr. Karel Des Fours Walderode v. Czech Republic (1996)</a>	ICCPR A2, para3 (a) (effective remedy) and A26 (non-discrimination) violations
<a href="#">Eliska Fábryová v. The Czech Republic (1997)</a>	ICCPR A26 (non-discrimination) violation
<a href="#">Josef Frank Adam v. Czech Republic (1996)</a>	ICCPR A2, para3 (a) (effective remedy) and A26 (non-discrimination) violations
<a href="#">Miroslav Blazek, George A. Hartman and George Krizek v. The Czech Republic (2001)</a>	ICCPR A26 (non-discrimination) violation
<a href="#">Robert Brok v. The Czech Republic (2001)</a>	ICCPR A2, para1 (equality before and equal protection of the law) and A26 (non-discrimination) violation
<a href="#">Simunek, Hastings, Tuzilova and Prochazka v. The Czech Republic (1995)</a>	ICCPR A26 violation

## Important Contact Information

### **EULEX Kosovo**

#### **Contacts:**

St. Muharrem Fejza, (Farmed Building)  
P.O. Box: 268,10000 Pristina  
Tel: +(381) 38 222 010 2000  
Fax: +(381) 38 222 010 6333  
E-mail: info@eulex-kosovo.eu

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### **United Nations Mission in Kosovo**

#### **Contacts:**

Mission HQ, Kosovo Polje  
038-504-604  
www.unmikonline.org

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### **Kosovo Police**

#### **Contacts:**

Str. Luan Haradinaj, p.n. Pristina  
044 192, 038 092, 038 550 999  
info@kosovopolice.com

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### **Kosovo Customs**

#### **Contacts:**

Kosovo Customs, Bulevardi Bill Clinton, p.n Pristina  
Tel. 038 540 350, Fax. 038 540 836  
Email: hq@dogana-ks.org  
Call to report corruption and contraband **038 500 095**

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### **Kosovo Property Agency**

#### **Contacts:**

KPA Headquarters  
Nazim Gafurri 31,  
Pristina  
Telephone: :+381 (0)38 249-936  
+381 (0)38 249-918  
Telefax: +381 (0)38 2490-919  
mailbox@kpaonline.org

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### **Kosovo Judicial Council**

#### **Contacts:**

Str.Oborrii Rilindjes, Kontejneri No.03  
Tel 038 234 630 / 113  
k.gjyqesor.ks@gmail.co

#### **Services:**

The Kosovo Judicial Council (KJC) is the highest body of the Kosovo Judicial System. The KJC acts in order to protect the Judicial system and keep it professional, independent, impartial, integrated,

fair and efficient. It is competent and responsible for the appointment of judges, prosecutors and lay-judges, disciplinary measures imposed against judges, prosecutors and lay-judges whenever misconduct is committed as well as with regard to their professional development.

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## **Kosovo Police Inspectorate**

### **Contacts:**

Str. Lidhja e Pejës, p.n, Kosovo Polje

+381 38 552 176

info.ipk@ks-gov.net

### **Services:**

The mission of the Kosovo Police Inspectorate is to oversee the way in which the Kosovo Police carries out its duties, ensuring the professional and effective manner of law enforcement in Kosovo. The inspectors are equipped with a range of powers to enter and inspect police stations and departments, to interview police officers regardless of their rank, to collect data for the performance of duties, to investigate disciplinary complaints and, wherever necessary, to confiscate police documents.

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## **Kosovo Correctional Service**

### **Contacts:**

Adresa: Ministry of Justice,

Str. "Perandori Dioklecian", 10000 Pristina, Serbia

Tel: 038/200-18-340

### **Services:**

KCS is responsible for the management of prisoners, detainees, juveniles, in accordance with the applicable laws in Kosovo, as well as European conventions and other regulations issued in the respective institutions. KCS is responsible for the management of institutions of different levels of security and supervision of persons under the auspices of the KCS.

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## **Office on Missing Persons and Forensics**

### **Contacts:**

OMPF building, QKU Area, Skopje Highway

11000, Pristina

### **Mandate:**

To determine and resolve the fate of missing persons resulting from the 1998- 1999 conflict and its aftermath by:

Keeping stake-holders informed about the progress of investigations and returning the identified remains to their families in a timely and respectful manner.

Keeping up-to-date records and statistics on missing persons in Kosovo.

Cases of medical malpractice

Medico-legal analysis of crime and death scenes

Expert witness testimony in Court

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## **Victim Assistance and Protection Unit**

### **Contacts:**

Pristina 044 278 738

Gracanica 044 425 477

Gnjilane 044 310 467

Kosovska Kamenica 044 310 467

Vitina 044 310 467

**Urosevac 044 161 138**  
**Prizren 044 310 468**  
**Pec 044 348 164**  
**Istok 044 352 934**  
**Kosovska Mitrovica 063 848 79 91**  
**www.md-ks.org**  
"Perandori Dioklecian" street, 10000, Pristina

**Services:**

Victim Assistance and Protection Unit, provides legal assistance to all victims of crime; free of charge authorized legal representative and interpreter; shelter and health services; clothing, food and other services responding to the needs of the victim, from the beginning of court and prosecution services up to the conclusion of the legal issues. Provides and facilitates access to the justice systems before during and after the court procedures to the victims of physical and psychological violence, with special focus on domestic violence victims, sexual abuse, human trafficking, children abuse, suicidal attempts etc.

Notice: Assistance line 044 080 90 is anti-trafficking line for cases of human trafficking ONLY. (Operational services)

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**Ombudsperson Institution in Kosovo**

**Contacts:**

**Priština Headquarters**

Address: Agim Ramadani St, nn.  
Tel: +381 (0) 38 501 401, 545 303  
Fax: +381 (0) 38 545 302  
Email: [ombudsperson@ombudspersonkosovo.org](mailto:ombudsperson@ombudspersonkosovo.org)

**Services:**

Investigates complaints from anyone in Kosovo who believes that his or her human rights have been violated by a public authority in Kosovo. All services are provided free of charge.

