The Role of Property in the Kosovo Conflict

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The Role of Property in the Kosovo Conflict

An examination of the contribution and limits of the rights-based approach to Housing, Land and Property to Peacebuilding in Kosovo

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Abstract

After examining the role of human rights in specific post-conflict initiatives it is clear that there has been a neglect and subordination of ESC rights in comparison to civil and political rights. The emerging of the development, security and human rights nexus and the progression of UN Missions from peacekeeping to peacebuilding has helped to stem the institutional neglect and subordination of human rights generally and ESC rights specifically. Vulnerable and/or marginalised groups such as internally displaced persons (IDPs), refugees and ethnic, religious and racial minorities whose participation is crucial to peacebuilding are particularly susceptible to those who exploit peoples socio-economic grievances and encourage them to take up arms. A rights-based approach is ideal for protecting them and emphasising a state’s obligations regarding their welfare and providing remedies for violations. Whilst there has been little progress in treating economic, social and cultural abuses as violations of human rights and providing a legal remedy, property restitution based on the right to return to one’s home of origin and the right to a legal remedy is an exception. Land and property issues figure prominently in conflict and a rights-based approach to these issues can contribute to peacebuilding including the supporting the rule of law, IDP and refugee returns, protection of vulnerable groups and reconciliation. The thesis examines the role of land and property issues in the Kosovo Conflict and the contribution and limits of a rights-based approach to these issues and particularly property restitution to peacebuilding in the country.
### Acronyms

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<th>Acronym</th>
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<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
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<tr>
<td>CAVR</td>
<td>Commission for Reception, Truth and Reconciliation</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<tr>
<td>CERD</td>
<td>Convention of the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>DDR</td>
<td>Disarmament, Demobilization and Reintegration</td>
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<td>ESC Rights</td>
<td>Economic, Social and Cultural Rights</td>
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<tr>
<td>EULEX</td>
<td>European Union Rule of Law Mission</td>
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<td>EUPT</td>
<td>European Union Planning Team for Kosovo</td>
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<td>FAO</td>
<td>Food and Agriculture Organisation</td>
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<td>KCA</td>
<td>Kosovo Cadastral Agency</td>
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<td>KPA</td>
<td>Kosovo Property Agency</td>
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<tr>
<td>KPS</td>
<td>Kosovo Police Force</td>
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<td>HLP</td>
<td>Housing, Land and Property Rights</td>
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<td>HPCC</td>
<td>Housing and Property Claims Commission</td>
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<td>HPD</td>
<td>Housing and Property Directorate</td>
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<td>IASC</td>
<td>United Nations Inter-Agency Standing Committee</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Political Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia (ICTY)</td>
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<td>ICR</td>
<td>International Civilian Representative (ICR)</td>
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<td>IDPs</td>
<td>Internally Displaced Persons</td>
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<td>IDMC</td>
<td>Internal Displacement Monitoring Centre</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>MEST</td>
<td>Kosovo Ministry of Education, Science and Technology</td>
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<td>MRLA</td>
<td>Malayan Races Liberation army</td>
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<td>ORC</td>
<td>United Nations Office for Returns and Communities</td>
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<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<tr>
<td>RAE</td>
<td>Roma, Ashkali and Egyptian</td>
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<tr>
<td>RPF</td>
<td>Rwandan Patriotic Front</td>
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<td>SMES</td>
<td>Serbian Ministry of Education and Sport</td>
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<td>SOEs</td>
<td>Socially Owned Enterprises</td>
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<td>SRSG</td>
<td>Special Representative of the Secretary-General</td>
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<td>SSR</td>
<td>Security Sector Reform</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN Habitat</td>
<td>United Nations Centre for Human Settlements</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
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The Role of Property in the Kosovo Conflict

An examination of the contribution and limits of the rights-based approach to Housing, Land and Property to Peacebuilding in Kosovo

Introduction

This thesis will examine the contribution and limits of the rights-based approach to housing, land and property to peacebuilding by doing the following. It will show that human rights have always been seen as an important tool for peace and conflict prevention but in post-conflict contexts, economic, social and cultural rights have faced neglect and subordination in favour of civil and political rights despite their importance to peacebuilding. The thesis will explain some of the areas where human rights operate in post-conflict contexts, their role and where economic, social and cultural rights should have more involvement. It will then examine how and why land and property issues are connected with conflict and then look at how this relates to Kosovo. The human rights laws that concern housing, land and property will be outlined and as well the developments in international housing, land and property rights protections. It will focus on one remedy for housing, land and property rights violations - property restitution and the rights upon which it is based. The thesis will explain the issues that need to be dealt with in post-conflict contexts as a result of these violations of land and property rights and then examine the Kosovo case specifically with respect to this. It will then examine the contribution Housing, Land and Property can make to Peacebuilding and the developments in the way they are dealt with in post-conflict environments. It will continue with a study of the Kosovo’s Housing and Property Directorate and Claims Commission (HPD/CC) and its successor the Kosovo Property Agency (KPA), before explaining and analysing what it has done to resolve land and property issues and if it has been successful. Finally, the thesis will examine the contribution of the HPD/CC and the KPA to peacebuilding particularly to the rule of law, returns of IDPs and Refugees to their homes of origin, protection of vulnerable groups and towards reconciliation. It will argue that that the HPD/CC and KPA are broadly following a rights-based approach by harnessing the right to return to ones home of origin and the right to legal remedy and have contributed to peacebuilding in many ways. However, they are limited by the political and security situation and the performance of other agencies both of which they are
not responsible. Additionally, it will argue that their role and effectiveness towards peacebuilding is dependent on their mandate.
Chapter 1: Economic, Social and Cultural Rights and Peacebuilding

A). Neglect of Economic, Social and Cultural Rights in Post-Conflict Environments

Shedrack C Agbakwa notes that from the very beginning the architects of the United Nations and the Universal Declaration of Human Rights were convinced that respect for human rights and the dignity of the individual was essential to peace and conflict prevention.1 The document included both economic, social and cultural rights (ESC rights) and civil and political rights. Despite this, Agbakwa states that ESC rights have been neglected in favour of civil and political rights with the latter considered more important.2

Louise Arbour states that one reason for this is that there is a belief that such rights will automatically flow from the enjoyment of civil and political rights3 and because there is little respect for the indivisibility of human rights; the idea that certain rights can be realized in isolation from others.4 Arbour states that this is in fact contrary to what human rights law and experience tells us.5 Indeed, the International Covenant on Economic, Social and Political Rights (ICESCR) (which for the first time binds economic, social and cultural into international law for those states that ratify it) states that freedom from fear and want requires both ESC and civil and political rights to be achieved.6 Additionally, the Limburg Principles (1987) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) state that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity.7 Despite the clear distinction between civil and political and ESC rights, neither should be inferior to the other and since they are indivisible they should be given equal attention.

2 Ibid, p.39
4 Ibid, p.10
5 Ibid, p.10
Arbour states that the neglect of economic, social and cultural rights generally and in post-conflict environments reflects the hidden assumption that these rights are not entitlements but aspirational expectations to be fulfilled by market-driven or political processes alone.\(^8\) This is referring to the neo-liberal development doctrine that a free market economy will facilitate economic growth that will benefit the whole of society, even the poorest. Essentially the idea is that, though such doctrine might not have socio-economic protective mechanisms for the most vulnerable, they should not require it as the fruits of GDP growth will trickle down\(^9\) from the elites to the poorest and raise them out of poverty. But as Lisa Laplante explains, this is not sufficient to reduce poverty and inequalities, and thus to prevent conflicts.\(^10\) Clearly, one cannot hope that the most vulnerable will benefit from economic growth and so economic and social rights must be enshrined in law with protection mechanisms with the possibility of redress for any violations of such rights.

The aspirational aspect that Arbour refers to is the assumption that economic, social and cultural rights are rather aspirational goals\(^11\) The logic is that unlike civil and political rights (e.g. the right to life), ESC rights depend on available resources and are provided by states over time, subject to priorities established in the political arena.\(^12\) Additionally, it is difficult to hold a party accountable for success or failure in protecting or facilitating such rights.\(^13\) For this reason, ESC rights are often not understood to be rights imposing legally-binding obligations on states.\(^14\)

However, the legally binding obligation and to whom it applies is clear when the ICESCR commits all state parties to take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.\(^15\) The UN Committee on Economic, Social and

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\(^8\) Arbour, Economic and Social Justice p.4
\(^10\) Ibid, p. 343
\(^11\) Arbour, Economic and Social Justice p.11
\(^12\) Arbour, Economic and Social Justice p.11
\(^13\) Ibid, p.11
\(^14\) Ibid, p.11
\(^15\) ICESCR, Article 2 (1)
Cultural Rightsâ€”General Comment No. 3 (1990) â€”On the Nature of States Parties Obligationsâ€”clarifies this perhaps ambiguous statement. The document states that there are two obligations of â€œimmediate effect,â€ the first is the prohibition of discrimination in the protection of ESC rights and the second to â€œtake stepsâ€ which the document notes that the French translation, â€œactâ€ elucidates the immediacy of the concept. The General Comment also utilises for the first time a very important phrase that challenges the idea that ESC rights are simply aspirational and hence not legally binding. The document states that â€œminimum core obligation to ensure satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State partyâ€”and failure to do so amounts to a violation. So the term â€œprogressively realiseâ€ is intended to show that whilst fully realising ESC rights obligations will take time there remain immediate obligations to this end. The Maastricht Guidelines challenge the idea that the fulfilment of state obligations in this area are subject to resources and political priorities by holding that the â€œminimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors or difficulties.â€

Many of the Maastricht guidelines have since been accepted by subsequent UN Conventions including the General Comments. There is also nothing in the UN Conventions dealing with ESC rights that permit derogation in a state of emergency.

To understand the nature of state obligations, the fallacy that civil and political rights have an immediate legal obligation whereas ESC rights do not, one must realise that state obligations are split into three types; to respect, protect and fulfil. This distinction was first used by General Comment 12 on the Right to Adequate Food (1999) and is another example of UN Committee on Economic, Social and Cultural Rights adopting the

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17 Ibid, Article 2 (2)
18 Ibid, Article 10
20 ICJ, Maastricht Guidelinesâ€”Paragraph 9
21 Eide, Economic, Social and Cultural Rights p.26
23 UN Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1990) on the Right to Adequate Food, Article 15
terminology of the Maastricht Guidelines. ‘Respect’ obliges states to not interfere with the ESC rights of their citizens and ‘Protect’ obliges states to stop interference by third parties. The ‘Fulfil’ obligation is split into two, the obligation to ‘Facilitate’ and the obligation to ‘Provide’ resources and measures to realise ESC rights.

Whilst individuals do not have access to the ICESCR regarding grievances or violations, Eide notes that the ‘Protect’ aspect of state obligation is part of legal legislation and hence part of ESC rights are justiciable, at least by national or regional courts and protection mechanisms. Eide states that the only circumstance in which the charge that ESC rights need resources and civil and political rights do not is when an ESC right is dealing with the obligation to fulfil and the civil and political right concerns the obligation to protect which is entirely circumstantial and this situation could just as easily be reversed.

As Arbour states, many ESC rights can be realised and she gives the example of forced eviction (obligation to protect) which ‘requires the same type of immediate action and redress’ as civil and political rights like the prohibition of torture. Whilst some ESC rights do need ‘progressive realisation’ and financial resources so do some civil and political rights. She gives the example that for post-conflict states the provision of basic free and universal healthcare or education in line with the relevant human rights provisions will be just as taxing as the formation of a criminal justice system. So it is clear that ESC rights are legally binding and have clear obligations on States parties and have immediate obligations.

Another reason for the neglect of ESC rights in post-conflict contexts is that given the criticisms of ESC rights outlined above and (subsequently refuted) they are viewed as ‘inherently non-justiciable’. But as Arbour correctly states, ‘if violations can be

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24 ICJ, ‘Maastricht Guidelines’ paragraph 6
26 Chinkin, ‘The Protection of Economic’ p.33
28 Ibid, pp.24-25
29 Arbour, ‘Economic and Social Justice’ p.12
30 Ibid, p.12
31 Ibid, p.12
32 Chinkin, ‘The Protection of Economic’ p.17
established, then judicial protection and enforcement are possible. The Maastricht Guidelines have clearly identified types of violations for ESC rights and these prescriptions have been adopted in subsequent UN documents including the General Comments on Food (1999) and Water (2002). The Guidelines hold that there are two main types of violations, those committed by "direct action" and those through "omission". The first are attributed to states or third parties not properly regulated by states. Examples of this type of violation include the formal removal or suspension of legislation necessary for the continued enjoyment of ESC rights, active denial of such rights to particular individuals, whether through legislated or enforced discrimination [and] the adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights. Acts of omission include the failure to take appropriate steps as required under the covenant and the failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the covenant. Clearly, with clear violations outlined in the Guidelines and ESC General Comments they can be protected and enforced.

Although the ICESCR and General Comment No. 3 do not include access to remedy, the Maastricht Guidelines establish measures that include "effective judicial or other appropriate remedies" for victims of violations of ESC rights who are "entitled to adequate reparation" including restitution and compensation. Accordingly, a year after the publication of the Guidelines, General Comment No. 9 (1998) established justiciability and judicial remedy when necessary as well for specific ESC Rights in most General Comments. Christine Chinkin writes that there is a growing jurisprudence on economic and social rights from regional human rights bodies and some national jurisdictions, which dispels the myth of non-justiciability of economic and social rights. Importantly, the UN General

33 Arbour, "Economic and Social Justice" p.12
34 ICJ, "Maastricht Guidelines" paragraph 14
35 Ibid, paragraph 15
36 Ibid, paragraph 14 (a)
37 ICJ, "Maastricht Guidelines" paragraph 14 (b-c)
38 Ibid, paragraph 15 (a)
39 Ibid, paragraph 15 (b)
40 Chinkin, "The Protection of Economic" p.33
41 ICJ, "Maastricht Guidelines" paragraph 22
42 Ibid, paragraph 23
43 Chinkin, "The Protection of Economic" p.33
44 Ibid, p.33
Assembly's Resolution (2006), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establishes that such violations require remedies including access to justice and reparations including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. According to Chinkin there are a number of reasons why ESC rights are not a feature of post-conflict reconstruction efforts. The first is that re-establishing security and the cessation of violence is the first priority for both domestic and international actors. So, programmes such as Disarmament, Demobilization and Reintegration (DDR), Security Sector Reform (SSR), mine clearance and dealing with humanitarian emergencies are prioritised to this end. Another reason is that even if there is the political will to deal with economic and social rights violations, often there is not enough legislation or enforcement and remedy mechanisms to implement State parties obligations.

A similar reason for the neglect of economic and social rights is that they have sometimes been considered to be part of development rather than as being central to establishing political stability and security and therefore considered subsidiary to political security. However, the perception that development is subordinate to the political and security arena and separate from each other has changed. Kofi Annan's much quoted phrase in In Larger Freedom states that we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights shows the inter-dependence of these concepts and their equality with one another. The development and political realms are no longer considered to be distinct and separate.

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46 Ibid, Article 18
47 Chinkin, The Protection of Economic p.7
48 Ibid, p.8
49 Ibid, p.8
50 Ibid, p.8
This theoretical development has been matched operationally with a progressive shift in UN interventions after the end of the Cold War from peacekeeping to peacebuilding.\textsuperscript{52} I am going to use Cedric DeConing\textsuperscript{53} definition of peacebuilding as a \textit{collective framework under which peace, security, humanitarian, rule of law, human rights and development dimensions can be brought together under one common strategy at country level} which has happened in the shape of \textit{Integrated Missions} which were the result of the recommendations of the Report of the Panel on United Nations Peace Operations\textsuperscript{54} also known as the \textit{Brahimi Report} which called for more coherence between UN agencies.\textsuperscript{54} Cecilia Hull defines an Integrated Mission as a situation when \textit{the wider UN system is integrated into one single structure in pursuit of an inclusive and coherent operation}} specifically, when development and humanitarian agencies are integrated with the political and military aspects of a UN operation.\textsuperscript{55} This integration of development and human rights with the other aspects of UN civilian and military crisis missions has made the neglect of human rights and economic, social and cultural rights specifically, less admissible.