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**Kosovo Anti- corruption Agency**

**Contacts:**

Str."Bajram Kelmendi", No. 31, Pristina  
00 381 (0) 38 248 563/5  
[info@akk-ks.org](mailto:info@akk-ks.org)

**Inform about corruption:** 044 082 82

**Services:**

To convey to the Public Prosecutor of Kosovo any information that has to do with possible violations relating to corruption; to initiate further investigations and conduct administrative charges related to alleged corruption in those cases where criminal proceedings are not initiated; To warn the Kosovo authorities about their commitments arising from international acts and offering recommendations on how to fulfill them;

To advise during the preparation of code of ethics in the public and private sectors;

To provide clarification regarding the incompatibility, conflict of interests, gifts and other issues related to the field of corruption;

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## **Danish Refugee Council**

### **Contacts:**

Address: Mark Isaku 30, Pristina  
Phone: +381 (0)38 243 793/4 & +381 (0)38 245 481  
FAX: +381 (0)38 243 796  
E-mail: [representative@drc-kosovo.org](mailto:representative@drc-kosovo.org)

### **Services:**

From 2003, DRC has focused increasingly on minority returns to Kosovo, a programme priority which has been developed in close cooperation with DRC Serbia & Montenegro. DRC is also engaged in mandatory returns from Western Europe. DRC remains a member of the NGO Returns Coordination Group, and sits on the Consulting Board for ProPeace Platform, an association of local NGOs with a peace building mandate.

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## **Independent Media Commission**

### **Contacts:**

Gazmend Zajmi Str. No.1 / Pristina  
tel: 038/245-031  
fax: 038/245-034  
e-mail: [info@imc-ko.org](mailto:info@imc-ko.org)  
[www.kpm-ks.org](http://www.kpm-ks.org)  
[www.imc-ko.org](http://www.imc-ko.org)

### **Services:**

The Independent Media Commission is the only authority in Kosovo responsible for managing, regulating, and assigning resources of the Broadcast Frequency Spectrum, issuance of licenses and collection of duties for usage of broadcasting frequencies.

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## **Press Council of Kosovo**

### **Contacts:**

Address: "Hajdar Dushi" Street no 7, Pristina  
Tel. 044 291 810  
Email: [presscouncil.kosovo@gmail.com](mailto:presscouncil.kosovo@gmail.com)

### **Services:**

Write to us whenever you consider that a Kosovo newspaper or magazine which is a member of our Council has violated the principles of the Code, has insulted or defamed, incited hatred speech or has denied the right to public response.

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## **Centre for Legal Aid and Regional Development (CLARD)**

### **Contacts:**

Luan Haradinaj str. 9A/1 Pristina  
+381 38 228 372  
[www.clardkosovo.org](http://www.clardkosovo.org)

### **Services:**

CLARD is an NGO founded by individuals of different professional backgrounds and ethnicities which have been working for international NGOs for more than 5 years on different kinds of programmes and projects, having different working tasks and contributing to the implementation of these programs and projects.

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## **NORMA**

### **Contacts:**

Address: Sylejman Vokshi, 7/12, Pristina

Email: shnorma@hotmail.com ; shoqatanorma@yahoo.com

Tel +381 (0)38 249 778; +377 (0)44 126 428; +386 (0)49 126 428;

### **Services:**

Providing legal aid to women; conducting seminars for women's groups on women-related issues, including gender-based violence; representing women in court; and supporting literacy training for women in communities as well as training at the municipal level on legal issues, including the application of the Convention on the Elimination of all forms of discrimination against Women

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## **The Legal Aid Commission of Kosovo**

### **Contacts:**

Str. Zenel Salihu 30, Pristina

+ 381 (0) 38 200 18 224

<http://www.knj-ks.org>

### **Services:**

5 District Legal Aid Bureaus operating throughout Kosovo, providing free legal aid in criminal, civil and administrative law fields. To provide free legal aid to people, with economic difficulties, that fulfil the criteria from the UNMIK regulation No. 2006/36 On Legal Aid, especially sensitive groups.

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## **CRP/K - Civil Right Program/Kosovo**

### **Contacts:**

Str. Mbretesha Teute, NGO Building No#2, Kosovska Mitrovica

044 118 854, 028 539 458

[crp.mi@crpkosovo.org](mailto:crp.mi@crpkosovo.org)

### **Services:**

Civil registration as habitual resident of Kosovo and Metohija, including civil status registration with particular focus on Roma, Ashkalia and Egyptian communities

Property rights disputes and legalization of property status (commercial, agriculture and other private properties), inheritance procedures

Retrieval of all types of documents vital in accessing individual civil rights and obligations

Pension rights, social welfare, non-discriminatory access to employment rights, formalization of informal marriages, sexual and gender-based violence

### **Mission:**

CRP/K provides free legal assistance and gender and age sensitive counselling for minority returnees, refugees, and internally displaced persons (IDP) and vulnerable local residents aiming to support sustainable return and contribute to preventing further displacement. The assistance is provided regardless of race, religion, nationality and political conviction of an individual.

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## **Court Liaison Office**

### **Contacts:**

Kralja Petra BB, Kosovska Mitrovica

+381 28 421 774, +377 44 425 649

### **Services:**

Court Liaison Offices provide communities with services such as transport for parties to attend court proceedings; help with lodging civil and criminal claims; assistance with finding old claims from court archives; legal information on issues affecting refugees and internally displaced persons; facilitation of contract certification; referral and liaison with non-governmental organizations; and general



support during the legal process. CLO is to facilitate access to justice for communities that are ethnic minorities in Kosovo.

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## Contact Numbers of Legal Aid Offices

### Website of Legal Aid;

General Enquiries can be addressed by visiting the website of legal aid

[www.pravnapomoc.org](http://www.pravnapomoc.org)

**Toll Free Number 0800 108 208**

### Legal Aid Offices:

Belgrade Trg Nikola Pašića 12 – tel. (011) 3342-115  
Nis Generala Tranijea 4 – tel. (018) 254-993  
Kraljevo Heroja Marinčića 47 – tel. (036) 315-760  
Kosovska Mitrovica, Kralja Petra 1 – tel. (028) 424-021  
Gracanica Zevet Centar tel. (038) 64-735

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### Emergency Contacts in Kosovo

Important phone numbers	
Legal Aid Staff in Kosovo	
Adriana Miletic	+381(0)64 826-2814
Jasmina Zupanjac	+381(0)63 716-3683

### Police Contact Numbers

<b>POLICE: Pristina 92</b>
<b>POLICE: Pec - 038 504 604 ext. 3118 or 3148</b>
<b>POLICE: Zvecan 028 665 130</b>

<b>AMBULANCE: Pristina 94</b>
<b>FIRE: Pristina 93</b>

<b>COURTS/SUD</b>	<b>TELEFON / PHONE</b>
SUPREME COURT OF KOSOVO VRHOVNI SUD KOSOVA	038 243-347 Biblioteka 038 243-346 038 243 345
COMMERCIAL COURT OKRUZNI PRIVREDNI SUD	044 118 515 038 548 911 038 554 747
DISTRICT COURT IN PRISTINA OKRUZNI SUD U PRISTINI	038 521 991 038 247 008, 006 Fax: 038 548 022
DISTRICT COURT IN PEC OKRUZNI SUD U PECI	039 34 725 039 32 723 039 31 590
DISTRICT COURT PRIZREN OKRUZNI SUD PRIZREN	029 42 129 Fax: 029 44 122 029-22-125
DISTRICT COURT GNJILANE OKRUZNI SUD U GNJILANE	0280-20-043 0280-20-145
DISTRICT COURT MITROVICA OKRUZNI SUD MITROVICA	044 177 122 038 502 488
<b>COURT/SUD</b>	<b>TELEFON/ PHONE</b>
MUNICIPAL COURT PRISTINA OPSTINSKI SUD PRISTINA	038 248 029 038 248 028 L:155 Fax: 038 248 905
MUNICIPAL COURT PEC OPSTINSKI SUD PEC	039 33 355 039 33 179 039 33 275
MUNICIPAL COURT PRIZREN OPSTINSKI SUD PRIZREN	029 22 229
MUNICIPAL COURT GNJILANE OPSTINSKI SUD GNJILANE	0280 22 180 0280 24 043 0280 20 120
MUNICIPAL COURT MITROVICA OPSTINSKI SUD MITROVICA	028 33 914 038 502 489
MUNICIPAL COURT DJAKOVICA OPSTINSKI SUD DJAKOVICA	0390 25 765
MUNICIPAL COURT UROSEVAC OPSTINSKI SUD UROSEVAC	0290 21 011 0290 20 261 044 225 518
MUNICIPAL COURT SUHA REKA OPSTINSKI SUD SUVA REKA	029 71 214
MUNICIPAL COURT PODUJEVO OPSTINSKI SUD PODUJEVO	038 570 001
MUNICIPAL COURT LIPLJAN OPSTINSKI SUD LIPLJAN	038 81 105 038 581 105
MUNICIPAL COURT KACANIK OPSTINSKI SUD KACANIK	0290 80 310 044 173 107 038 502 445

MUNICIPAL COURT GLOGOVAC OPSTINSKI SUD GLOGOVAC	038 584 923 038 584 020
MUNICIPAL COURT ISTOK OPSTINSKI SUD ISTOK	039 51 020 044252 672
MUNICIPAL COURT KLINA OPSTINSKI SUD KLINA	039 71 174
MUNICIPAL COURT DECANI OPSTINSKI SUD DECANI	0390 61 692 0390 61 464 044 178 808
MUNICIPAL COURT ORAHOVEC OPSTINSKI SUD ORAHOVEC	029 76 555 029 224 555
MUNICIPAL COURT DRAGAS OPSTINSKI SUD DRAGAS	029 81 148 044 190 727
MUNICIPAL COURT MALISEVO OPSTINSKI SUD MALISEVO	038 569 011 038 569 037
MUNICIPAL COURT KAMENICA OPSTINSKI SUD KAMENICA	0280 71 509
MUNICIPAL COURT VITINA OPSTINSKI SUD VITINA	0280 81 518 044 194 459
MUNICIPAL COURT VUCITRN OPSTINSKI SUD VUCITRN	028 71 414 Fax: 028 71 204 028 70 815 (admin)
MUNICIPAL COURT SRBICA OPSTINSKI SUD SRBICA	028 82 104 028 82 072
MUNICIPAL COURT LEPOSAVIC OPSTINSKI SUD LEPOSAVIC	028 83 506 028 83 778
MUNICIPAL COURT ZUBIN POTOK OPSTINSKI SUD ZUBIN POTOK	028 460 096 063 846 5629 FAX: 028 461 053, 028 461 050
MUNICIPAL COURT STRPCE OPSTINSKI SUD STRPCE	044-381-121
<b>DISTRICT PROSECUTORS OKRUZNI TUZILASTVO</b>	<b>TELEFON/ PHONE</b>
PUBLIC PROSECUTOR OF KOSOVO TUZILASTVO KOSOVA	038 211-902 038 248 020 038 548 020
PUBLIC PROSECUTOR OFFICE IN PRISTINA JAVNO TUZILASTVO PRISTINA	038 232 617 038 532 619
PUBLIC DISTRICT PROSECUTOR OFFICE IN PEC OKRUZNO TUZILASTVO U PEC	039 22 074
PUBLIC DISTRICT PROSECUTOR OFFICE IN PRIZREN OKRUZNO TUZILASTVO U PRIZREN	029 44 210
PUBLIC DISTRICT PROSECUTOR OFFICE IN GNJILANE OKRUZNO TUZILASTVO U GNJILANE	0280 20 143 0280 22 043
PUBLIC DISTRICT PROSECUTOR OFFICE IN MITROVICA OKRUZNO TUZILASTVO U MITROVICI	028 31 346

MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO PRISTINA	038 248-873
MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO PEC	039 32 550
MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO PRIZREN	029 44 027, 029-23 -163
MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO U GNJILANE	0280 24 143
MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO MITROVICA	044 412 337
MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO DJAKOVICA	0390-22-419
MUNICIPAL PUBLIC PROSECUTOR OPSTINSKO TUZILASTVO UROSEVAC	0290 21 633