Annan\textsuperscript{56} conception of the development, security and human rights nexus and the change in the structure and organisation of UN Missions towards greater coherence and integration shows the importance of human rights to post-conflict peacebuilding generally.

But why should economic, social and cultural rights specifically be part of peacebuilding strategies?

The most important reason is that protection of ESC rights and particularly redressing their war-time violations will help to prevent another outbreak of violence. This is because, as Van Zyl states \textit{war-induced grievances are a significant cause of a return to}

\begin{footnotesize}
\textsuperscript{53} Ibid, p.3
\textsuperscript{55} Hull, \textit{Integrated Missions} p.12
\textsuperscript{56} Ibid, p.15
\end{footnotesize}
hostilities in post-conflict societies.\textsuperscript{57} Agbakwa states that without adequate protection of ESC rights and/or a mechanism with which to redress related injustices people have traditionally gravitated toward rebellion to compel a change.\textsuperscript{58} So the great utility of enforcement mechanisms for economic, social and cultural rights to peacebuilding is that by giving voice to the voiceless - the oppressed - enforceable socio-economic rights provide an outlet or platform to ventilate bottled-up grievances.\textsuperscript{59} Additionally as Laplante notes, it prevents warmongers from tapping into the frustration of populations whose historic socioeconomic grievances largely have been ignored by the state.\textsuperscript{60} Van Zyl states that as a result of these points, post-conflict activity must deal with and remedy such grievances\textsuperscript{61} and clearly one of the best ways to do so is the using a human rights framework which will place emphasis on the states obligation to remedy violations.\textsuperscript{62} Agbakwa considers that the legal protection of economic, social and cultural rights is a way of redistributing power\textsuperscript{63} that would place such rights beyond the depredations and predilections of a government so they are no longer dependent on the whim of politicians. This act of redistribution would in turn reduce the pool of recruits that otherwise would have been available to be used by agents of destabilization.\textsuperscript{64} So peacebuilding strategies must include the totality of conflict motivations\textsuperscript{65} and all vital issues of concern to the target society\textsuperscript{66} which obviously necessitates the inclusion of economic and social grievances. Therefore, economic, social and cultural rights need to be given the same protection and attention as civil and political rights in post-conflict contexts.

Chinkin also sees the danger of people's grievances becoming possible destabilising agents in post-conflict contexts. Such groups include internally displaced persons (IDPs), refugees and ethnic, religious and racial minorities. She states that the inclusion of

\textsuperscript{58} Agbakwa, \textit{A Path Least Taken} p.39
\textsuperscript{59} Ibid, p.58
\textsuperscript{60} Laplante, \textit{Transitional Justice and Peace Building} p.337
\textsuperscript{61} Van Zyl, \textit{Promoting Transitional Justice} p.218
\textsuperscript{62} Agbakwa, \textit{A Path Least Taken} p.61
\textsuperscript{63} Ibid, p.61
\textsuperscript{64} Ibid, p.61
\textsuperscript{65} Agbakwa, \textit{A Path Least Taken} p.62
\textsuperscript{66} Ibid, p.63
economic and social rights is especially important with respect to the security of vulnerable persons who can become marginalised by post-conflict settlements. If socio-economic grievances are not catered for such groups, they will not feel inclined to cooperate in rebuilding, reconciliation and could even recommence or support conflict. Since a rights-based approach gives more attention to issues of exclusion, disparities and injustice, and address the basic causes of discrimination ESC rights are therefore a crucial aspect of post-conflict peacebuilding.

Agbakwa also notes that with enforcement mechanisms for ESC rights there is likely to be an independent review body which has two uses for peacebuilding. The first is that the body can scrutinize state policies and action and ensure that they cohere with ESC obligations. Second, such a body would help to facilitate accountability and good governance because a state has to justify its actions and this is likely to restrain policy that is not consistent with ESC obligations and encourage well thought out legislation.

This section has shown that human rights have always been seen as an important tool for peace and conflict prevention. However, the conceptual division of human rights into two categories first evidenced in the two Covenants of 1966 has caused a number of problems for the protection, respect and fulfilment of economic, social and cultural rights.

The idea that ESC rights will follow from civil and political rights and that they are aspirational entitlements and not in fact rights to the perception that they are non-justiciable has caused the neglect of such rights. The Maastricht Guidelines and General Comments have cleared much of the ambiguity about state obligations and justiciability. The emerging of the development, security and human rights nexus and the progression of UN Missions from peacekeeping to peacebuilding has helped to stem the institutional neglect and subordination of human rights generally and ESC rights specifically. The General Comments and UN General Assembly Resolution (2006), Basic Principles

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67 Chinkin, The Protection of Economic p.10
68 Ibid, p.10
69 O Sandkull, Strengthening inclusive education by applying a rights-based approach to education programming Paper presented at ISEC Conference, Glasgow, 2005, p.6
70 Agbakwa, A Path Least Taken p.58
71 Ibid, p.59
72 Ibid, p.60
73 Agbakwa, A Path Least Taken p.60
and Guidelines on the Right to a Remedy and Reparation have established that the right to remedy for victims of human rights violations including economic, social and cultural rights.

ESC rights should be part of peacebuilding strategies because by their protection and particularly redressing their war-time violations will help to prevent another outbreak of violence by will preventing 'spoilers' from exploiting peoples socio-economic grievances and encouraging them take up arms. Vulnerable and/or marginalised groups such IDPs, refugees and ethnic, religious and racial minorities whose participation is crucial to peacebuilding are particularly susceptible to spoilers and a rights-based approach is ideal for protecting them and emphasising a state's obligations regarding their welfare and providing remedies for violations.
Chapter 1: Economic, Social and Cultural Rights and Peacebuilding

B). Economic, Social and Cultural Rights and Transitional Justice

Now that we have established why ESC rights should be part of peacebuilding strategies, where specifically do human rights operate in post-conflict contexts and where should economic, social and cultural rights have more involvement?

Initially, economic, social and cultural rights need to be ratified into domestic legislation by the post-conflict government and in doing so be constitutionally recognised and judicially enforced in order for the state to meet its obligations to the international human rights legislation of which it is a signatory. Regarding their place in post-conflict peacebuilding initiatives, human rights form a central part of Transitional Justice measures. Transitional Justice for Van Zyl is the attempt to build a sustainable peace after conflict, mass violence or systematic human rights abuse. Michael Humphrey explains the relationship between human rights and transitional justice well by stating that from the top-down perspective transitional justice has been about the recovery of the rule of law and State legitimacy, from the bottom up the realization of the human rights of victims. Transitional measures that involve human rights in various ways include prosecution for human rights offenders, truth commissions and reparations for victims.

Traditionally, ESC rights have been neglected in transitional justice in favour of civil and political rights and specifically the violations of such rights. Arbour and Laplante explain that this is because of the conception of justice that is being applied. Arbour writes that transitional justice is that its root modelled on criminal justice originating from the Nuremberg Trials after the Second World War and specifically concerned with

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74 Arbour, "Economic and Social Justice" p.21
75 Van Zyl, "Promoting Transitional Justice" p.209
76 Michael Humphrey, "Human Rights Politics & Transitional Justice", Law and Society Association Australia and New Zealand (LSAANZ) Conference 2008, "W(h)ither Human Rights?" 10-12 December, University of Sydney, p.6
77 Laplante, "Transitiona..." p.333
78 Arbour, "Economic and Social Justice" p.5
79 Ibid, p.2
Individual criminal responsibility for international crimes.\textsuperscript{80} Contemporary transitional justice often still adheres to a more traditional dispute resolution framework that primarily focuses on violations of civil and political rights.\textsuperscript{81} For Arbour the marginalisation of ESC rights results from deep ambivalence within justice systems about social justice.\textsuperscript{82}

Arbour defines social justice as referring to minimum legal standards guaranteeing substantive equality (as reflected in international human rights instruments prohibiting discrimination and protecting economic, social, and cultural rights) in the fulfillment of the idea of freedom from want.\textsuperscript{83} In this way social justice is inseparable to human rights.

Laplante states that social justice should be part of transitional justice because the latter would then have a mandate to examine the entrenched socioeconomic conditions that cause poverty, exclusion and inequality.\textsuperscript{84} This would then allow the remedy and redress of socio-economic grievances that might lead to a resurgence of conflict.\textsuperscript{85}

Clearly, if social justice should to be part of transitional justice, the protection, enforcement and redress of ESC rights is an excellent way to achieve this.

I now wish to examine some specific transitional justice mechanisms, the relationship of human rights to them and how ESC rights can be implanted into the application and have a greater influence over such mechanisms.

Human Rights are central to Truth Commissions since they include the examination of the causes, consequences, and nature of gross human rights violations.\textsuperscript{86} The importance of human rights to peacebuilding is clearly identified by Van Zyl who states that a post-conflict peacebuilding strategy must be founded on such an examination.\textsuperscript{87}

\begin{flushleft}
\textsuperscript{80} Arbour, Economic and Social Justice p.2
\textsuperscript{81} Ibid, p.4
\textsuperscript{82} Ibid, p.5
\textsuperscript{83} Ibid, p.5
\textsuperscript{84} Laplante, Transitional Justice and Peace Building p.333
\textsuperscript{85} Arbour, Economic and Social Justice p.8
\textsuperscript{86} Arbour, Economic and Social Justice p.14
\textsuperscript{87} Van Zyl, Promoting Transitional Justice p.216
\end{flushleft}
The Truth Commissions findings, which often include systematic and grave human rights abuses, will help all parties to understand the seriousness and harm of such violations but also enhance the legitimacy and ease with which a post-conflict government can implement real reforms to ensure the promotion and protection of human rights. They can also recommend the adoption of UN or regional human rights treaties to better protect human rights in a post-conflict environment as was the case with Guatemala’s Truth Commission.

Van Zyl writes that truth commissions also examine the social, structural and institutional causes of conflict and human rights abuses and then make recommendations of ways to address them as part of a peacebuilding strategy. Truth commissions seem to be incredibly useful for human rights protection including ESC rights but this is one area of transitional justice where they have again been overshadowed by civil and political rights. Laplante writes that in their infancy truth commissions limited their study to crimes that constitute violations of civil and political human rights and overlooking, avoiding or otherwise ignoring the socioeconomic causes of conflict and consequently ESC rights abuses too. This was the case for the truth commissions of Argentina (1984), Chile (1991) and El Salvador (1993). There was some development with the truth commissions for Guatemala (1999) and Peru (2003) which examined the historical context as a cause of the wars which included the socio-economic factors, but tellingly, they did not frame their analysis in terms of violations of economic and social rights.

In order for transitional justice to take social justice seriously, Laplante argues for an expansion in the role of truth commissions that should investigate socio-economic deprivation and classify them as ESC rights violations in the same way that civil and political deprivations are. The author states that violations of human rights need to be

\[\text{88 Van Zyl, } \text{"Promoting Transitional Justice" p.212}\]
\[\text{89 Ibid, p.213}\]
\[\text{90 Arbour, } \text{"Economic and Social Justice" p.17}\]
\[\text{91 Van Zyl, } \text{"Promoting Transitional Justice" p.216}\]
\[\text{92 Ibid, p.216}\]
\[\text{93 Laplante, } \text{"Transitional Justice and Peace Building" p.335}\]
\[\text{94 Ibid, p.335}\]
\[\text{95 Ibid, p.335}\]
\[\text{96 Ibid, p.335}\]
\[\text{97 Ibid, p.333}\]
in presented in final reports along with recommendations for how a state should redress them.\footnote{Laplante, ‘Transitional Justice and Peace Building’ p.333} For the author, this addition would allow truth commissions to treat the root causes of political violence\footnote{Ibid, p. 334} and using a human rights framework, to present them as state obligations that were not fulfilled and thus require redress\footnote{Ibid, p.334}. Consequently, it would make states remedy such violations as it is their responsibility and obligation to do so.\footnote{Ibid, p.351} Another benefit is that using the rights-based approach would allow grievances to be channelled through democratic mechanisms\footnote{Ibid, p.334} as opposed to violence or other criminal means and so is a good conflict prevention mechanism. Finally, the recommendations of a truth commission that used a rights-based framework could net reform agendas for longer-term conflict recovery efforts\footnote{Ibid, p.347} furthering the protection, respect and facilitation of ESC rights.

Laplante holds that if truth commissions presented socioeconomic roots of violence in terms of human rights violations\footnote{Ibid, p.342} it would help the chances of a sustainable peace in two ways. First, it would make it more difficult for hostile governments to portray such actors as dissidents\footnote{Ibid, p.334} or somehow illegitimate\footnote{Ibid, p.342} and attempt to stifle their grievances.\footnote{Ibid, p.334} Additionally, truth commissions that have embraced the ESC rights framework will give greater legitimacy to those who are campaigning for social justice and also equip them with the language and narrative to successfully argue their case for reform.\footnote{Ibid, p.342} Finally, it would make social justice itself a legitimate priority in post conflict recovery.\footnote{Ibid, p.351}

Laplante cites East Timor’s Commission for Reception, Truth and Reconciliation (CAVR) as a good example of a TC that adopted a human rights framework and diagnostic approach\footnote{Ibid, p.342} to economic and social causes of the conflict. However, the Commission did not view the victims of ESC rights violations as needing reparation
which shows that such rights are yet to be treated similarly to civil and political rights which usually have reparations/remedies in response to violations.\textsuperscript{108}

Whilst truth commissions have made good progress in examining socio-economic causes of conflict and viewing them as ESC rights violations, they have not yet made the step of recommending remedies/reparations for violations. This is strange as once something is classified as human rights violation, the Maastricht Guidelines, General Comments and UN Resolution on the Right to Remedy (in the case of a gross-serious violation of international human rights/humanitarian law) state that a remedy is required when applicable. Once this becomes a standard part of recommendations, finally, the protection and enforcement of ESC rights will be on a par with civil and political rights.

Another aspect of transitional justice that involves human rights is the prosecution of those who have violated such rights. Van Zyl notes that prosecutions of human rights violators help post-conflict peace-building by deterring violations in the future, showing that perpetrators will be found, investigated and held to account for their crimes and in the process embedding human rights standards in government and to the public.\textsuperscript{109} Additionally, it can contribute to preventing victims from taking the law in their own hands.\textsuperscript{110}

Prosecution can be through domestic, regional or international courts/tribunals though they mainly deal with civil and political rights violations which reach the threshold of international crimes.\textsuperscript{111} However, Arbour sites the International Criminal Tribunal for the Former Yugoslavia (ICTY) which found that intentional housing and property rights violations could be classified as crimes against humanity in the Kupreskic case.\textsuperscript{112} Arbour argues that for international courts to routinely arbitrate ESC violations, international criminal law will have to be expanded to protect ESC rights and provide redress for their violations.\textsuperscript{113} National courts of course would not need an ESC violation to be an international crime for it to be adjudicated, though international human rights law would have to have been incorporated into national legislation for this to be possible.

\textsuperscript{108} Arbour, \textit{Economic and Social Justice} p.13
\textsuperscript{109} Van Zyl, \textit{Promoting Transitional Justice} p.211
\textsuperscript{110} Ibid, p.217
\textsuperscript{111} Ibid, p.15
\textsuperscript{112} Ibid, p.15
\textsuperscript{113} Ibid, p.16
Reparations programs represent an additional transitional justice measure that directly deals with human rights obligations. As Van Zyl writes, states are obliged under international law to provide reparation to victims of gross violations of human rights and this should be the case for both civil and political and ESC rights. They are an excellent way through which victims of violations can regain their assets and services. Interestingly, Van Zyl implicitly recognises that reparations for ESC rights, far from being routine are subject to much debate as to whether such violations are worthy of reparations and will depend on the definition of victimhood. He does not preclude reparations in response to violation of ESC rights but states that reparations should be financially viable and neither create nor perpetuate divisions amongst different categories of victims. However, for victims of civil and political rights violations like torture who routinely get access to remedy and victims of ESC rights violations like forced eviction who have not traditionally had such reparations there is already a division and probably understandable grievance.