## Annex - Forms and Templates

### ПРИЈАВНИ ЛИСТ ПРАВНЕ ПОМОЋИ LEGAL AID APPLICATION FORM

ЛИЧНИ ПОДАЦИ КОРИСНИКА BENEFICIARIES' PERSONAL DETAILS	
Име: First Name:	Презиме: Family Name:
Име родитеља: Parents' name	Датум и место рођења: Date and place of birth
Садашња адреса: Current address:	Број телефона: Telephone Number:  Остале контакт информације ( е-мајл) Other contact information (e-mail):
Претходна адреса Previous Address:	Боравишни статус/Residential Status: <input checked="" type="checkbox"/> ИРЛ с КиМ које живи у Србији IDP from KiM Living in Serbia proper <input type="checkbox"/> ИРЛ с КиМ које живи на Косову IDP from Kosovo Living in KiM <input type="checkbox"/> Избеглице из Хрватске Refugees from Croatia <b>Error! Not a valid bookmark self-reference.</b> Non Displaced Persons from KiM <input type="checkbox"/> Остало/ Other <b>Error! Not a valid bookmark self-reference.</b>
ЈМБГ:	Пол: Мушко <input checked="" type="checkbox"/> Женско <input type="checkbox"/> Gender: Male Female
Етничка група/Ethnic group: (Необавезно/ Optional) Србин/Serbian <input checked="" type="checkbox"/> Ром/Roma <input type="checkbox"/> Бошњак/Bosniak <input type="checkbox"/> Ашкалија/Ashkali <input type="checkbox"/> Горанац/Gorani <input type="checkbox"/> Албанац/Albanian <input type="checkbox"/> Египћанин/Egyptian <input type="checkbox"/> Остало/Other <b>Error! Not a valid bookmark self-reference.</b>	
Случај препоручен/прослеђен од: Case Referred By:	
Како сте чули о ПРОЈЕКТУ ПРАВНЕ ПОМОЋИ РАСЕЉЕНИМ ЛИЦИМА? How did you hear about the PROJECT FOR LEGAL AID TO IDP'S? <input type="checkbox"/> Радио-Телевизија/ Radio-Television <input type="checkbox"/> Новине/ Newspaper <input type="checkbox"/> Интернет/ Internet Site <input type="checkbox"/> Препорука, ако јесте од кога?/ Referral, if so by whom?	

**Остали извори/ Other source**

**ПРАВНА ПОМОЋ**  
Legal Aid

**Детаљи правног проблема:**

Details of legal problem:

**Приложена документа:**

Documents provided:

- 1.
- 2.
- 3.

**Да ли сте затражили помоћ неке друге НВО или локалног државног органа у вези овог проблема? Have you sought assistance from other NGOs or the local government authorities about the problem?**

**Детаљи/Details:**

**Препоручени ниво правне помоћи:**

Recommended level of legal aid:

- Правна информација и саветовање/ Legal information and advice**  
 **Правна помоћ/ Legal Assistance**  
 **Заступање на суду/ In-court representation**

**Пружена правна помоћ/ Legal information and advice given:**

- Ништа/None**  
 **Упућивање неком приватном адвокату. Ком адвокату?**  
Referral to private advocate. Which advocate?  
 **Упућивање некој НВО? Којој?/ Referral to NGO. Which NGO?**  
 **Упућивање неком државном органу/ Referral to government agency.**  
 **Остало/Other**

**Опис пружене правне помоћи/Details of provided legal aid:**

**Препорука за заступање на суду/државним органом:**

Recommendation regarding legal representation:

**Име правног саветника**

Legal Officer Name:

**Канцеларија правне помоћи:**

Legal Aid Office:

**Потпис**

Signature: **Error! Not a valid bookmark self-reference.**  
, 2011

**Датум**

Date:

**ПОДОБНОСТ ЗА ПРАВНУ ПОМОЋ (заступање)**  
ELIGIBILITY FOR LEGAL AID (legal representation)

**Одобрено за правну помоћ**

Approved for legal aid services?  **Да/Yes**  **Не/No**

**Разлог:**

Reasons: **Error! Not a valid bookmark self-reference.**

**Датум обавештавања апликанта о одлуци?**

Date applicant notified of decision? **Error! Not a valid bookmark self-reference.**

**Потпис:**

Signature: **Error! Not a valid bookmark self-reference.**  
**Error! Reference source not found.**

**Датум:**

Date:

**СОЦИЈАЛНО-ЕКОНОМСКИ СТАТУС КОРИСНИКА<sup>61</sup>****Beneficiaries socio-economic status****Брачно стање/Marital Status:**

Неожењен /Single  Ожењен/Married  Раздвојен/Separated  Разведен/Divorced   
Удовац/Widowed

**Број издржаваних чланова домаћинства:**

No. of dependent household members:

**Запослење:**

Employment Status:

- Без прихода/ No income  
 Незапослен/ Unemployed  
 Социјална помоћ / Social assistance  
 Пензија/ Pension  
 Месечна плата/ Monthly salary \_\_\_\_\_  
 Приходи од имовине/ Income from property  
 Штедња/ Savings  
 Остали приходи/Other income

**ОПИС СОЦИЈАЛНО-ЕКОНОМСКОГ ПОЛОЖАЈА ОСТАЛИХ ЧЛАНОВА ДОМАЋИНСТВА:**

SOCIO-ECONOMIC DETAILS OF OTHER MEMBERS OF HOUSEHOLD:

**Зашто су приходи домаћинства недовољни да покрију правне трошкове по плаћању уобичајених трошкова домаћинства?**

Why is your household income not sufficient to cover your legal expenses after payment of reasonable household expenses?

**ИЗЈАВА/ APPLICANT'S DECLARATION**

Потврђујем да су информације и приложена документа истинита и тачна.

Разумео сам да моје право на правну помоћ може бити обустављено ако је засновано на приложеној лажној информацији или документу и у том случају Пројекат од мене може тражити надокнаду свих трошкова плаћених у моје име.

Разумео сам да Пројекат може захтевати додатне информације и документацију ради потврђивања мог права на правну помоћ и такође у ову сврху се може распитивати и код владиних организација и институција.

Разумео сам да морам одмах информисати Пројекат о било каквој промени о околности које могу утицати на моје право на правну помоћ.

У случају успеха у грађанском судском поступку финансираном од стране Пројекта разумео сам да Пројекат има право на накнаду трошкова од друге стране.

Разумео сам да Пројекат правне помоћи сарађује са Министарством за Косово и Метохију Републике Србије и сагласам сам да могу да размењују податке поводом мог предмета.

<sup>61</sup> To be fulfilled only for cases proposed for legal representation.



Разумео сам и сагласан сам да у случају престанка Пројекта правне помоћи реселџеним лицима, мој случај може бити прослеђен Министарству за Косово и Метохију Републике Србије и следбенику пројекта. Такође сам разумео да копија предмета, уколико је завршен, може бити архивиран за пет година.

I declare that the information and documentation I have provided in support of this application are true and correct.

I understand that my entitlement to legal aid may be terminated if I am found to have provided false information or documentation, and that the Project may seek to recover from me any legal aid funds paid on my behalf.

I understand that the Project may request further information and documentation in order to confirm my entitlement to legal aid and may also make enquiries of government agencies for these purposes.

I understand that I must inform the Project immediately of any change in my circumstances that would affect my entitlement to receive legal aid.

I understand that in case of successful finalization of my case in a civil court action Project may reclaim their legal expenses from the opposite party.

I understand that the Project is working in conjunction with the Ministry for Kosovo and Metohija of Republic of Serbia and I am allowing them to share details related to my case.

I understand and agree that upon the cessation of the Project for legal aid to IDP's my case might be transferred to the Ministry for Kosovo and Metohija of Republic of Serbia and a successor legal aid provider. I also understand that a copy of my file, if closed, may be kept in archive for up to five years.

**Потпис/ Signature** \_\_\_\_\_

**Датум/ Date** \_\_\_\_\_

## ПУНОМОЋЈЕ

Којим ја \_\_\_\_\_ (име корисника), од оца/мајке: \_\_\_\_\_, рођен:  
\_\_\_\_.\_\_\_\_.\_\_\_\_.године у \_\_\_\_\_, општина \_\_\_\_\_, ЈМБГ: \_\_\_\_\_, са  
пребивалиштем у \_\_\_\_\_, тренутно на адреси: \_\_\_\_\_, лична карта бр.  
\_\_\_\_\_ ПУ \_\_\_\_\_,

### овлашћујем и опуномоћујем

Правног саветника (Име правног саветника) пројекта *ПОДРШКА ИЗБЕГЛИЦАМА И ИНТЕРНО  
РАСЕЉЕНИМ ЛИЦИМА У СРБИЈИ* који финансира ЕВРОПСКА УНИЈА да у моје  
име и за мој рачун може предузети правне и фактичке радње у предмету:

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Пуномоћје није ограничено, и важи до опозива.

У случају потребе пуномоћник може пренети овлашћења на трећу особу ради извршавања  
правних и фактичких радњи у вези са мојим предметом.

Дана: \_\_/\_\_/2011

у \_\_\_\_\_

ДАВАЛАЦ ПУНОМОЋЈА:

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## AUTHORIZATION LETTER

I (Name of Client), name of father, DoB, PoB, JMBG, residential address from Kosovo, present address in Serbia, Id card no, issued by

**authorize**

Legal adviser (Name of Legal Officer) from *FURTHER SUPPORT TO REFUGES AND IDP'S PROJECT* financed by EUROPEAN UNION to undertake on my behalf and in my benefit legal and factual actions in:

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Authorization is not timely limited, and lasts until it is revoked.

In case of need authorized person can authorize third person to replace him/her for purpose of fulfillment of authorization tasks.

Date: \_\_/\_\_/2011

Place: \_\_\_\_\_

Signature of authorization issuer:

\_\_\_\_\_

## CONTRACT ON PROVISION OF FREE LEGAL AID

Concluded and signed on \_\_\_\_\_ (date and place) between:

1. (Name of beneficiary) with residence in \_\_\_\_\_, and temporary residence in \_\_\_\_\_, (personal number) in text – BENEFICIARY, and
2. **PROJECT FURTHER SUPPORT TO REFUGEES AND IDP's IN SEBIA** represented by \_\_\_\_\_, based in Belgrade, Nikola Pasic Square 12/7 in text PROVIDER

### Article 1.

Provider is obliging himself in period starting from contract signing until the project ending on October 01, 2012 to provide to beneficiary free legal aid in accordance with applicable legislation in Republic of Serbia and Province of Kosovo and Metohija /UNMIK. In the process of provision of free legal aid all international and professional standards would be respected, as well as standards in area of protection and materialization of human and civil rights.

### Article 2.

Free legal aid envisaged by this contract is related to: (type of case – HPD, KPA, court, administrative body, type of procedure, competent institution, and contract duration period).

### Article 3.

The beneficiary has the obligation to provide the Provider with all documents and information relevant for case. The beneficiary guarantees that all information, documents and facts presented to Provider are true and accurate.

### Article 4.

The provider is obliging himself that in accordance with professional standards will respect confidentiality of case, and would not without consent of beneficiary disclose details of it. The provider does not bear responsibility for outcome of case or decisions of competent institutions. The provider obliges himself to regularly inform beneficiary on current status of case. Provider does not bear responsibility for potential illegal, incompetent or any other practice contrary to legislation or justice by courts or administrative bodies/institutions.

### Article 5.

For the payment of court and administrative costs that occur during initial or later phases of proceedings of case, decides Provider in written form in each case separately. In case of positive outcome of procedure Provide is entitled to charge procedural expenditures from opposite party on bases of legally non-appealable and executive decision.

### Article 6.

In case of breach of contractual provisions Provider has right to unilaterally cancel *Contract on provision of legal aid*.

Both contractual parties are authorized to unilaterally cancel contract with written announcement to other party 30 days in advance.

Provider is obliging himself in accordance with professional standards that during contract cancelation period will undertake all necessary legal and factual actions in interest of

beneficiary, and that after expiration of cancelation period will hand over to beneficiary complete copy of his/her file.