But there have been developments in this area and Arbour notes that there are a growing number of reparations programmes that concern ESC rights, particularly housing and property restitutions (which I will examine at length in the next chapter) citing the examples of South Africa, Guatemala and Bosnia and Herzegovina.

This section has shown some of the areas where human rights operate in post-conflict contexts, their role and where economic, social and cultural rights should have more involvement. It has briefly examined specific transitional justice mechanisms, the relationship of human rights to them and how ESC rights can be implanted into the application and have a greater influence over such mechanisms.

After examining the role of human rights in specific post-conflict initiatives it is clear that there has been neglect and subordination of ESC rights in comparison to civil and

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114 Van Zyl, *Promoting Transitional Justice*, p.212
115 Ibid, p.217
116 Ibid, p.213
117 Ibid, p.213
118 Arbour, *Economic and Social Justice*, p.18
political rights. Transitional Justice measures are traditionally based on criminal justice that have focused on violations of civil and political rights. Whilst elements of social justice have increasingly been incorporated into TJ measures like Truth Commissions particularly examining the socio-economic causes of a conflict and using a human rights framework that includes ESC rights violations they have yet to recommend the provision of remedies for such violations.

Prosecutions (a form of remedy) through domestic, regional or international courts/tribunals have mainly dealt with civil and political rights violations which reach the threshold of international crimes. The ICTY’s decision that intentional housing and property rights violations could be classified as crimes against humanity in the Kupreskic case is an important precedent and represents an improvement in the recognition of ESC rights violations. But even if prosecution does start to include those who violate ESC rights, Van Zyl recognises that prosecution of human rights offenders can only be considered one element of tackling violations since “the overwhelming majority of victims and perpetrators of mass crimes will never encounter justice in a court of law”\(^{119}\). So remedies for ESC rights violations show the weakest progress of ESC rights role in peacebuilding. Van Zyl’s scepticism of reparations for ESC rights violations shows that this is still a moot point. One of the few areas of real progress has been in the area of housing and property restitution particularly in South Africa, Guatemala and Bosnia and Herzegovina. This is because of the emerging right to property restitution. The latest example of a country pursuing remedies for land and property abuses is Colombia who with the largest IDP population in the world\(^{120}\) has recently decided to financially compensate or provide property restitution for those who disposed of their housing and land.\(^{121}\) Since this area represents the zenith of progress in ESC rights remedies I will now turn my attention to this area. Accordingly, I will begin with an examination of the role of land and property as a socio-economic grievance before discussing the rights protections in this area, how they can/are remedied and their contribution to peacebuilding.

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\(^{119}\) Van Zyl, *Promoting Transitional Justice*, p.211  
\(^{120}\) Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2010*, 23 March 2011, p.15, last accessed on 12.6.11 at: http://www.internal-displacement.org/publications/global-overview-2010  
Chapter 2:  Land and Property Issues in Conflict Environments

This chapter will examine how and why land and property issues are connected with conflict and then look at how this relates to Kosovo. Land and property is often a socio-economic cause of conflict or it can exacerbate tensions leading to conflict. In fact for Alex de Waal, "Land ownership is perhaps the oldest reason for organized conflict."\(^\text{123}\)

Governments or rebels can directly or indirectly use and manipulate land and property for their own political ends in a number of ways. Alex de Waal notes a number of ways in which this can happen directly. The first is simply that governments or other actors want or need the land or natural resources.\(^\text{124}\) The second, is when land is used as a form of loot that can be freely allocated to its favoured agents and proxies\(^\text{125}\) to give incentives to would-be supporters in order to help them achieve their political ends (e.g. crushing a rebellion). For Waal, Darfur is a prime example of this.\(^\text{126}\) Many scholars also deem that this was one motivation for some Hutu\(^\text{1}\) involvement in the Rwandan genocide of 1994.\(^\text{127}\) For Waal, another way land and property can be affected is "Ethnic cleansing and forced relocation\(^\text{128}\) for political ends that can involve forced displacement and eviction or dissolving land rights."\(^\text{129}\) Another reason is "controlling the population\(^\text{130}\) through managing migration or taking possession of land and property."\(^\text{131}\) Regarding the latter, Waal notes one method of Counter-Insurgency where "authorities\(^\text{1}\) gather the civilian population, suspected to support the insurgents, in protected villages, where they can be subject to close surveillance and control.\(^\text{132}\) However, this form of displacement does not always involve the deprivation of property. The successful British counter-insurgency operation against the Malayan Races Liberation army (MRLA) guerrillas is a


\(^{123}\) Alex de Waal, "Why humanitarian organizations need to tackle land issues\(^\text{1}\) in Uncharted Territory: Land, Conflict and Humanitarian Action, edited by Sara Pantuliano (Rugby: Practical Action, 2009), p.12

\(^{124}\) Ibid, p.12

\(^{125}\) Ibid, p.13

\(^{126}\) Ibid, p.5


\(^{128}\) Waal, "Humanitarian organizations\(^\text{1}\) p.15

\(^{129}\) Ibid, p.15

\(^{130}\) Ibid, p.16

\(^{131}\) Ibid, p.16

\(^{132}\) Ibid, p.16
case in point. The British moved hundreds of thousands of the mainly pro-MRLA Chinese minority (who did not own their land) living at the edges of the jungle into newly prepared villages with their own property title deeds.\textsuperscript{133} So, in the Malayan case, part of the British counter-insurgency strategy involved the giving of land and property as a way of controlling the population. Land and property can also be affected in an incidental way without intent, where they represent \textit{little} more than battleground\textsuperscript{134} leading to property being destroyed or people being displaced.\textsuperscript{135}

Alternatively, land and property issues can be used indirectly in cases where such issues are coincidentally problematic but seized upon and exploited by governments or rebels who attempt to harness such grievances to their own ends. One such way is by politicising and ethicizing them.\textsuperscript{136} A Food and Agriculture Organisation (FAO) report states that since land is related to social identity, when it is predominantly owned by a particular group, property issues are vulnerable to becoming politicised and, in turn, ethnicized.\textsuperscript{137} Waal\textsuperscript{\textdegree} definition of \textit{communal land conflict}\textsuperscript{138} between communities (including boundary disputes, competing land claims or overpopulation) can be used in this way.

A good example is the problem of land scarcity that contributed to conflict in Rwanda. Pre-1994 it had the highest population density in Africa, which adversely affected food production for the people of the country.\textsuperscript{139} Chris Huggins et al. consider land issues in Rwanda to have been \textit{one} of the structural causes of poverty\textsuperscript{140} and this was \textit{exploited} by the organisers of the genocide.\textsuperscript{141} To demonstrate the level of land and property grievances, the victims of murder in one particular commune embroiled in land disputes

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\begin{itemize}
\item \textsuperscript{133} Rupert Smith, \textit{The Utility of Force} (London: Penguin, 2006), pp.203-4
\item \textsuperscript{134} Ibid, p.16
\item \textsuperscript{135} Ibid, p.16
\item \textsuperscript{136} FAO, \textit{Access to rural land} p.5
\item \textsuperscript{137} Ibid, p.5
\item \textsuperscript{138} Waal, \textit{Humanitarian organizations} p.14
\item \textsuperscript{139} Takele Sobaka Bulto, \textit{The Promises of new constitutional engineering in post-genocide Rwanda} African Human Rights Law Journal, 8, 2008, p.190
\item \textsuperscript{140} Chris Huggins, Herman Musahara, Prisca Mbura Kamungi, Johnstone Summit Oketch and Koen Vlassenroot, \textit{Conflict in the Great Lakes Region \textendash How is it linked with Land and Migration?} \textit{Natural Resource perspectives}, Number 96, Overseas Development Institute, March 2005, p.1
\item \textsuperscript{141} Ibid, p.1
\end{itemize}
\end{small}
before the genocide only included one Tutsi, the rest were Hutu represented by some people because they had large landholdings.\textsuperscript{142}

The ring leaders exploited this situation by blaming the Tutsi\textsuperscript{142} for the overpopulation and arguing that less Tutsi\textsuperscript{142} would mean more land for those who remain.\textsuperscript{143} This had happened previously with Tutsi\textsuperscript{142} being driven from their homes with the subsequently vacant land and property being redistributed amongst the Hutu.\textsuperscript{144} Additionally, Hutu extremists played on fears that returning Tutsi\textsuperscript{142} including the Rwandan Patriotic Front (RPF) would reclaim the land they lost\textsuperscript{145} and even went so far as to publish maps highlighting the land that would be lost should the advancing RPF get that far.\textsuperscript{146} In these ways, overpopulation and land scarcity was politicised and ethnicized in order to facilitate and maintain the Rwandan genocide.

As well as the grievances that consciously trigger the conflict\textsuperscript{147} (including land scarcity) Liz Alden Wily also claims that property issues can be those that appear during the war due to a breakdown in norms\textsuperscript{148}. Laurel Rose\textsuperscript{149} point that some Rwandans both Tutsis and Hutus used the uncertainty and insecurity about land ownership and rights during and after the genocide as an excuse to grab land\textsuperscript{149} is a great illustration of this.

\textsuperscript{142} H Musahara, C Huggins, C, Land Reform, Land Scarcity and Post Conflict Reconstruction: A Case Study of Rwanda Eco-Conflicts, 3 (3), 2004, p.275
\textsuperscript{143} Bulto, The Promises of new constitutional engineering p.190
\textsuperscript{144} Ibid, p.191
\textsuperscript{145} Ibid, p.190
\textsuperscript{146} Huggins, Conflict in the Great Lakes Region p.2
\textsuperscript{147} Liz Alden Wily, Tackling land tenure in the emergency to development transition in post-conflict states: From restitution to reform in Uncharted Territory: Land, Conflict and Humanitarian Action, edited by Sara Pantuliano (Rugby: Practical Action, 2009), p.31
\textsuperscript{148} Ibid, p.31
\textsuperscript{149} Rose, Land and Genocide p.54
Chapter 2: Land and Property Issues in Conflict Environments

A). Kosovo

Before discussing land and property issues in conflict of Kosovo, I will briefly give some context to the background of the conflict. The disputes and grievances between the two main ethnic groups the Kosovo Serb’s and Albanian’s as well as the non-majority groups (Roma, Ashkali, Egyptians and Gorani) are many and there has been tension between them for centuries. It is not within the scope of the essay, nor does the word limit allow me, to discuss the conflict unless directly relevant to housing, land and property (HLP) issues. But, Branislav Radeljic neatly explains the main dispute by explaining that “For Serbs, Kosovo is the core of the medieval Serbian kingdom. For Albanians, Kosovo is the cradle of their struggle for independence.”

Kosovo was part of Yugoslavia and subject to the Yugoslav Federation Constitution of 1974. Marc Sommers and Peter Buckland explain that this “provided every republic and province in Yugoslavia with theoretical statehood.” However, the Yugoslav constitution was altered by Serbian leader Slobodan Milosevic in 1989 which subordinated all Kosovo state functions and organisation to Serbian control.

In Kosovo, land and property issues represented a number of grievances for the Kosovo Albanians that contributed to and are the result of the conflict all of which stem from this change in the Constitution. Grievances included discriminatory property laws restricting property transactions, forced evictions and destruction of housing. Scott Leckie writes that during the 1990’s violations of housing rights were endemic and the housing and property sectors in Kosovo became bastions of ethnic discrimination.

Property and land policy were part of a piece of important Serbian legislation ironically entitled Programme for Establishment of Peace, Liberty, Equality, Democracy and

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150 Branislav Radeljic, International & Interdisciplinary Conference, HUMAN RIGHTS, INDIVIDUALISM & GLOBALIZATION, April 10-12, 2008, Center for Spirituality, Ethics & Global Awareness, p.1
151 Marc Sommers and Peter Buckland, Parallel Worlds. Rebuilding the education system in Kosovo UNESCO, IIEP Paris, 2004, p.39
154 Ibid, p.12
155 Ibid, p.13
Prosperity in the Autonomous Province of Kosovo that served to consolidate the dominance of the minority Serb population.\textsuperscript{156}

These housing and land rights violations cohere with De Waal's categories of how and why property and land are used in humanitarian emergencies including conflict. The first is using property and land to control the population, which in the Kosovo case, was by controlling migration through restricting property transactions. The Law on Changes and Supplements on the Limitations of Real-Estate Transactions\textsuperscript{157} served to ensure that the Serb minority in Kosovo was not further depleted. Under this law, all cross-ethnic property deals had to be approved by the Serbian Ministry of Finance.\textsuperscript{158} The idea was to block any transaction that "changed the ethnic composition of the population."\textsuperscript{159} It was therefore discriminatory to both Serbians and Albanians since the latter were often denied permission to buy or sell property\textsuperscript{160} and the former "were prohibited from selling property in order to discourage and restrict Serb emigration."\textsuperscript{161} The consequence was that it was "virtually impossible"\textsuperscript{162} for there to be property transactions between the Serb and Albanian communities. If a transaction proceeded without permission, whether permission was either denied or not sought, the parties of that illegal transaction could be sentenced to 60 days in prison.\textsuperscript{163} This law was even applied to cross-ethnic transactions before the legislation came into force in 1991 and, as a result, "sales of property to Albanians by departing Serbs"\textsuperscript{164} were deemed null and void.

A further action involving land and property rights is Waal's "Ethnic cleansing and forced relocation"\textsuperscript{165} that can involve forced displacement and eviction or dissolving land rights.\textsuperscript{166} Waal holds that this happens either during or in the lead up to conflict, and can either be the "physical removal of the targeted population" [or] removing their land.

\textsuperscript{156}Leckie, \textit{Resolving Kosovo's Housing Crisis} p.13
\textsuperscript{158}Ibid, p.434
\textsuperscript{159}Edward Tawil, \textit{Property Rights in Kosovo: A Haunting Legacy of a Society in Transition} (2009), International Center for Transitional Justice, p.10
\textsuperscript{160}Leckie, \textit{Resolving Kosovo's Housing Crisis} p.13
\textsuperscript{161}Ibid, p.13
\textsuperscript{162}Ibid, p.13
\textsuperscript{163}Hans Das, \textit{Restoring Property Rights} p.434
\textsuperscript{164}Leckie, \textit{Resolving Kosovo's Housing Crisis} p.1
\textsuperscript{165}Waal, \textit{Humanitarian organizations} p.15
\textsuperscript{166}Ibid, p.15
Both were the case for Kosovo. The genesis of the removal of land and property rights begins with a relic of the Communist era, the 1980 Law on Basic Property Relations. Edward Tawil writes that this allowed people to own structures but not land instead they had user rights to the land. This obviously applied to all the community groups in Kosovo but in 1992 the Serbian government created a law that permitted the privatisation of residential apartments. However, the Serb directors of socially owned enterprises (SOEs) which owned the apartments dissolved many Kosovo Albanian ownership rights over these apartments once they had bought them. Additionally when, because of ethnic discrimination, 135,000 Kosovo Albanians were made redundant at the beginning of the 1990s they were also evicted because occupancy rights in socially owned housing were invariably linked with employment. Subsequently, the housing was re-distributed to Serbs and Montenegrins on preferential terms. Finally, Leckie notes that under the Law on Changes and Supplements on the Limitations of Real-Estate Transactions Albanian Housing and Occupancy Rights were arbitrarily annulled. These violations of property rights were however, nothing in comparison to what happened a few years later in 1999.

Operation Horseshoe has been described by a report in The (UK) Observer as Milosevic’s final solution to the Kosovo problem. This was a massive escalation in violence and systematic human rights violations. It was an operation that involved the Serbian military and police who swept through Kosovo from three sides (hence the name Horseshoe). It was designed to eradicate the Kosovo Liberation Army guerrillas but also to expel all Kosovo Albanians from the territory and through the open southwestern end of the horseshoe into Macedonia and Albania. The report states that

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167 Waal, Humanitarian organizations p.15
168 Tawil, Property Rights in Kosovo p.10
169 Ibid, p.10
170 Ibid, p.10
171 Ibid, p.10
172 Ibid, p.10
173 Ibid, p.10
174 Leckie, Resolving Kosovo’s Housing Crisis p.13
175 Ibid, p.13
176 Peter Beaumont and Patrick Wintour, Milosevic and Operation Horseshoe, The Observer, Sunday 18 July 1999, last accessed on 1.6.11 at: http://www.guardian.co.uk/world/1999/jul/18/balkans8
177 Ibid.
the operation succeeded in displacing in excess of one million people from their homes into those neighbouring countries amid appalling massacres and the deliberate destruction of Albanian property.ÔÔ

Land and property was also adversely affected in an incidental way without intent, where they represent what Waal calls, Ôlittle more than battlegroundÔ and leading to property being destroyed or people being displaced.ÔÔ Hans Das quotes international surveys, which hold that 103,000 units or nearly half of the Kosovo housing stock was Ôdestroyed or uninhabitableÔ. Ô Obviously, this destruction was partly intentional through Operation Horseshoe, but would also have been a by-product of NATO bombing and fighting between the KLA and Serbian military.

Liz Alden Wily claims that property rights violations can also be Ôthose that appear during the war due to a breakdown in normsÔ. Ô This is represents another aspect violations during the Kosovo conflict. All sides took advantage of the lack of law and order whether it was Serbian paramilitaries destroying Albanian propertyÔ or Kosovo Albanians claiming abandoned Serb properties once they had fled, KLA supporters given rewarded with Serb property or forced evictions and transactions.Ô

In summary, there were a number of land and property grievances in the form human rights violations that Kosovo Albanians experienced in the run up to, and during, the conflict. The examples show discrimination, favouritism (for Serbs and Montenegrins), destruction of property (intentional or not), forced evictions, loss of property rights, and annulled/severe restrictions on property transactions. These for Scott Leckie are Ôfactors which substantially contributed to the subsequent conflict.Ô

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178 Beaumont, ÔMilosevicÔ Ibid.
179 Waal, ÔHumanitarian organizations, p.16
180 Ibid, p.16
181 Hans Das, ÔRestoring Property RightsÔ p.433
182 Wily, ÔTackling land tenureÔ p.31
183 Tawil, ÔProperty Rights in KosovoÔ p.11
184 Hans Das, ÔRestoring Property RightsÔ p.434
185 Leckie, ÔResolving KosovoÔ Housing CrisisÔ p.13
Chapter 3: Housing, Land and Property Rights

This section will outline the human rights laws that concern housing, land and property their justiciability and which of them the Kosovo government is bound by, if at all. Additionally, it will look at the developments international HLP protections. The Food and Agriculture Organisation of the United Nations distinguish between two aspects of land and property issues. They are land tenure and security of tenure. The FAO defines land tenure as the relationship among people, as individuals and groups, with respect to land and other natural resources which essentially concerns access to land which can be split into user rights, control rights and transfer rights. The second category, is security of tenure which concerns the recognition and protection of one’s property and land rights. The Land and property rights in international human rights law and international humanitarian law come under both categories. There are a number of human rights that concern property under such laws. The first is Right to Adequate Housing. This is stipulated in Article 25 (1) of the Universal Declaration of Human Rights (UDHR) of 1948 and derived from the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, [and] housing.

The ICESCR states the same human right in Article 11 with the addition that states parties will take appropriate steps to ensure the realization of this right. The Convention of the Elimination of All Forms of Racial Discrimination (CERD) also includes the guarantee to the Right to Housing.

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186 FAO, ‘Access to rural land’ p.19
187 Ibid, p.21
188 Ibid, p.22
189 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 25 (1), last accessed on 8.6.11 at: http://www.unhchr.org/refworld/docid/3ae6b3712c.html
The Right to Adequate Housing is an important human right, indeed, the United Nations fact sheet on Adequate Housing notes that this is "one of the most basic human needs."\(^{192}\) But it is not only important in and of itself, a number of other human rights are necessary for it to be achieved and a number human rights flow from it. The fact sheet recognises that the achievement of the Right to Adequate housing relies upon the "right to human dignity, the principle of non-discrimination, the right to an adequate standard of living, the right to freedom to choose one's residence, the right to freedom of association and expression (such as for tenants and other community-based groups), the right to security of person (in the case of forced or arbitrary evictions or other forms of harassment) and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence."\(^{193}\) The factsheet also states that the right to housing aids the attainment of the right to environmental hygiene and the right to the highest attainable level of mental and physical health.\(^{194}\)

The Right to Property is also a human right espoused in the UDHR as (1) Everyone has the right to own property alone as well as in association with others. [Furthermore] (2) No one shall be arbitrarily deprived of his property.\(^ {195}\) CERD also charts the right to own property.\(^ {196}\) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) outlines;\(^ {197}\)

\[\text{The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.}\]

The UN Committee on Economic, Social and Cultural Rights has drafted two General Comments regarding Article 11 of the CESCR. General Comment No.4 (1991) on "The right to adequate housing" outlines the aspects of the right that need to be catered for, of


\(^{193}\) Ibid, p.5

\(^{194}\) Ibid, p.5

\(^{195}\) UDHR, Article 17 (1 & 2)

\(^{196}\) CERD, Article 5 (v)

which there are seven; Legal security of tenure, Availability of services, materials, facilities and infrastructure, Affordability, Habitability, Accessibility, Location and Cultural adequacy.\textsuperscript{198} It also outlines state obligations, and aspects of the right that require domestic legal remedy. General Comment No.7 (1997) on The right to adequate housing: Forced Evictions\textsuperscript{199} clarifies the nature of state obligations regarding security of tenure which guarantees legal protection against forced eviction, harassment and other threats.\textsuperscript{200} The General Comment defines forced eviction as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.\textsuperscript{201} It stipulates that states should refrain from forced eviction and protect against its agents or third parties doing the same.\textsuperscript{202} It also holds that forced eviction and house demolition as a punitive measure are inconsistent with the norms of the Covenant.\textsuperscript{203}

Beyond noting an inconsistency\textsuperscript{204} several human rights bodies have proclaimed that forced evictions constitute gross human rights violations. The Sub-Commission on Prevention of Discrimination and Protection of Minorities (Resolution 1991/12) and the Commission on Human Rights (Resolution 1993/77) have both stated that forced evictions amount to a gross violation of the right to adequate housing\textsuperscript{205} which would then oblige a legal remedy under the UN Resolution on the Right to Remedy.

International Humanitarian Law (IHL) also includes protection of property. The Geneva Conventions require all parties to a conflict to abide by its articles, which include the prohibition of destruction to private property (unless out of military necessity)\textsuperscript{206}, pillage

\textsuperscript{198} UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, Paragraph 8 (a-g) last accessed on 20.6.11 at: http://www.unhchr.org/refworld/docid/47a7079a1.html

\textsuperscript{199} UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22, Paragraph 1, last accessed on 24.6.11 at: http://www.unhchr.org/refworld/docid/47a70799d.html

\textsuperscript{200} Ibid, Paragraph 3

\textsuperscript{201} Ibid, Paragraph 8

\textsuperscript{202} Ibid, Paragraph 12

\textsuperscript{203} OHCHR, Fact Sheet No.21, p.14

\textsuperscript{204} Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 53, last accessed on 25.6.11 at: http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5?OpenDocument
and reprisals against private property.\footnote{Convention IV, Protection of Civilian Persons, Article 33} IHL also distinguishes between civilian and military objectives and prohibits direct and indiscriminate attacks and other acts of violence against civilian objectives [and] using civilian property to shield military operations or objectives.\footnote{Protection Cluster Working Group, Land and Property, (Part V.11), Handbook for the Protection of Internally Displaced Persons, PCWG, 2007, p.258, last accessed on 1.6.11 at: http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/Protection%20Handbook/land%20and%20property.pdf} Such violations could be dealt with by the International Criminal Court if submitted by the UN Security Council or other courts such as the ICTY.

Obviously, given the land and property rights abuses in Kosovo shown in the previous chapter, such abuses are violations of a number of these international human rights law and IHL rights including destruction of property (intentional or not), forced evictions and loss of property and housing rights as well as discriminatory laws.

As has been discussed in the earlier chapter, justiciability is an issue for the human rights set out in the CESCR and the Right to Property is no exception. Whilst the CESCR does not have an individual complaints mechanism or formal complaints/petition procedure, states parties are obliged to submit a report every five years to explain the legislative and policy measures initiated to ensure their compliance with the CESCR.\footnote{UN Office of the High Commissioner for Human Rights, Fact Sheet No. 25, Forced Evictions and Human Rights, May 1996, No. 25, p.14, last accessed on 8.7.11 at: http://www.unhchr.org/refworld/docid/479477435.html} It is clear that states parties to the CESCR and other international law should ratify such Covenants into domestic legislation thereby allowing violations of such rights to be remedied. Fact sheet No.25 notes that the necessity of implementing international human rights obligations through domestic legislation is consistent with article 27 of the 1969 Vienna Convention on the Law of Treaties\footnote{Ibid, p.54} concerning the prohibition of a state invoking domestic law as the reason why it is not fulfilling its treaty obligations. Additionally, as has been noted, the Maastricht Guidelines, General Comments and UN Resolution on the Right to Remedy (in the case of a gross/serious violation of international human rights/humanitarian law) state that a remedy is required when applicable.
There has also been a development in the drafting of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.\(^{209}\) The Protocol will only enter into force three months after the tenth country ratifies the document, which has not yet happened. The Protocol gives significant “teeth” to the CESCR by states parties allowing the Committee on Economic, Social and Cultural Rights to consider written communications (after the exhaustion of domestic remedies).\(^{211}\) This is by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of the rights in the CESCR. This also includes inter-state communications but only if both state are parties to the protocol or otherwise recognise the competence of the Committee to intervene.\(^{213}\)

Regarding individual or group complaints against a state party, the Committee will contact the state party and the latter have six months in which to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.\(^{214}\) The Committee will then respond to this communication with its recommendations and, in turn, the State Party will then submit written response (within six months) with information on its activities regarding the matter.\(^{215}\) Finally, the Committee can ask the State Party to submit another report regarding its policy measures in response to the Committees views or recommendations.\(^{216}\) In extreme cases, the Committee can request interim measures prior to the following procedure to avoid possible irreparable damage to the victim or victims of the alleged violations.\(^{217}\) The Protocol is an encouraging development, however, it is yet to enter force and very few States have ratified the document. Until the Protocol comes into force for those States who become parties, the only way individuals have access to remedy for violations of the ESC Rights in the CESCR is either domestically, if there is domestic provision, or with a regional human rights mechanism. One example of the latter is the European Court of Human Rights, again, only for State parties of the European Convention on Human Rights and Fundamental Freedoms.

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\(^{210}\) Ibid, Article 18, Paragraph 1

\(^{211}\) Ibid, Article 3, Paragraph 1

\(^{212}\) Ibid, Article 2

\(^{213}\) Ibid, Article 10

\(^{214}\) Ibid, Article 6, Paragraph 2

\(^{215}\) Ibid, Article 9, Paragraph 1 & 2

\(^{216}\) Ibid, Article 9, Paragraph 3

\(^{217}\) Ibid, Article 5, Paragraph 1
CERD has an inbuilt complaints mechanism for individuals and groups if State Parties declare the Committee on the Elimination of Racial Discrimination competent to receive and consider communications under Article 14. CEDAW has an Optional Protocol to the Covenant of which there are 102 States Parties which has a complaints mechanism for individuals and groups whose procedure is similar to CERD and the Optional Protocol of the CESCR complaints procedure. Therefore, for those State Parties of the Optional Protocol to CEDAW and CERD who recognise the competence of the respective Committee, individuals who believe their property rights have been violated can bring their claims the relevant Committee.

So what laws regarding property and housing is Kosovo now party to? Obviously, since there is a dispute over sovereignty and if Kosovo is a part of Serbia, it would party to the international law that Serbia has adopted. However, since Kosovo has been under international administration and it has now declared independence, I will focus on the laws that apply if Kosovo is considered to be independent. One of the principles on which the Kosovo Constitution is based is the right to property. In addition, Article 46 states that the right to own property is guaranteed and no one shall be arbitrarily deprived of property. However, the Constitution also allows the Republic of Kosovo or a public authority of the Republic to expropriate property if it is lawful, necessary for a public purpose or public interest and there is immediate compensation to the ‘victim’ of the expropriation. Perhaps this could be a provision of law that is aimed to allow the authorities to decide competing property claims and provide property restitution. Article 54 guarantees the right to an effective legal remedy in the event of a violation of a right set out in the constitution which, obviously, includes Article 46.

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218 CERD, Article 14
221 Ibid, Article 46 (1)
222 Ibid, Article 46 (2)
223 Ibid, Article 46 (2)
224 Ibid, Article 54
Regarding international human rights law, Kosovo is not a state party to any of them. However, Article 22 of the Constitution states that several international human rights instruments are "directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions." Those that include property and housing rights are the UDHR, CERD and CEDAW with the notable exception of CESCR. But since Article 11 of CESCR that regards the right to housing under the right to a standard of living is the same as the UDHR (which the Constitution does deem directly applicable) Article 25, it is not too damaging to the right to adequate housing in Kosovo. So, in summary, the Constitution guarantees the Right to Property and the Right to Adequate Housing and shows that the post-conflict government has made some progress protecting the human rights in these instruments.

The area where most progress has been made regarding property and housing rights is for refugees and IDPs. Principally, this is through the Guiding Principles on Displacement (2001) issued by the Secretary-General's Representative on IDPs and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005). The latter are also commonly known as the Pinheiro Principles, after Paulo Sergio Pinheiro, the architect of the principles and the UN Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons.

In Guiding Principles on Internal Displacement, Principle 21 guarantees that none shall be arbitrarily deprived of their property and also incorporates international humanitarian law, including that the property of IDPs must be protected from pillage, reprisals, destruction, illegal appropriation, direct or indiscriminate attacks, and being used as military shields. Principle 28 charges the relevant authorities with the obligation to establish the conditions and provide the means for IDPs to voluntarily return to their homes or resettle elsewhere and to facilitate their reintegration into society. Principle 29, prohibits the discrimination against former IDPs who have settled or resettled. Perhaps the most important provision for IDPs and their property rights is Principle 29 (2) which states:

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225 Constitution of the Republic of Kosovo, Article 22
227 Ibid, Principle 28 (1)
“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 disposed 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.”

Its importance is due to its influence on the emerging right to restitution of property for those who have been arbitrarily deprived of it, a right which is expanded on and made more explicit in the Pinheiro Principles. The Pinheiro Principles elaborates and perhaps establishes this emerging right in Principle 2 which states “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.” Additionally, it stresses that the right to restitution is a distinct right and that States should clearly prioritise restitution over other forms of remedy such as compensation. The right to property restitution will be examined in the following chapters.

There are several other rights in the principles that protect the vulnerable people. The right to non-discrimination on grounds such as race, sex, language, social origin etcé. including the prohibition of discrimination against refugees and IDPs. The Right to equality between men and women ensures the equal right to housing, land and property restitution including practices and policies that establish joint ownership of property rights between men and women and prohibiting restitution programmes that disadvantage women and girls. Principle 5, the Right to be protected from displacement, includes that this right should be part of domestic legislation, it also requires states to prohibit

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228 UN Commission on Human Rights, Report of the Representative, Principle 29 (2)
230 Ibid, Principle 2.2
231 Ibid, Principle 3
232 Ibid, Principle 4
force eviction and destruction of housing and land and ensure that third parties abide by this.\textsuperscript{233} The Principles also include the right to privacy and respect for the home (prohibiting unlawful interference)\textsuperscript{234}, the right to freedom of movement which protects against people being forced to leave or remain in a given territory\textsuperscript{235} and the right to adequate housing for refugees and IDPs.\textsuperscript{236}
Chapter 3: Housing, Land and Property Rights

A). Right to Property Restitution

This section will examine the main development in HLP protection that is the legal remedy for housing, land and property rights violations - property restitution and the rights upon which it is based. Rhodri C. Williams explains that legally, the Right to Property Restitution rests upon two other rights. The first is the right to return whereby refugees and IDPs are entitled to return voluntarily not to their country but their actual home of origin. The second, is a rights-based rationale otherwise known as the Right to Remedy.