Article 7.

Beneficiary is aware that Provider is collaborating with Ministry for Kosovo and Metohija of Republic of Serbia. The Provider will not disclose any confidential information about the case without the prior written consent of the beneficiary.

Article 8.

All misunderstandings contractual parties will try to resolve in amicable manner. In case of dispute I basic court in Belgrade has jurisdiction.

Article 9.

This contract is prepared in two copies, one per each contractual party.

PROVIDER:

\_\_\_\_\_

BENEFICIARY:

\_\_\_\_\_

## **УГОВОР О ПРУЖАЊУ ПРАВНЕ ПОМОЋИ**

Закључен и потписан дана (место и датум) године, између:

1. (Име корисника), са пребивалиштем у (место), и боравиштем у (место), (улица), (ЈМБГ), у даљем тексту – КОРИСНИК,
- и
2. **ПРОЈЕКТА ДАЉА ПОДРШКА ИЗБЕГЛИЦАМА И ИНТЕРНО РАСЕЉЕНИМ ЛИЦИМА У СРБИЈИ** кога представља \_\_\_\_\_, са седиштем у Београду, Трга Николе Пашића бр. 12/7, у даљем тексту ПРУЖАЛАЦ

### Члан 1.

Пружалац правне помоћи обавезује се да у периоду од тренутка потписивања уговора до окончања пројекта 01.10.2012. кориснику пружи бесплатну правну помоћ у складу са свим важећим законима и прописима у Републици Србији и Покрајини Косово и Метохија/УНМИК. Приликом пружања бесплатне правне помоћи биће поштовани сви међународни и професионални стандарди, као и стандарди у области заштите и остваривања грађанских и људских права.

### Члан 2.

Бесплатна правна помоћ предвиђена овим уговором односи се на: (унети врсту случаја нпр. ХПД, КИА, суд, орган управе, врста поступка, пред којим судом/органом, и време на које је уговор закључен.)

### Члан 3.

Корисник је у обавези да Пружаоцу преда сва документа и саопшти све информације које су од значаја за конкретан предмет. Корисник гарантује да су све информације, документа и чињенице које предочи Пружаоцу веродостојне и истините.

### Члан 4.

Пружалац се у складу са правилима струке обавезује на поштовање права потпуне поверљивости у предмету, и да детаље конкретног случаја неће износити трећим лицима без изричитог пристанка корисника. Пружалац не сноси одговорност за исход поступка и одлуке надлежних органа. Пружалац се обавезује да редовно обавештава корисника о тренутном статусу предмета. Пружалац не сноси одговорност за евентуално противзаконито, нестручно или какво друго поступање противно праву и правди учињено од стране судова или органа управе.

### Члан 5.

Пружалац одлучује о плаћању судских и административних трошкова који се јављају приликом покретања или у току поступка, и то писмено у сваком предмету посебно. Пружалац има право да у случају позитивне одлуке у предмету где је Пружалац обезбедио заступање наплати судске или административне трошкове од стране која је изгубила спор, а све на основу правоснажне и извршне одлуке.

### Члан 6.

У случају кршења одредаба Уговора, Пружалац има право да једнострано раскине *Уговор о пружању правне помоћи*.

Свака уговорна страна овлашћена је да једнострано раскине уговор уз достављање писаног обавештења другој уговорној страни 30 дана унапред. Пружалац се обавезује да у складу са правилима струке током трајања отказног рока предузима неопходне правне и фактичке радње у интересу корисника, као и да му преда копију целокупаног списка предмета након истека отказног рока.

#### Члан 7.

Корисник је упознат да Пружалац сарађује са Министарством за Косово и Метохију Републике Србије и сагласан је да Пружалац може да размењује податке из његовог/њеног предмета са Министарством за КиМ Републике Србије.

Корисник је сагласан да у случају престанка Пројекта правне помоћи, Пружалац у складу са својом проценом његов/њен предмет може бити прослеђен Министарству за КиМ Републике Србије и следбенику пројекта. Такође, корисник је упознат да копија предмета, уколико је затворен, може бити архивиран за период од пет година.

#### Члан 8.

Све неспоразуме уговорне стране ће покушати да решен на мирољубив начин. У случају спора надлежан је I основни суд у Београду.

#### Члан 9.

Овај Уговор је сачињен у два примерка, по једна примерак за сваку уговорну страну.

ПРУЖАЛАЦ:

КОРИСНИК:

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**ПРОЈЕКАТ ПОДРШКА ИЗБЕГЛИЦАМА И ИНТЕРНО РАСЕЉЕНИМ ЛИЦИМА У СРБИЈИ**

Канцеларија у \_\_\_\_\_

адреса

(КОРИСНИКОВО ИМЕ И ПРЕЗИМЕ)

(Корисникова адреса)

Поштовани/а \_\_\_\_\_,

Са жаљењем Вас обавештавамо да због природе нашег пројекта нисмо у могућности да пружимо правну помоћ поводом Вашег правног проблема.

Чињеница да је овај Пројекат није у могућности да Вам помогне поводом овог конкретног правног проблема не значи да немате право да покушате да заштитите своја права. Препоручујемо да покушате да заштитите и остварите своја права у сарадњи са другим организацијама или адвокатима.

**А опција** – Препоручујемо да контактирате \_\_\_\_\_ (ако постоји могућност да буде препоручен неко ко може преузети предмет информација о организацији/адвокату уз контакт детаље требало би да буде овде наведена) специјализован/а у правној области у коју и Ваш предмет спада.

**Б опција** – Безуспешно смо покушали да пронађемо пружаоца правне помоћи који би Ва могао помоћи поводом Вашег правног проблема. У случају да желите да наставите да поступак за заштиту Ваших права препоручујемо да контактирате адвоката. У контакту са адвокатом мголи бисте да добијете правни савет о основаности Вашег захтева за заштиту права, како да покренете поступак и које су могућности успешног решавања спора.

Можете нас контактирати ако желите да добијете додатне информације о разлозима због којих нисмо у могућности да Вам помогнемо.