The latter appears to be the stronger of the two rights that support the right to property restitution. This is because the right to return to one’s home of origin as opposed to the right to return to one’s country of origin is a right that, for Williams, is only weakly supported in international law. He reveals that the architects of the Guiding Principles on IDPs could not find anything in international law asserting this right; however, they found that failure to allow such return could amount to a violation of the right to freedom of movement. Although forced displacement is a violation of International Humanitarian Law and the right to freedom of movement there is only the Guiding Principles and Pinheiro Principles that assert the right to remedy in such cases. However, the Guiding Principles only assert a state duty and not an individual right to return to one’s home of origin. Williams notes that because of this lack of legal support, the Principles included a state duty to allow return home on the basis of the right to a remedy and in doing so, made the right to return derivative of the right to remedy.

There has recently been a turn towards the principle of a right to return to ones home of origin via the right to remedy through practice as well as the legal instruments. The UN

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237 Rhodri C. Williams, Post-conflict property restitution in Croatia and Bosnia and Herzegovina: legal rationale and practical implementation, Forced Migration Review 21 (Oct. 2004), p.15
238 Ibid, p.15
240 Ibid, p.8
241 Ibid, p.7
242 Ibid, p.8
Sub-Commission has asserted this right and the UN Security Council have also supported it.\textsuperscript{243} However, the right remains derivative of the right to remedy. The UNHCR has upheld this right as a remedy for forced eviction, which, Williams believes, "in displacement settings amounts to an effective right to return home".\textsuperscript{244} The peace settlement for Bosnia, the Dayton Peace Agreement (1995) represents another surge forward for the right to restitution because the Agreement included the right of IDPs to return to their homes of origin as well as property restitution.\textsuperscript{245} The return of a million people to Bosnia and the restitution of 200,000 homes represent, for Williams, "the first real precedent for large-scale post-conflict property restitution as of right".\textsuperscript{246}

Regarding legal instruments, as already noted, the UN General Assembly’s Resolution (2006), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establishes that such violations require remedies including access to justice and reparations\textsuperscript{247} including restitution which "should, whenever possible, restore the victim to the origin situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred" and return of property is explicitly named as one example. Additionally, as previously explained, Principle 2 of the Pinheiro Principles asserts the distinct right of property restitution for IDPs and Refugees in event of its arbitrary or unlawful deprivation. Williams states that the Pinheiro Principles as well as the Guiding Principles on Displacement have helped fill an important gap in the consolidation of the right to property restitution as a legal entitlement.

\textsuperscript{243} Williams, "The Contemporary Right to Property Restitution" p.8
\textsuperscript{244} Ibid, p.8
\textsuperscript{245} Europe - Miscellaneous, Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, 14 December 1995, last accessed on 13.6.11 at: http://www.unhcr.org/refworld/docid/3de497992.html
\textsuperscript{248} UN General Assembly, Basic Principles, Article 19
\textsuperscript{249} Williams, Guiding Principle 29 P.23
Another important reason for the emergence of right to restitution is that it is an important durable or long term solution for displaced people.\textsuperscript{250} There are three durable solutions for IDPs and Refugees, return to their home/county of origin, local integration in the location where they are presently living, or resettlement that somewhere else. Indeed as the Pinheiro Principles state, restitution should be the \textit{preferred remedy for displacement}.\textsuperscript{251} So property restitution, for displaced people, provides both a remedy and the preferred durable solution for them. For this reason, Williams holds property restitution \textit{can contribute to the resolution of larger conflicts}\textsuperscript{252} and is considered to be \textit{a central tactic in addressing the wave of renewed sectarian strife and attendant ethnic cleansing}.\textsuperscript{253}

\textsuperscript{250} Williams, \textit{The Contemporary Right to Property Restitution} p.49
\textsuperscript{251} COHRE, \textit{United Nations Principles on Housing and Property Restitution} Principle 2.2
\textsuperscript{252} Williams, \textit{The Contemporary Right to Property Restitution} p.11
\textsuperscript{253} Ibid, p. 11
Chapter 4: Housing, Land and Property Issues in Post-Conflict Environments

The section will explain the issues that need to be dealt with in post-conflict contexts as a result of these violations of land and property rights and Kosovo specifically. Scott Leckie notes a number of such issues that need to be resolved. The first, the destruction and damage to housing will cause severe shortages of habitable housing and housing remains will often be overcrowded and/or unsuitable. This affects Kosovo since, as already noted, half of the territories housing stock was either destroyed or uninhabitable. He also notes there is often a legacy of arbitrary applications of law affecting HLP Rights which will need to be repealed. He actually offers Kosovo’s own law on Changes and Supplements on the limitations of Real-Estate Transactions (which has already been described) as an example of this. Property rights records, whether incomplete or lost through destruction or confiscation is another legacy that Leckie outlines. These records are sorely needed to work out who has rights over land, property or tenancy especially to resolve a property dispute. For Kosovo, many property records were either destroyed by Serbian forces or taken to Serbia by the authorities and what remains is incomplete, especially records registered since 1994. In fact, Leckie quotes estimates that over half of Kosovo’s property records are no longer in the territory. Understandably, this is a huge issue to be dealt with and adversely impact upon the ease with which property disputes are resolved.

Leckie also states that post-conflict settings often suffer from large-scale secondary occupation of housing, land and property. In Kosovo’s case, this is a problem for Albanian IDP and Refugees whose property rights were dissolved and transferred to others by Serbian authorities though UNMIK has since annulled all documents and laws.

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254 Leckie, Housing, Land and Property Rights p.16
255 Ibid, p.16
256 Ibid, p.14
257 Ibid, p.14
258 Ibid, p.15
260 Tawil, Property Rights in Kosovo p.18
261 Leckie, Resolving Kosovo’s Housing Crisis p.13
262 Leckie, Housing, Land and Property Rights p.12
issued by the Serbian government after 24th March 1999. Similarly, it is also a problem for Serbs who have had their vacant houses occupied by returning Albanians.

The destruction of property, forced evictions and the annulment of property rights as well as the general conditions of a conflict means that there will be many IDPs or refugees. I will use the The Guiding Principles' definition of an IDP as;

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.

Refugees are those who have crossed the state border. Obviously, given the sovereignty dispute over Kosovo, displaced peoples could be IDPs or refugees depending on whether one considers Kosovo to be independent. Refugees and IDPs have a number of issues that need to be addressed. Leckie writes that first, for those that want to return, the authorities need to assist returnees to return to, reclaim and repossess their original homes. Second, there will be a number of HLP rights disputes for refugees and IDPs who find that their original home is occupied either by poorer groups [who] seek to find adequate housing or opportunists who, as Wiley states, exploit the lawless situation for their own ends. For Leckie, such disputes include the determination of rights:

1. between the original and current occupier and their competing land deeds
2. in the case of unofficial property transfers
3. for land boundaries
4. for tenancy and cultivation rights

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263 Leckie, ‘Resolving Kosovo’s Housing Crisis’ p.13
264 Ibid, p.13
265 UN Commission on Human Rights, Guiding Principles on Internal Displacement, paragraph 2
266 Leckie, ‘Housing, Land and Property Rights’ p.12
267 Ibid, p.12
268 Ibid, p.12
This is particularly difficult for Kosovo because in response to the discriminatory laws and restrictions on property many such transactions, according to Hans Das, continued to take place in large numbers through secret, informal or unregistered contracts to the extent that the property registration system has gradually become obsolete. Another result is that there are significant numbers of competing claims between Albanians and Serbs who have documentation proving their property rights. Related to this is another issue, that Kosovo authorities will have to do deal with is insecure Housing and Land Tenure to protect people vulnerable to HLP disputes from arbitrary eviction or informal tenancy agreements. Additionally, as many of the property rights records are either in Serbia or destroyed, and Serbian and Kosovo authorities do not recognise each other there is no exchange of records or mutual recognition of issued documents [which presents] severe challenges to IDPs as well as refugees.

There is also the problem of forced housing sales or rental contracts made under duress at the time of flight which affected both fleeing Albanians and Serbs and Roma during Operation Horseshoe and Albanian retaliatory attacks during and after the NATO intervention respectively. Members of all three communities were forcefully evicted since July 1999 using false documents under duress and often having to sign that they have relinquished their property willingly and without any pressure.

269 Hans Das, ‘Restoring Property Rights’ p.434
270 Ibid, p.434
271 Leckie, ‘Resolving Kosovo’s Property Rights’ p.13
272 Leckie, ‘Housing, Land and Property Rights’ p.17
273 Ibid, p.17
274 Tawil, ‘Property Rights in Kosovo’ p.18
275 Leckie, ‘Housing, Land and Property Rights’ p.13
276 Leckie, ‘Resolving Kosovo’s Housing Crisis’ p.13
Chapter 4:  **Housing, Land and Property Issues in Post-Conflict Environments**

A). Vulnerable Groups

Before discussing how these problems have been dealt with in Kosovo, I want to further explore which groups are vulnerable and why they are crucial to peacebuilding. I wish now to look at the plight of vulnerable groups who are or might be victims of property rights violations. As explained in the previous chapters without the provision of remedies for such violations, 'spoilers' could exploit their socio-economic grievances (including property violations) and encourage them to take up arms. Additionally, if these socio-economic grievances are not resolved, they will not feel inclined to cooperate in rebuilding or reconciliation, which is crucial to the success of peacebuilding.

IDPs and refugees, by definition, particularly suffer from property violations. They can lose their land in a number of ways as has been shown previously. They might have fled conflict violence or faced forced eviction and subsequently, third parties have illegitimately occupied their property.

The Special Rapporteur on Adequate Housing, Raquel Rolnik notes that "Displacement is a notorious driver of human and particularly housing-rights violations." Indeed, the United Nations explicitly recognised this by appointed the Representative of the UN Secretary-General on the Human Rights of IDPs in 2004. Rolnik states that eight risks faced by IDPs, which are landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property resources, and social/community disarticulation.

Many of these risk areas are manifested because their displacement has removed, according to the Protection Cluster Working Group, their main source of physical and socio-economic security, including shelter, water, and food as well as the ability to earn a

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Regarding employment, this would certainly be an issue for subsistence farmers, but it would affect significant others since many countries require a fixed address as a condition for eligibility of employment. This condition could also be the case for services like education and healthcare and consequently displaced persons may suffer increased poverty, marginalisation and risk of harassment, exploitation and abuse. Security and safety can also be an issue for IDPs and refugees. This could be because of landmines or hostility from the local population, especially if their land or property is situated in an area dominated by other ethnic communities. Rolnik points out the speed with which displacement should be dealt with by quoting the United Nations Inter-Agency Standing Committee (IASC) who believe that the position of IDPs deteriorates over time and human rights violations, particularly of economic, social and cultural rights become more frequent.

Rolnik states that all those displaced suffer terribly, however, women, minorities and children, who are more vulnerable to discrimination, are most at risk. After an ethnic conflict, discrimination towards certain community groups can still be a real problem for minorities. The Working Group note that in the case of women their vulnerability stems from laws and cultural practice that prohibit them from owning, leasing, renting and/or inheriting property, and so without a male head of the household they face serious problems. Additionally, for these reasons, the Working Group hold that it will be difficult for women to successfully return to their homes, without which, they face risks such as rape, forced prostitution or trafficking.

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281 Ibid, p.256
282 FAO, Access to Rural Land p.18
283 Rolnik, Report of the Special Rapporteur p.7
284 Ibid, p.7
285 Protection Cluster Working Group, Land and Property p.256
286 Ibid, p.256
Chapter 4: **Housing, Land and Property Issues in Post-Conflict Environments**

**B). Kosovo**

I will now examine the vulnerable IDPs in Kosovo. After the conflict in 1999, at their peak in 2000, there were 36,000 IDPs in Kosovo\(^{287}\) and that figure has been reduced to 18,300 by late 2010.\(^{288}\) Ethnic violence (against Kosovo Serbs and Roma) in 2004 caused a further 4,200.\(^{289}\) By the end of 2010, the ethnic make up of the IDPs was thus; slightly over half were Kosovo Serbs, around 39 per cent Kosovar Albanians, and six per cent from Roma communities.\(^{290}\) In addition, there are roughly 225,000 IDPs from Kosovo in Serbia (proper).\(^{291}\) The report concludes that 18,000 IDPs and 22,000 Refugees have returned to Kosovo, and the lowly figures are explained by reluctance to return because of security concerns, limited freedom of movement, the restricted access to services and livelihoods, and the difficulties in repossessing or rebuilding their homes.\(^{292}\)

Who are the particularly vulnerable displaced people in Kosovo? The IDMC report states that the most vulnerable were those IDPs (4,500) living in collective centres that were still living in very harsh conditions [with] only minimal and intermittent assistance at best.\(^{293}\) Tawil states there are four; Displaced Kosovo Serbs, the Roma, Ashkali, and Egyptian Communities, women and Kosovo Albanians North of the Ibar River.\(^{294}\) The Internal Displacement Monitoring Centre report that most of the Kosovo Serb IDPs were living in Northern Kosovo including Mitrovica and other IDPs were in enclaves where their respective ethnic group represented the majority of the


\(^{288}\) Ibid, p.65

\(^{289}\) Internal Displacement Monitoring Centre (IDMC), *Kosovo: Need to support minority communities to prevent further displacement and allow durable solutions*, 22 January 2010, p.4, last accessed on 12.6.11 at: [http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C8391DFACE00AECE6C12576B3004C751A/$file/Kosovo_Overview_Jan10.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C8391DFACE00AECE6C12576B3004C751A/$file/Kosovo_Overview_Jan10.pdf)

\(^{290}\) IDMC, *Internal Displacement: Global Overview* p.65

\(^{291}\) Ibid, p.67

\(^{292}\) Ibid, p.65

\(^{293}\) Ibid, p.65

\(^{294}\) Tawil, *Property Rights in Kosovo* pp. 18-23
Displaced Kosovo Serbs, according to Tawil, face discrimination, freedom of movement, and lack of employment opportunities, security and access to basic services. Owing to the property deeds problems outlined previously (i.e. many are either destroyed or in Serbia and Kosovo authorities do not recognise Serbian documents/courts or administrative bodies) Kosovo Serbs find in difficult to register their property, and as Tawil notes, without a property certificate they cannot begin the process to attempt to legally reclaim their former homes.

Both Tawil and Internal Displacement Monitoring Centre believe that the Roma, Ashkali and Egyptian (RAE) community are the most marginalised group in Kosovo. There are between 35,000 to 40,000 RAE living in Kosovo, and many of their settlements have been destroyed. Most notably, Roma Mahala in Mitrovica where 7,000 RAE resided until the settlement was destroyed because of their alleged collaboration with the Serbs during the conflict. Tawil writes that this community face discrimination and disempowerment at all levels of Kosovo society and many are forced to live in settlements without electricity, clean water or sewerage.

One major reason for their continued displacement is that they cannot register because they do not have the right documents. Tawil labels this a phenomenon called chronic unregistration either because generations have not been able to acquire them or that they have been lost when they fled the violence. Without this documentation they cannot obtain accommodation, social assistance or health cards.

Kosovo is sadly a prime example where laws and cultural practice make women extremely vulnerable to property and wider abuse. Tawil holds that women of all ethnic communities have subordinate status but Kosovo and Albanian and RAE women are

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295 IDMC, Internal Displacement: Global Overview p.65
296 Tawil, Property Rights in Kosovo p.18
297 Ibid, p.18
298 Ibid, p.19
299 Tawil, Property Rights in Kosovo, p.20
300 Ibid, p.21
301 Ibid, p.20
302 IDMC, Internal Displacement: Global Overview p.65
303 Tawil, Property Rights in Kosovo p.20
304 Ibid, p.20
305 Tawil, Property Rights in Kosovo p.21
most vulnerable. Though the Kosovo constitution assures equality between the sexes\textsuperscript{307}, the weight of culture and tradition\textsuperscript{308} prevents the application of the law and property rights are a prime example this. Tawil states that, especially amongst rural and poor communities, property amongst other things, is governed by traditional Albanian customary law called the Kanun\textsuperscript{309}, under which, women's rights are severely restricted\textsuperscript{310}. This law forbids women to inherit property; the latter must go to immediate male family\textsuperscript{311}, or otherwise to the closest male relative\textsuperscript{312}.