С поштовањем,

у \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(ИМЕ ПРАВНОГ САВЕТНИКА)



**SAMPLE LETTER FOR BENEFICIARIES REFERRAL**

**FURTHER SUPPORT TO REFUGEES AND IDP'S IN SERBIA PROJECT**

Office in \_\_\_\_\_  
address

(CLIENT's NAME)  
(CLIENT's ADDRESS)

Dear (CLIENT's FULL NAME)

With regret to have to inform you our mandate does not allow for providing you with legal assistance.

The fact that the Project is unable to assist you with this concrete issue does not necessarily mean that you do not have right to try to protect our rights. We recommend you to try to protect and materialize your rights through assistance of an NGO, or a private lawyer.

**A option** – We are recommend you to contact \_\_\_\_\_ (if it is possible to recommend someone who may be able to assist the client then that information should be put here along with contact details) specialized in the legal matters at stake in your case.

**B option** - We have attempted without success to locate another legal aid provider to assist you with your other claims. If you should wish to continue to pursue legal action in relation to claim you should contact a private attorney. He or she may be able to advise you concerning the merits of the case, how your case should be initiated and how what the chances for success are.

Please do not hesitate to contact us should you require further explanation of the reasons for our inability to assist you.

Respectfully,

In \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(NAME OF LEGAL OFFICER)

## CASE CLOSING FORM/ОБРАЗАЦ ЗА ЗАТВАРАЊЕ ПРЕДМЕТА

Beneficiaries' Name/Име корисника \_\_\_\_\_

Legal officer/Правни саветник \_\_\_\_\_

Beneficiaries Current Address/Корисникова тренутна адреса:  
\_\_\_\_\_

Case Type/Врста предмета: \_\_\_\_\_

Date Opened/Датум отварања \_\_\_\_\_

Date Closed/Датум затварања \_\_\_\_\_

Since beneficiaries file will eventually be destroyed it is important that all original and important documents be returned to client in person or registered mail.

Пошто ће након истека рока корисников предмет бити уништен важно је да сва оригинална и важна документа буду враћена кориснику лично или препорученом поштом.

Beneficiary was informed about case closure procedure/Корисник је обавештен о поступку затварања предмета: \_\_\_\_\_

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Signature of Supervisor – I have reviewed this file, and it is suitable for closure and to be stored in archive.

Потпис Контролора – Прегледао сам овај предмет, и подобан је за затварање и архивирање.

Supervisor/Контролор: \_\_\_\_\_  
(Name & signature/Име и потпис)

**ОБРАЗАЦ ДОПИСА КОРИСНИКУ О ЗАТВАРАЊУ ПРЕДМЕТА**

**ПРОЈЕКАТ ПОДРШКА ИЗБЕГЛИЦАМА И ИНТЕРНО РАСЕЉЕНИМ ЛИЦИМА У СРБИЈИ**

Канцеларија у \_\_\_\_\_

адреса

(КОРИСНИКОВО ИМЕ И ПРЕЗИМЕ)

(Корисникова адреса)

Поштовани/а \_\_\_\_\_,

Обавештавам Вас да услед \_\_\_\_\_ (навести разлоге за затварање предмета) смо принуђени да затворимо Ваш предмет. У претходном периоду били смо у могућности да Вам пружимо бесплатну правну помоћ у Вашем предмету поводом:

(кратак опис конкретне правне помоћи пружене кориснику).

Ваш предмет је службено затворен у нашој канцеларији и заступање у Вашем предмету је окончано. Сва пуномоћја која сте нам дали биће отказана прд надлежним институцијама. Документа која смо прибавили или која сте нам доставили за Ваш предмет ће Вам бити враћена ако сте за то заинтересовани. Ваш предмет ће бити архивиран у наредних 5 (пет) година, а након тога ће бити уништен.

У случају да Вам је потребно ддоатно обавештење или информација позивамо Вас да нас контактирате. Хвала Вам!

С поштовањем,

у \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(ИМЕ ПРАВНОГ САВЕТНИКА)

**SAMPLE OF CLOSING LETTER TO BENEFICIARY**

**FURTHER SUPPORT TO REFUGEES AND IDP'S IN SERBIA PROJECT**

Office in \_\_\_\_\_  
address

(CLIENT's NAME)  
(CLIENT's ADDRESS)

Dear (CLIENT's FULL NAME)

I am informing you that because \_\_\_\_\_ (reasons for case closure) we had to close your case. In the previous period we were able to provide you with legal aid in your case:

(brief description of concrete legal aid provided to beneficiary).

Your file is now officially closed in this office and your representation by us is now concluded. All issued Powers of Attorney will be canceled in front of competent institutions. All documents that have been provided or that you provided for your case will be returned to you if you so request. A copy of your file will be archived for the next five years for our records, after which it will be destroyed.

Should you require any further information please feel free to contact this office.  
Thank you!

Respectfully,

In \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(NAME OF LEGAL OFFICER)

## Guiding Principles on Internal Displacement<sup>62</sup>

### **Introduction - Scope and Purpose**

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
  - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
  - (b) States when faced with the phenomenon of internal displacement;
  - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
  - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

### **Section I. General Principles**

#### ***Principle 1***

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.  
Brookings Institution—University of Bern :: Project on Internal Displacement

#### ***Principle 2***

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

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<sup>62</sup> U.N. Doc. E/CN.4/1998/53/Add.2

### ***Principle 3***

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

### ***Principle 4***

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

## **Section II. Principles Relating to Protection From Displacement**

### ***Principle 5***

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

### ***Principle 6***

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
  - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

### ***Principle 7***

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such

displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

***Principle 8***

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

***Principle 9***

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

**Section III. Principles Relating to Protection During Displacement**

***Principle 10***

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

**Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
  - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
  - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
  - (c) Acts of violence intended to spread terror among internally displaced persons.Threats and incitement to commit any of the foregoing acts shall be prohibited.

**Principle 12**

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

**Principle 13**

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

**Principle 14**

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

**Principle 15**

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.