Tawil writes that the final vulnerable group at Kosovo Albanians who were living north of the Ibar River, in the Northern most part of Kosovo nearest Serbia proper where there was a Serbian majority. During the conflict and afterwards Kosovo Serbs IDPs from elsewhere in Kosovo alongside various vigilante groups drove many Kosovo Albanian's from this part of the territory and took their property for their own.\textsuperscript{313} Indeed, the UN High Commissioner for Refugees (UNHCR) estimated in 1998 that 98 percent of the Kosovo Albanian IDPs were displaced from Northern Mitrovica.\textsuperscript{314} Tawil writes that few of these IDPs have had access to the properties they were forced to abandon nor repossessed them due to the political and security situation there. He states that the failure of property restitution in the area has led some Kosovo Albanians to sell their property to Kosovo Serbs.\textsuperscript{315}

\textsuperscript{307}Kosovo Constitution, Article 7 (2), Article 24
\textsuperscript{308}Ibid, p.21
\textsuperscript{309}Ibid, p.22
\textsuperscript{310}Ibid, p.22
\textsuperscript{311}Ibid, p.22
\textsuperscript{312}Ibid, p.22
\textsuperscript{313}Tawil, Property Rights in Kosovo p.23
\textsuperscript{314}IDMC, Kosovo p.4
\textsuperscript{315}Tawil, Property Rights in Kosovo p.24
Chapter 4: Housing, Land and Property Issues in Post-Conflict Environments

C). Contribution of Housing, Land and Property to Peacebuilding

This section will examine the contribution Housing, Land and Property can make to Peacebuilding and the developments in the way they are dealt with in post-conflict peacebuilding notably the proposals for a consistent way in which to deal HLP issues particularly the establishment of a national Housing, Land and Property Rights Directorate (HLPRD).

IDPs form a crucial part of peacebuilding. The most obvious reason, as William O’Neill states, is that for some post-conflict countries, displaced people are a significant percentage of the population (for example, half of Bosnia’s population were displaced after its conflict\textsuperscript{316}) and it is therefore impossible to design development plans without taking into account the situation of returning refugees and IDPs.\textsuperscript{317}

O’Neill believes that neither sustainable peace nor development are possible as long as there is a population that is rootless, dependent on foreign aid and harbouring resentment and hostility towards those who caused their displacement.\textsuperscript{318} There refers to the point made earlier that their group of people will be unwilling to cooperate with development and reconciliation initiatives and could be a cause for instability, they are particularly ripe for ‘spoilers’ who could encourage them to violence.

The author states that the plight of refugees has been recognised (e.g. the Convention Relating to the Status of Refugees of 1951) far longer than IDPs, who have only been seriously considered for the last two decades. O’Neill explains that in 2006 OCHA launched the ‘cluster approach’ [where] individual agencies are expected to assume a lead role for IDPs in their areas of expertise.\textsuperscript{319} The problem with the cluster approach, for O’Neill, is that various UN agencies quarrel over who has the competency and

\textsuperscript{316} Williams, *The contemporary right to property restitution* p.33
\textsuperscript{318} O’Neill, *Internal Displacement* p.152
\textsuperscript{319} Ibid, p.154
mandate to deal with IDP issues. Additionally, the approach deals with immediate life-saving needs, but fail to address the longer-term solutions.\textsuperscript{320}

O’Neill believes that it is the provision of long-term solutions, commonly referred to as “Durable Solutions” that are essential to building sustainable peace.\textsuperscript{321} He considers the Guiding Principles on Internal Displacement offer three such solutions, \textsuperscript{322} return to the IDP’s place of origin; integration in the area where the IDP has sought refuge; or resettlement to a different part of the country.

In summary, there are number of post-conflict challenges to land tenure and security of tenure that need to be dealt with. As explained, they include destruction of property, arbitrary HLP laws, lost property records, and secondary occupation of housing, land and property. For refugees and IDPs there are issues of return to their homes of origin, housing land and property rights disputes, insecure housing and land tenure, and forced housing sale/rental contracts.

The resolution of these issues will clearly aid peace-building. The FAO report warns that failure to resolve such issues can threaten peacebuilding.\textsuperscript{323} It has been shown that in some conflicts, land and property issues are one of the root causes of the conflict, and in the Kosovo case HLP abuses was one of many ways in which the Serbian government repressed the Kosovo Albanians. The Report of the Secretary-General on “The rule of law and transitional justice in conflict and post-conflict societies” states that the root causes of conflict have often been left unaddressed but their remedy can be an important conflict prevention tool.\textsuperscript{325} The Report goes on to claim that, “peace and stability can only prevail if the population perceives that politically charged issues [including] denial of the right to property can be addressed in a legitimate and fair manner.”\textsuperscript{326}

\textsuperscript{320} O’Neill, \textit{Internal Displacement}, p.154
\textsuperscript{321} Ibid, p.155
\textsuperscript{322} Ibid, p.155
\textsuperscript{323} FAO, \textit{Access to Rural Land}, p.33
\textsuperscript{325} Ibid, p.4
\textsuperscript{326} Ibid, p.4
The FAO state that resolving land and property issues, particularly securing access to land helps both “emergency humanitarian needs as well as longer-term social and economic stability.”\(^{327}\) Concerning the former, land can deliver food and shelter and facilitate humanitarian aid during the emergency period.\(^{328}\) Settling land and property disputes and providing security of tenure can facilitate reconciliation, economic development and neutralise grievances that “can be politically, socially and economically destabilizing.”\(^{329}\) Return of land and security of tenure facilitate economic development because it “provides a base where people can live, grow food and work.”\(^{330}\)

Recognising the danger of neglecting post-conflict land and property issues and the benefit of their resolution to peace-building, the United Nations have made a concerted effort to bring them fully into their post-conflict reconstruction apparatus. Scott Leckie’s “Proposals for a New United Nations Institutional and Policy Framework for HLP Rights in Post-Conflict Societies aims to develop “a consistent, transparent and effective policy to address the land and property issues identified which will aid the “establishment of the rule of law within post-conflict settings.”\(^{331}\)

Leckie starts by lamenting the relative neglect of HLP violations in comparison to other human rights violations.\(^{332}\) For example, the International Criminal Court and ICTY does not deal with violations of HLP rights. It only deals with the Geneva Conventions which as previously stated includes prohibitions against destruction to private property (unless out of military necessity), pillage and reprisals against private property but unless these are deemed grave breaches the ICTY will not have jurisdiction.\(^{333}\) The author notes that such violations have not been dealt with in a consistent way and the proposal seeks to establish HLP rights as a “priority of all peacekeeping operations.”\(^{334}\) Not only will HLP issues be properly addressed, adherence to the proposals will aid peacebuilding by improving social stability, facilitating economic development and supporting the rule of

\(^{327}\) FAO, “Access to Rural Land” p.33
\(^{328}\) Ibid, p.33
\(^{329}\) Ibid, p.33
\(^{330}\) Ibid, p.33
\(^{331}\) Leckie, “Housing, Land and Property Rights” p.8
\(^{332}\) Ibid, p.iii
\(^{333}\) United Nations, International Criminal Tribunal for the Former Yugoslavia Website, Mandate and Jurisdiction Section, last accessed on 16.6.11 at: http://www.icty.org/sid/320
\(^{334}\) Leckie, “Housing, Land and Property Rights” p.iv
Leckie, like the FAO, also sees the role of addressing HLP issues as a conflict prevention tool. At the heart of framework is the establishing of a national Housing, Land and Property Rights Directorate (HLPRD) to ensure that comprehensive and consistent institutional, political and legal attention is paid to all HLP rights concerns within the country. The HLPRD can be a new body or consist of already established national institutions and can operate either when there with a substantial UN presence with executive powers (UN Transitional Authority) or when the UN is supporting a newly formed post-conflict government. The Directorate should include a Claims department that will act as a claims mechanism to solve housing disputes and determine claims. Kosovo represents one of the first examples of a Housing, Land and Property Rights Directorate. So, I will focus on Kosovo’s Directorate and particularly its claims mechanism because it represents a legal remedy for HLP rights violations and property restitution which is a durable solution for IDPs as a vulnerable group.

335 Leckie, ‘Housing, Land and Property Rights’ p.9
336 Ibid, p.iii
337 Ibid, p.vi
338 Ibid, p.vi
339 Ibid, p.11
340 Ibid, p.29
Chapter 5: Kosovo

A). Description of Housing and Property Directorate and Claims Commission and the Kosovo Claims Agency

This section will examine Kosovo’s Housing and Property Directorate and Claims Commission (HPD/CC) and its successor the Kosovo Property Agency (KPA), explain and analyse what it has done to resolve land and property issues and if it is in line with Leckie’s conception as well as if it has been successful.

First, I will explain the context under which these institutions were established and operating. United Nations Security Council Resolution 1244 of 1999 established the United Nations Interim Administration Mission in Kosovo (UNMIK). Neither the Resolution, nor the Agreement that ended hostilities in Kosovo the “Military Technical Agreement” referred to property rights issues or property restitution specifically. Jose Maria Arraiza and Massimo Moratti note that this is in contrast to the Dayton Accords which included the right to return to ones home of origin and for the remedy of property rights violations. However, the Resolution did stipulate that UNMIK had to allow the “unimpeded return of all refugees and displaced persons to their homes in Kosovo.”

To this end, the head of UNMIK, the Special Representative of the Secretary-General (SRSG) decided to address with the housing, land and property crisis by asking the UN Centre for Human Settlements (UN Habitat) in 1999 to form a plan of how to proceed. The plan highlighted three priorities, the first was the housing shortage, the second discriminatory legislation and establishing a dispute settlement mechanism and the third,
reforming the broken cadastre and property registration system.\textsuperscript{346} Regarding the first, UNMIK’s municipality administrators were instructed to temporarily allocate vacant housing to homeless people on humanitarian grounds\textsuperscript{347} until a new body, the Housing and Property Directorate took over this responsibility.\textsuperscript{348}

The newly created Housing and Property Task Force dealt with discriminatory property laws. They recognized two Serbian Laws as discriminatory. Both of them have already been discussed. The first is the Law on Changes and Supplements on the Limitation of Real Estate Transactions which severely restricted inter-ethnic property transactions. The Second, the Law on Conditions, ways and Procedures of Granting Farming Land to Citizens Who With to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija which concerned privatizing socially owned housing which heavily favoured Serbs.\textsuperscript{349} The Regulation on the Repeal of Certain Discriminatory Legislation (UNMIK Regulation No. 1999/10) which repealed these two laws was approved in October of 1999.\textsuperscript{350}

The Kosovo Cadastral Agency (KCA) is an UNMIK body created 2000 that dealt with the third priority identified by UN Habitat; the reform of the Cadastral and Property Registration system. Its main purpose was to foster the rule of law in the property sector\textsuperscript{351} through legal reforms in two areas. The KCA was careful to recognize and maintain existing Yugoslav, Serb and Kosovo legislation whenever it was appropriate to do so and stipulate that reforms had to be compatible with local civil laws.\textsuperscript{352}

Another innovation was a regulation that dealt with the problem of Kosovo Serbs being coerced into selling their properties for a depreciated value by Albanian agents who allegedly aimed to change the ethnic balance in Kosovo.\textsuperscript{353} The Serb National Council lobbied for a freeze of Serb property sales to stem this issue. However, as well as being a return to the ethnically driven prohibition of property transactions of the 1990s, UNMIK

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\textsuperscript{346} Leopold Von Carlowitz, \textit{Crossing the Boundary from the International to the Domestic Legal Realm: UNMIK Lawmaking and Property Rights in Kosovo} \textit{Global Governance} 10, 2004, p.309
\textsuperscript{347} Ibid, p.311
\textsuperscript{348} Ibid, p.311
\textsuperscript{349} Ibid, p.311
\textsuperscript{350} Ibid, pp.311-312
\textsuperscript{351} Ibid, p.316
\textsuperscript{352} Ibid, p.317
\textsuperscript{353} Carlowitz, \textit{UNMIK Lawmaking} p.321
realised that this could amount to a violation of the right to free disposal of property under the European Convention on Human Rights.\textsuperscript{354} UNMIK was sympathetic to the problem though and decided on a regulation that provided for the designation of specific geographical areas where all property transactions needed to be registered with the municipal administrator before the civil court could validate the transaction.\textsuperscript{355} A property transaction in a geographical area (a pre-decided area that included minorities) could be refused if there were well founded evidence that the transaction was coerced or had ulterior ethnically driven motives.\textsuperscript{356} Despite Kosovo Albanian objections that the legislation was a retrogressive step towards discrimination, the Registration of Contracts for the Sale of Real Property in Specific Areas of Kosovo (UNMIK regulation no. 2001/17) was passed in August of 2001.\textsuperscript{357}

The dispute settlement mechanism was the main operation of the new Housing and Property Claims Commission (HPCC) which was a quasi-judicial\textsuperscript{358} organisation supported by the Housing and Property Directorate (HPD). These two organisations were established by the SRSG through UNMIK regulation 1999/23.\textsuperscript{359} As well as the dispute settlement mechanism, the HPD had to catalogue abandoned housing, provide guidance on property rights issues to UNMIK and other organisations, and allocate housing for humanitarian purposes.\textsuperscript{360} Leopold Von Carlowitz writes that the HPD was designed to meet many of Resolution 1244's objectives because its main purposes were to protect rights as stipulated in international human rights instruments; to create the conditions for the return of refugees; and to re-establish civil law and order in property matters.\textsuperscript{361}

Arraiza and Moratti note that the HPD represents the first mass claims mechanism\textsuperscript{362} for property. UNMIK decided against using local courts or municipal authorities for property claims because both were fledgling institutions and it was deemed that they

\textsuperscript{354} Carlowitz, \textit{UNMIK Lawmaking} p.321  
\textsuperscript{355} Ibid, p.321  
\textsuperscript{356} Ibid, p.322  
\textsuperscript{357} Ibid, p.322  
\textsuperscript{358} Moratti, \textit{Legal Policy Dilemmas} p.429  
\textsuperscript{359} Carlowitz, \textit{Contribution to Peacebuilding} p.551  
\textsuperscript{360} B Vagle and Rosales, de Medina, An evaluation of the housing and property directorate in Kosovo. S. Skåre, \textit{NORDEM}, Vol. 12, 2006, p.22  
\textsuperscript{361} Carlowitz, \textit{UNMIK Lawmaking} pp.312-313  
\textsuperscript{362} Moratti, \textit{Legal Policy Dilemmas} p. 423
would struggle to handle such a huge caseload and finally, they could not be trusted with restoring property rights in a fair manner. An independent mass claims mechanism with full control throughout the claims process was chosen for the sake of efficiency and impartiality. Arriaza and Moratti note that the advantages of a mass claims mechanism allows for the grouping of types of claims based on their similarity which will aid efficiency and because the mechanism will bear the brunt of investigation costs, claimants will not to pay for example, they will not require lawyer. The HPD referred unsolved property claims to the HPCC which split the property claims into three types:

- Claims by natural persons whose ownership, possession or occupancy rights to residential property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or its intent;

- Claims by natural persons who entered into informal transactions of residential property on the basis of the free will of the parties subsequent to 23 March 1989;

- Claims by natural persons who were the owners, possessors or occupancy right holders of residential property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred

Claims concerned people who lost their property rights because of discriminatory legislation (so predominantly Albanian) and a successful claimant will either have their property restored or be compensated. An important aspect of this type of claims was the reversal of the burden of proof to make it easier for claimants who might face difficulties proving wrong-doing beyond a reasonable doubt. The reversal was due to the HPCC, as a mass claims mechanism, recognising that norm/breaking behaviour was the rule rather than the exception during those repressive years. Claims attempted to resolve the many informal property transactions that were conducted below the radar of officials and against the discriminatory Serbian property legislation of the 1990s. A

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363 Moratti, Legal Policy Dilemmas p.427
364 Ibid, p.427
365 Ibid, p.429
366 Rosales, An Evaluation p.19
367 Moratti, Legal Policy Dilemmas p.430
368 Ibid, p.429
successful Bclaimant will have their property transaction legitimised and deemed legal before being placed in the newly created Immovable Property Rights Register.369

Cclaims refer to IDPs and refugees (mainly Kosovo Serbs) who owned or legally occupied property up to 24 March 1999 and have been dispossessed of that property. The HPCC, similar to the reversal of the burden of proof for AClaims assumed (without requiring proof) that dispossession during this period was caused by the conflict which speeded the process.370 A successful Cclaimant will have their property restored with the right to return.371 The HPCC’s decisions were binding and could not be challenged by another organisation in Kosovo.372

An interesting point to note is that Arraiza and Moratti believe that Ñthe legislator foresaw a similar number of claims for each category373, however the reality was very different. There were 25,283 (93%) Cclaims in comparison to 1,205 AClaims and 365 BClaims.374 Hans Das recognises two principles governing the dispute settlement mechanism of the HPCC concern property restitution. The first, Ñany person who lost residential property after 1989 as a result of discrimination has a right to restitution of property and the second, Ñany refugee or displaced person who has lost possession of residential property has a right to return to the property or to dispose of it in accordance with the law.375

There are two serious problems for the HPD/CC that concern its mandate. That is the omission of agricultural land and commercial properties and informal housing settlements from the dispute settlement mechanism.376 Bizarrely, in the case of the former, the studies that informed the mandate of the HPD/CC only considered the dispossession of residential property for facilitating IDP and refugee returns.377 This omission was in contrast to Bosnia’s programme and the Pinheiro Principles which include the restitution

369 Moratti, ďLegal Policy Dilemmas’ p.430
370 Ibid, p.431
371 Hans Das, ďRestoring Property Rights’ p.435
372 Rosales, ďAn Evaluation, p.19
373 Moratti, ďLegal Policy Dilemmas’ p.431
374 Ibid, p.431
375 Hans Das, ďRestoring Property Rights’ p.435
376 Moratti, ďLegal Policy Dilemmas’ p.434
377 Ibid, p.433
of land and property as well as housing. Arraiza and Moratti note that this adversely affected returns, minorities and would-be returnees who upon gaining their home depended on the economic revenue of land and non-residential property that remained in the hands of secondary occupants.

There was also an omission of informal housing settlements from the claims mechanism which particularly affected the RAE Communities who have traditionally lived in such settlements. As previously mentioned, up to 50,000 RAE have been displaced and unregistered since 1999 with many being accused by Kosovo Albanians of collaborating with Kosovo Serbs. Many settlements have been destroyed and their inhabitants displaced, including Roma Mahala which had a population of roughly 7,000. Perhaps, because many of the RAE community do not have registered property titles they have not been included in the claims mechanism. Arraiza and Moratti state that property and land restitution outside of the mechanism has been mixed for the RAE community. Roma Mahala has seen destroyed property rebuilt and property titles given to the original occupiers, whereas other RAE settlements have been permanently expropriated. As previously noted, the General Comment 4 on the Right to Adequate Housing states that informal settlements should have legal security of tenure so the omission is a violation of that standard. It also means that the most vulnerable group in Kosovo do not have access to remedy or protection under the HPD mandate.

Arraiza and Moratti cite the 'Standards for Kosovo' document which called for return and reconstruction and/or compensation for the inhabitants of destroyed informal settlements, including affirmative action to provide legal security of tenure to persons lacking it however they state that this area has mostly remained unfulfilled.

The HPD/CC was replaced by the Kosovo Property Agency in March 2006, and at that point that former, according to a recent Council of Europe report, had decided

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378 Moratti, Legal Policy Dilemmas p.434
379 Ibid. p.434
380 Tawil, Property Rights in Kosovo p.19
381 Moratti, Legal Policy Dilemmas p.435
382 CESC, General Comment 4, Right to Housing, paragraph 8 (a)
383 Moratti, Legal Policy Dilemmas p.435
384 Moratti, Legal Policy Dilemmas p.435
385 Ibid. p.435
property claims which represented 98.9% of the claims it received.\textsuperscript{386} Property Restitution was the result for 5,199 of the claims, and would have been for a further 10,108 claims but in these cases the property had been destroyed so ownership/occupancy was confirmed but restitution was impossible. Finally, other claims were either abandoned before a decision was made or the owner decided to rent the property to the secondary occupier.\textsuperscript{387}

The Kosovo Property Agency (KPA) was the result of a study by the European Agency for Reconstruction at the behest of UNMIK who were concerned at the paucity of minority returns owing to the omission of agricultural land and commercial property in the HPD/CC mandate.\textsuperscript{388} UNMIK’s rationale was that without the income from their agricultural land and commercial property IDPs and Refugees would be unlikely to return so a resolution mechanism for this land and property had to be in the KPA mandate.\textsuperscript{389} Therefore with this in mind, the SRSG drafted Regulation 2006/10 which established the KPA, an independent organisation which comprises some of the HPD/CC’s mandate and responsibilities with the addition of deciding disputes over agricultural land and non-residential property.\textsuperscript{390} The Council of Europe Report states that the KPA is composed of three main bodies, namely an Executive Secretariat (ES), responsible for managing the claims process, the Property Claims Commission (PCC) an autonomous quasi-judicial body adjudicating the claims and a Supervisory Board (SB) providing oversight and policy guidance.\textsuperscript{391}

In addition to the new dispute mechanism for land and non-residential property, there are further notable differences between the KPA and its predecessor which can be considered improvements on the latter. For Claims the HPCC only decided who had lawful jurisdiction over a property but this did not amount to a title deed. Since a title deed was necessary to be registered in the Property Rights Register and the absence of such a deed would make the legitimate owner/occupier vulnerable to future court challenges, the

\begin{itemize}
  \item \textsuperscript{387} Ibid, p.29
  \item \textsuperscript{388} Moratti, \textit{Legal Policy Dilemmas} p.440
  \item \textsuperscript{389} Evaluation, p.101
  \item \textsuperscript{390} Ibid, p.102
  \item \textsuperscript{391} Council of Europe, \textit{Report of the Council of Europe} p.29
\end{itemize}
newly created Property Claims Commission’s decisions on cases included a title determination.\textsuperscript{392}

Another change was that KPA decisions could be reviewed by the Kosovo Supreme Court if a claimant or defendant decided to appeal the decision. Arraiza and Moratti note that this brought the KPA into the domestic judicial system and would "help to resolve conflicts of jurisdiction.\textsuperscript{393} There was concern that if a significant number of people decided to appeal, the system would grind to a halt and adversely affect property restitution and aid illegal secondary occupiers who would welcome the cessation of the process.\textsuperscript{394} Arraiza and Moratti point out that this actually happened to the property restitution process in Bosnia and Herzegovina where thousands of appeals brought the system to its knees. Therefore mindful of this danger, UNMIK stipulated that people could only appeal within 30 days of a Commission decision and the Supreme Court could combine several appeals at once. To guarantee impartiality the appeals panel would consist of two international judges and a domestic judge all of whom were appointed by UNMIK.\textsuperscript{395} Finally, the new regulation strove to increase the participation of local government (and harness its support) by appointing a Supervisory Board (including two government appointees) for the Executive Secretariat of the KPA who were entrusted with "administrative oversight and policy guidance.\textsuperscript{396}

Interestingly, whilst the European Agency for Reconstruction study predicted around 11,000\textsuperscript{397} new claims under the agricultural land and commercial property mandate, the KPA has accepted over 40,000 (mainly Serb and uncontested) claims of which 18,000 have been resolved.\textsuperscript{398}

\textsuperscript{392} Moratti, "Legal Policy Dilemmas" p.444
\textsuperscript{393} Ibid, p.445
\textsuperscript{394} Ibid, p.445
\textsuperscript{395} Ibid, p.446
\textsuperscript{396} Ibid, p.446
\textsuperscript{397} Ibid, p.441
\textsuperscript{398} Council of Europe, "Report of the Council of Europe" p.30
Chapter 5: Kosovo

B). Analysis of Housing and Property Directorate and Claims Commission and the Kosovo Claims Agency

This section will examine whether these agencies have cohered with Leckie’s conception of how they should operate. Scott Leckie states that a Housing, Land and Property Rights Directorate “should maximise local and national involvement” and its policy must be “grounded in human rights principles and international practice.”

HLP policy in Kosovo closely follows human rights principles. For example, one of the three priorities identified by the UN Habitat report is human-rights based. That is, dealing discriminatory legislation and establishing a dispute settlement mechanism. Indeed, Carlowitz notes that the repeal of discriminatory legislation “had an unmistakable human rights-based justification.” Concerning the dispute settlement mechanism, this can clearly be perceived through a human-rights based lens as providing the right to remedy for housing rights violations. Additionally, the three main objectives of the HPD as identified by Carlowitz are inseparable with human rights principles. Firstly, that the HPD should protect the human rights guaranteed in international human rights law, create conditions for the return of refugees which amounts to facilitating the right to return, and to re-establish the rule of law for property, which essentially means promote respect for property rights. One area of Kosovo’s HLP policy that has not followed international human rights standards is the omission of informal housing settlements from the dispute claims mechanism. As previously stated this has particularly affected the Roma, Ashkali, and Egyptian (RAE) Communities who have traditionally lived in such settlements. Since the General Comment 4 on the Right to Adequate Housing states that informal settlements should have legal security of tenure the omission is a violation of that standard. It is sadly the case that the most vulnerable group in Kosovo did not have access to remedy or protection under the HPD mandate.

399 Leckie, ‘Housing, Land and Property Rights’ p.27
400 Ibid, p.27
401 Carlowitz, ‘UNMIK Lawmaking’ p.312
402 Carlowitz, ‘UNMIK Lawmaking’ pp.312-313
403 CESCR, General Comment 4, Right to Housing, paragraph 8 (a)
404 Moratti, ‘Legal Policy Dilemmas’ p.435
Kosovo’s HLP policy does not fare so well concerning its adherence to international practice. I am interpreting international practice as the standard practice of the international community in its HLP policy in post-conflict countries. Obviously, as this is relatively new area, I am mainly comparing Kosovo’s policy to that of Bosnia and Herzegovina which preceded it. To start with the positives, it has been informed by and learnt from the HLP policy of BiH. For example, it noted the problems that the property restitution process there because local officials attempted to obstruct it. Therefore UNMIK recognised the need to establish a completely independent directorate with full control and this was partly the reason why they did not use local courts and municipal authorities. UNMIK also remembered the problem of appeals of Commission decisions seriously impeding the restitution process in BiH because the Courts were overwhelmed. So when they decided that the Supreme Court could hear appeals from KPA decisions, UNMIK chose to limit the appeal time and allowed the Supreme Court to bunch appeals together to save time and prevent a repeat of what happened in BiH. Finally, there are cases of conformity with international practice including the repeal of discriminatory legislation which, for Carlowitz, was in line with the limited regulatory precedents of former peace operations.  

However, there are glaring examples where Kosovo did not follow international practice to its detriment. As already noted, the omission of agricultural land and commercial property from the mandate of the HPCC was contrary to Bosnia’s dispute settlement mechanism as well as the Pinheiro Principles. This was the major reason for creation of the Kosovo Property Agency which remedied this oversight. Another departure from international is the omission of property rights issues and property restitution in the Kosovo peace agreement, in contract to the Dayton Accords which included the right to return to ones home of origin and for the remedy of property rights violations. However, it must be noted that Resolution 1244 does commit the safe and free return of all refugees and displaced persons to their homes which obviously coheres with the right to return as well as international practice.

405 Moratti, Legal Policy Dilemmas p.426  
406 Carlowitz, UNMIK Lawmaking p.312  
407 Moratti, Legal Policy Dilemmas p.425  
408 UN Security Council, Resolution 1244, paragraph 11 (k)
Whilst Leckie recommends that HLP policy should maximise local and national involvement, he also states that “political decisions will need to be made”.\textsuperscript{409} It is for this reason that local involvement was not a high priority for the HPD/CC. As explained, UNMIK took a political decision to limit the involvement of local actors particularly courts and municipalities which it deemed did not have the capacity to undertake dispute settlement responsibilities nor could be trusted to be impartial with delicate inter-ethnic disputes. Despite this, the KCA did attempt to recognise and maintain existing Yugoslav, Serb and Kosovo legislation whenever it was appropriate to do so and stipulate that reforms had to be compatible with local civil laws which advanced local ownership.\textsuperscript{410} Local involvement further increased under the new Kosovo Property Agency. The Supervisory Board for the Executive Secretariat included two government appointees and the fact that the people could appeal Commission decisions at the Kosovo Supreme Court brought the KPA into the domestic judicial system are both examples of increased domestic involvement and participation in the process.

\textsuperscript{409} Leckie, \textit{Housing, Land and Property Rights} p.37
\textsuperscript{410} Carlowitz, \textit{UNMIK Lawmaking} p.317
Chapter 6: Contribution of HPD/CC and KPA to Peacebuilding in Kosovo

I will now examine the contribution of the HPD/CC and the KPA to peacebuilding. I will examine its contribution to the rule of law, returns of IDPs and Refugees to their homes of origin, protection of vulnerable groups and towards reconciliation.

First, I will address whether these institutions have succeeded in deciding the property dispute claims and providing a legal remedy, i.e. property restitution where this has been required. As stated, by the time the HPD/CC had been replaced by the KPA the latter had had decided 28,828 property claims which represented 98.9% of the claims it received.\(^{411}\) Property Restitution was the result for 5,199 of the claims, and would have been for a further 10,108 claims but in these cases the property had been destroyed so ownership/occupancy was confirmed but restitution was impossible. Finally, other claims were either abandoned before a decision was made or the owner decided to rent the property to the secondary occupier.\(^{412}\) The KPA has accepted over 40,000 (mainly Serb and uncontested) claims of which 18,000 have been resolved.\(^{413}\)

For Anneke Rachel Smit, these figures tell a success story, particularly given the speed and efficiency of the decisions that should not be underemphasized.\(^{414}\) The mass claims mechanism has let the HPD/CC churn through determinations at a rate previously unimaginable\(^{415}\) and the author reveals that the HPD/CC has resolved all of the claims in slightly over three years when UNHABITAT had predicted that it would take ten years.\(^{417}\) Impressively, she reveals that this has been achieved on a pauper budget in comparison to UNMIK's other organisations. Smit notes that this has allowed UNMIK to comply with the European Convention on Human Rights article 6 (1) that stipulates the amount of time an arbitrator should take to resolve a claim.\(^{418}\)

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\(^{411}\) Council of Europe, *Report of the Council of Europe*, p.29  
\(^{412}\) Ibid, p.29  
\(^{413}\) Ibid, p.30  
\(^{414}\) Smit, *Property Restitution and Ending Displacement*, p.192  
\(^{415}\) Ibid, p.192  
\(^{416}\) Smit, *Housing and Property Restitution*, p.70  
\(^{417}\) Ibid, p.70  
\(^{418}\) Smit, *Property Restitution and Ending Displacement*, p.192
So regarding the mass-claims mechanism and providing a legal remedy, the HPD/CC have been successful in resolving as many claims as they have and done so in an efficient and timely fashion on a tight budget. For those lucky to have property restitution or gaining the security of tenure that a positive decision provides, this has provided a valued remedy to forced eviction or other housing, land or property violations. Indeed Smit states that the HPD... [is] the envy of numerous other post-conflict societies in which individuals only dream of having the right to their property returned to them.\(^\text{419}\) However, the KPA has fared less well. A recent Internal Displacement Monitoring Centre (IDMC) report states that the restitution process has been slow and is far from complete.\(^\text{420}\) By September 2009, 6,700 decisions (of 18,000) have been acted upon\(^\text{421}\) and only 770 of these have resulted in physical repossession by legitimate owners.\(^\text{422}\) Too be fair to the KPA, the rate of progress coheres with the estimate of UNHABIT. Additionally it is the responsibility of the police to carry out the evictions so legitimate owners/occupiers can return. The Kosovo Police Force (KPS) co-operate with the KPA and have an eviction procedure resulting from a memorandum of understanding between the two organisations.\(^\text{423}\) Whilst Tawil believes that the KPS have been adequate in their eviction duties, they have been lax on re-evictions.\(^\text{424}\) This is when after eviction (ordered by a KPA decision) the illegal secondary occupier trespassed on the property and re-claimed it. Tamil states that often the KPS are not acting in these cases by charging the secondary occupier with an offence and/or carrying out a second eviction of the illegal occupier.\(^\text{425}\) This reveals an important point, that the HPD/CC and the KPA are not and cannot be responsible for everything, there are other actors such as the Courts and the KPS who have responsibilities that are related to their mandate. The KPA cannot be blamed for the failures of these organisations even though they adversely affect what the KPA is trying to achieve – the return of refugees and IDPs. Additionally, as well as the police, the IDMC report state that this reflects the reluctance of IDPs to return.\(^\text{426}\) Conveniently, this brings us to the issue of returns.