**Principle 16**

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

**Principle 17**

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

**Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - (a) Essential food and potable water;
  - (b) Basic shelter and housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

**Principle 19**

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

**Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

**Principle 21**

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

**Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

**Principle 23**

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be

free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

## **Section IV. Principles Relating to Humanitarian Assistance**

### ***Principle 24***

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

### ***Principle 25***

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

### ***Principle 26***

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

### ***Principle 27***

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States

## **Section V. Principles Relating to Return, Resettlement and Reintegration**

***Principle 28***

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

***Principle 29***

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/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 these persons in obtaining appropriate compensation or another form of just reparation.

***Principle 30***

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

## Principles on Housing & Property Restitution for Refugees and Displaced Persons<sup>63</sup>

### **Preamble**

**Recognizing** that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands;

**Underscoring** that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin;

**Reaffirming** the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed;

**Welcoming** the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution;

**Convinced** that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution Programs, on the part of international organizations and affected states, is indispensable to ensuring their effective implementation;

**Convinced also** that the implementation of successful housing, land and property restitution Programs, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace;

## **Section I. Scope and Application**

### **1. Scope and Application**

1.1 The *Principles on Housing and Property Restitution for Refugees and Displaced Persons* articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The *Principles on Housing and Property Restitution for Refugees and Displaced Persons* apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal

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<sup>63</sup> E/CN.4/Sub.2/2005/17

definition of refugee, (hereinafter 'refugees and displaced persons') who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

## **Section II. The Right to Housing and Property Restitution**

### **2. The Right to Housing and Property Restitution**

2.1 All 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 and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy to displacement and as a key element of restorative justice. The right to restitution exists as a distinct Handbook on Housing and Property Restitution for Refugees and Displaced Persons right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

## **Section III. Overarching Principles**

### **3. The Right to Non-Discrimination**

3.1 Everyone has the right to non-discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3.2 States shall ensure that *de facto* and *de jure* discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

### **4. The Right to Equality Between Men and Women**

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to the enjoyment of housing, land and property restitution. In particular, States shall ensure the equal right of men and women, and the equal right of boys and girls, to *inter alia* voluntary return in safety and dignity; legal security of tenure; property ownership; equal access to inheritance; as well as the use, control of and access to housing, land and property.

4.2 States should ensure that housing, land and property restitution Programs, policies and practices recognize the joint ownership rights of both the male and female heads of the household as an explicit component of the restitution process, and that restitution Programs, policies and practices reflect a gender sensitive approach.

4.3 States shall ensure that housing, land and property restitution Programs, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

### **5. The Right to be Protected from Displacement**

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

## **6. The Right to Privacy and Respect for the Home**

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against such arbitrary or unlawful interference with his or her privacy and his or her home.

## **7. The Right to Peaceful Enjoyment of Possessions**

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general Principles of international law. Whenever possible, the 'interest of society' should be read restrictively, so as to mean only a temporary interference with the right to peaceful enjoyment of possessions.

## **8. The Right to Adequate Housing**

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

## **9. The Right to Freedom of Movement**

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

# **Section IV. The Right to Voluntary Return in Safety and Dignity**

## **10. The Right to Voluntary Return in Safety and Dignity**

10.1 All refugees and displaced persons have the right to voluntarily return to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of state succession, nor can it be subject to arbitrary or unlawful time limitations.

10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.

10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

## **Section V. Legal, Policy, Procedural & Institutional Implementation Mechanisms**

### **11. Compatibility with International Human Rights, Refugee and Humanitarian law and Related Standards**

11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

### **12. National Procedures, Institutions and Mechanisms**

12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests” of the child.

12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

12.4 States should establish guidelines which ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation



and complaints procedures, verification of property ownership or other possessory rights, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.

12.5 States should, where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes responsible for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

### **13. Accessibility of Restitution Claims Procedures**

13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, and to receive a determination on their claim. States should not establish any pre-conditions for filing a restitution claim.

13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests” of the child.

13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.

13.5 States should seek to establish restitution claims processing centers and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.

13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

13.7 States should develop restitution claims forms that are simple, easy to understand and use and make them available in the first language or languages of the groups affected. Competent assistance should be made available to help persons in completing and filing any necessary restitution claims forms, and such assistance should be provided in a manner which is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified due to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner which is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. The time period should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of information and access, the spread of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (be they national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

#### **14. Adequate Consultation and Participation in Decision-Making**

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution Programs are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

#### **15. Housing, Land and Property Records and Documentation**

15.1 States should establish or re-establish national multi-purpose cadastre or other appropriate systems for the registration of housing, land and property rights as an integral

component of any restitution Programs, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property right as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the possessory rights of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection *in situ* or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format) transferring them securely, and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavor to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or possessory rights, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

## **16. The Rights of Tenants and other Non-Owners**

16.1 States should ensure that the rights of tenants, social occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution Programs. To the maximum extent possible, States should ensure that such

persons are able to return to and re-possess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

### **17. Secondary Occupants**

17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including, *inter alia*, an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

17.3 States should, in cases where evictions of secondary occupants are justifiable and unavoidable, take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means to facilitate the timely restitution of refugee and displaced persons housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.

17.4 States may consider, in cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of *bona fide* property interests in such cases.

### **18. Legislative Measures**

18.1 States should ensure the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

### **19. Prohibition of Arbitrary and Discriminatory Laws**

19.1 States should neither adopt nor apply laws which prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws, and laws which otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to non-discrimination and to equality in both law and practice.

### **20. Enforcement of Restitution Decisions and Judgments**

20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.

20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.

20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution Programs should be fully investigated and prosecuted.

20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution Programs.

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

### **21. Compensation**

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only be used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of

restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

## **Section VI. The Role of the International Community, Including international Organizations**

### **22. Responsibility of the International Community**

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national governments and share expertise on the development of national housing, land and property restitution policies and Programs and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through *inter alia* the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and Programs may be successfully implemented and enforced.

22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgments. Member States in the Security Council should consider including this role in the mandate of peace operations.

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

## **Section VII. Interpretation**

### **23. Interpretation**

23.1 The *Principles on Housing and Property Restitution for Refugees and Displaced Persons* shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.