\(^{419}\) Smit, 'Housing and Property Restitution,' p.71  
\(^{420}\) IDMC, 'Kosovo,' p.6-7  
\(^{421}\) Ibid, p.7  
\(^{422}\) Ibid, p.7  
\(^{423}\) Tawil, 'Property Rights in Kosovo,' p.35  
\(^{424}\) Ibid, p.36  
\(^{425}\) Ibid, p.36  
\(^{426}\) IDMC, 'Kosovo,' p.7
As Carlowitz states, since the right to return was the primary justification for the establishment of the institutions, the first gauge for assessing their performance are the actual refugee return figures. The right to return is indeed an element of the HPD/CC and KPA set out in UNMIK regulation 2000/60. Additionally, since property restitution is the preferred durable solution for refugees and IDPs and hence an important aspect of peacebuilding one must now examine the amount of returns.

The success of returns depends very much on the ethnicity of the people concerned. The estimated 860,000 Kosovo Albanians driven from the territory have returned. However for the minority groups of Kosovo particularly the Kosovo Serbs and RAE community the rate of returns is much lower. Given the success of the Kosovo Albanian returns, we must focus on these other communities. Over 230,000 minority refugees and IDPs were displaced during and after the conflict and of this number only 19,700 have returned. Before Kosovo’s declaration of independence more than half of this number were Serbs and 32 percent from the RAE communities, there was a reversal post-declaration where the latter formed 48 percent and the former 32 percent.

So what are the reasons for the poor return figures for these groups? I am going to split the reasons into three broad groupings, the first reason can be a failure of the HPD/CC, the second, on the political and security situation and finally, on the failure of other organisations or bodies whose mandate includes refugee and IDP returns. The ICMC document states that the main problem for IDPs from minority communities is the lack of integration into Kosovo society which prevents them from having a durable solution including return. I believe this lack of integration is partly due a failure in reconciliation between the community groups and partly political and security issues.

I will start with political and security issues that have affected the returns of minority refugees and IDPs. Principally, there is a major dispute over who has sovereignty over Kosovo, whether it is now independent or remains a territory within Serbia. The UN

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427 Carlowitz, Contribution to Peacebuilding p.553
428 Smit, Housing and Property Restitution p71
429 Carlowitz, Contribution to Peacebuilding p.553
430 Ibid, p.553
431 IDMC, Kosovo p.8
432 Ibid, p.4
Security Council 1244 upheld the territorial integrity and sovereignty of the Federal Republic of Yugoslavia.\(^{433}\)

Regarding the sovereignty issue, UNMIK was tasked with the responsibility of organizing and overseeing the development of provisional institutions for democratic and autonomous self-government\(^{434}\) and transferring, as these institutions are established, its administrative responsibilities\(^{434}\) before finally, overseeing the transfer of authority from Kosovo provisional institutions to institutions established under a political settlement\(^{435}\). So clearly, UNMIK is establishing and supporting the institutions for democratic and autonomous self-government but the resolution remains neutral on who will be the recipient of the transfer of authority of these provisional institutions after a political settlement. However, there have been some interesting developments that perhaps indicate that the self-government institutions will gain the upper hand in the final political settlement. This stems from the Ahtisaari Plan named after the Martti Ahtisaari who led the political settlement negotiations between Kosovo and Serbia on behalf of UNMIK.\(^{436}\) As the IDMC makes clear the Plan published in 2007 proposed Kosovo independence under international supervision\(^{437}\) which for the Serbian government was sacrilege and the Security Council impeded by the veto-wielding Permanent Security Council members Russia (who particularly support the Serbian claims\(^{438}\)) and probably China (a stringent upholder of the sovereignty and territorial integrity) did not accept the plan. However, a year later in February 2008, the Kosovo provisional authorities took the initiative and boldly declared independence.\(^{439}\)

They have closely followed the Ahtisaari Plan by creating a Constitution, requesting that the International Civilian Representative (ICR), European Union Rule of Law Mission (EULEX) and NATO embrace the tasks outlined in the Ahtisaari Plan; and these organisations have done so. Additionally, UNMIK operations and staff numbers have been hugely scaled back. Although UNMIK, NATO and EULEX are very careful to remain neutral, they have allowed the Kosovo self-government to dictate the pace of change and have abided by their decisions and the Ahtisaari Plan, making the neutral

\(^{433}\) UN Security Council, Resolution 1244, p.2
\(^{434}\) Ibid, paragraph 11 (c & d)
\(^{435}\) Ibid, paragraph 11 (f)
\(^{436}\) IDMC, ‘Kosovo’, p.3
\(^{437}\) Ibid, p.3
\(^{438}\) Ibid, p.3
\(^{439}\) Ibid, p.3
position a minor paradox. However, the IDMC also note that for the UN Security Council resolution 1244 still applies, the Serbian government reject the independence claim and will only cooperate with UNMIK.\textsuperscript{440} The Kosovo independence decision has been handed to the International Court of Justice (ICJ) by the UN General Assembly and the former ruled that claiming independence was not a violation of international law but refrained from endorsing the Kosovo provisional authorities.\textsuperscript{441} Additionally, out of a total of 192 United Nations members, 76 of them recognise Kosovo\'s independence\textsuperscript{442} and if the total reaches 100 Kosovo and become a member of the UN\textsuperscript{443}. These are significant outcomes, and now it is clear that the international authorities do not view the declaration as a violation of international law, with significant international support, the way is paved for a favourable political settlement for the Kosovo government.

One consequence of this dispute is the Serbian government running parallel institutions as a way of maintaining it sovereignty claims. These parallel institutions, completely independent and separate to UNMIK, run in Serbian enclaves, particularly in Northern Mitrovica and include areas of health, education and courts.\textsuperscript{444} For example, schools in majority Kosovo Albanian areas are administered by the Ministry of Education, Science and Technology (MEST) and in Kosovo Serb areas schools are run and follow the curriculum of the Serbian Ministry of Education and Sport (SMES).\textsuperscript{445}

No where is this parallel system more dramatically evident than Northern Mitrovica. A recent report by the International Crisis Group states that in practice, Serbia and Kosovo both exercise partial sovereignty of the North of Kosovo. It reveals that both currencies (Euro and Dinar) are used, in addition to health, education and courts there are parallel public services, energy companies and civil authorities.\textsuperscript{446} The Serbian government continues to pump a staggering 200 million Euros a year into Mitrovica to

\textsuperscript{440} IDMC, \textit{Kosovo}, p.3
\textsuperscript{441} Peter Beaumont, Kosovo\'s independence is legal, UN court rules, The Guardian, Thursday 22 July 2010, last accessed on 1.6.11 at: \url{http://www.guardian.co.uk/world/2010/jul/22/kosovo-independence-un-ruling}
\textsuperscript{442} See: \url{http://www.kosovothanksyou.com/statistics/}
\textsuperscript{443} Beaumont, Kosovo\'s independence
\textsuperscript{445} Ibid, p.32-33
\textsuperscript{447} Ibid, p.3
maintain this parallel system. Perhaps the most accurate position is the Crisis Group’s assertion that sovereignty is determined by individual identity and [the] choice of the resident living in the territory. So what does this situation mean for IDPs and refugees and returnees in Kosovo?

As previously mentioned, some of the property rights records for Kosovo have been removed to Belgrade and since the Serbian and Kosovo authorities do not recognise each other [there is no exchange of records or mutual recognition of issued documents] which presents severe challenges to IDPs and refugees whatever their ethnicity. The IDMC report notes that without the property rights documentation the KPA’s mass-claims mechanism (including restitution of property) has been hampered. Additionally, the report states that in 2008 the Serbian government has closed KPA centres in Serbia (presumably in protest at the Kosovo government independence declaration) that has effectively frozen 3,500 property claim disputes because the KPA cannot proceed without the property register. However, there has recently been a memorandum of understanding between the UNHCR and the KPA which the report believes could improve the situation by allowing the opening of UNHCR property offices in Serbia.

The situation not only affects the work of the KPA but also the access to legal remedy of potential claimants for Kosovo Serbs, the RAE community and Albanians. Owing to the property deeds problems outlined previously (i.e. many are either destroyed or in Serbia and Kosovo and authorities do not recognise Serbian documents/courts or administrative bodies) Kosovo Serbs find in difficult to register their property, and as Tawil notes, without a property certificate they cannot begin the process to attempt to legally reclaim their former homes. Another vulnerable group who suffer are the over 7,000 Albanians North of the Ibar river (i.e. Mitrovica). They represent 98 percent of the total number Kosovo Albanian IDPs so this is a huge issue. There have been violent affrays when this group have attempted to occupy and reconstruct their housing and tellingly, the rental collected by the KPA from secondary occupiers (as the Kosovo

448 ICJ, Dual Sovereignty p.4
449 Ibid, p.3
450 Tawil, Property Rights in Kosovo p.18
451 IDMC, Kosovo p.7
452 Ibid, p.7
453 IDMC, Kosovo p.7
454 Tawil, Property Rights in Kosovo p.18
455 IDMC, Kosovo p.4
456 Ibid, p.4
Albanian owners do not feel comfortable returning yet) in this area has been pitifully small – only eight occupants have paid rent out of the 360 that the KPA is supposed to be administering. The main reason for this situation is that the KPS (Kosovo Police Force) are either unwilling or unable to evict secondary occupiers who have lost a claims decision or who will not pay rent. Given the hostile atmosphere and perceived insecurity for Kosovo Albanian in Northern Mitrovica and the threats, harassment and violence for the RAE communities and Kosovo Serbs elsewhere it is understandable that many are willing to return to their homes of origin.

For those that do decide to return, there is a lack of sustainability which some believe distorts returns figures. For example, the Serbian government and Serb IDP groups old that only 5,000 of their IDPs have returned sustainably. With the security situation the way it is, it is not surprising that the most successful returns have been to mono-ethnic villages for example Serbian enclaves. This might not be just because of the security situation, as the IDMC report notes that the return programmes have generally only dealt with such areas and avoided the more difficult multi-ethnic urban centres. One could argue that sustainable returns in mono-ethnic villages are the product of the return programmes, in which case, programmes should deal with the more sensitive population areas. The plausibility of this argument is strengthened by the evidence that the RAE community has also successfully returned alongside significant support from the Kosovo government including its 2008 Strategy for the Integration of Roma, Ashkali, and Egyptian Communities.

In the end, the decision to return is one that only the refugee/IDP can take. Evidence shows that many prefer to take local integration as a durable solution as opposed to return and the choice of durable solution varies depending on the place of displacement and ethnicity. The political and security issues are clearly going to be a huge factor for RAE and Kosovo Serbs decision on whether to return. A political settlement would clearly help and there is existing evidence to suggest this. First, that the Kosovo

457 IDMC, Kosovo p.7
458 Ibid, p.7
459 Ibid, p.4
460 Ibid, p.8
461 Ibid, p.8
462 Ibid, p.8
463 Ibid, p.8
464 Ibid, p.8
declaration of independence did not result in further displacement and second, the RAE community returns figures have improved since this.\textsuperscript{464}

Another reason for lack of sustainability as well as political and physical insecurity, is difficulties repossessing property or rebuilding houses\textsuperscript{465} which brings one back to the performance of the organisations who are responsible for this. As has been made clear the Kosovo Police Force have had problems in re-evictions, not charging people for offences and reposing property re-occupied illegitimately. But the local courts also cause significant problems for IDPs and refugees returning.

As Tawil points out though the mass-claims mechanism has limited the role of the local courts in restitution \textsuperscript{466} they still have important jurisdiction over the determination and protection of property rights\textsuperscript{467} The Courts failings cause problems for the displaced in several ways. First, they do not follow the procedures that govern property transactions which affects displaced minority groups, where others have attempted to use fraudulent documentation to legitimise coerced property sales of such groups. The fault of the courts is that sometimes they \textit{accept the validity} of these fraudulent documents or do not show due diligence in investigating suspect documentation. Additionally, they sometimes judge in favour of suspect claimants without any written documentation and on the testimony of \textit{eyewitnesses}\textsuperscript{468} Another way the displaced who represent minorities in Kosovo can be robbed of their legitimate property is when they (unknowingly) faced claims for that property. Tawil notes that Courts do not show due diligence in attempting to find such displaced people in order for them to defend themselves against a claim for their property. Additionally, in the event of a failure of notifying the displaced the Court will often appoint \textit{a temporary representative to defend his/her interests}\textsuperscript{469} but this representative is usually a Kosovo Albanian, who is sometimes in the pay of the claimant and in such a situation will \textit{act passively during hearings or even support the claimant}\textsuperscript{470} As a result, Tawil believes that the courts are

\textsuperscript{464} IDMC, \textit{Kosovo} p.4  
\textsuperscript{465} Ibid, p.8  
\textsuperscript{466} Tawil, \textit{Property Rights in Kosovo} p.37  
\textsuperscript{467} Ibid, p.38  
\textsuperscript{468} Ibid, p.38-9  
\textsuperscript{469} Ibid, p.39  
\textsuperscript{470} Ibid, p.39
therefore sometimes complicit in the wrongful dispossession of the displaced homes and violate the law and procedures that is supported to govern them.\textsuperscript{471}

The actions of UNMIK regarding the court system have also prevented Kosovo Serbs and Albanians from a fair trial and potentially from a legal remedy. Tawil writes that there are over 18,000 existing compensation or property claims by aggrieved Kosovo Serbs because the dispossession and damage to their property against the Kosovo authorities and international organisations operating in Kosovo. In response, UNMIK concerned at the possible paralysis of the court system has directed the courts to suspend judgement of these cases. Kosovo Albanians have also submitted roughly 3,000 claims against Kosovo Serbs and the Serbian government which have also been suspended.\textsuperscript{472} Tawil reveals that the Kosovo Ministry of Justice, the Organization for Security and Co-operation in Europe (OSCE) and European Union Planning Team for Kosovo (EUPT) are jointly acting to resolve the suspension \textquotedblleft little has been done and equally little progress has been noted in reducing the backlog\textquotedblright.\textsuperscript{473} Whereas the failures of the courts detailed above were a mixture of discrimination and corruption this problem is through the lack of capacity of the local courts to deal with such claims. Also it is the political situation because the Kosovo court authorities do not have jurisdiction to decide cases against the government of Serbia and as the ICTY (who would have jurisdiction) do not deal with property cases these claims cannot be decided. As Tawil recognises, the mass suspension of claims not only violates the right to a fair trial under the European Convention on Human Rights, it also violates the right to legal remedy (either compensation of property restitution).\textsuperscript{474}

Another reason for the lack of returns is the failure of the HPD/CC and its successor the KPA to facilitate returns. As previously noted, Carlowitz recognises that facilitating the right to return is the main purpose of these agencies and the protection of the right to return is part of the regulation governing the HPD/CC and KPA in UNMIK regulation 2000/60.\textsuperscript{475} Additionally, Smit quotes the Senior Legal Advisor of the HPD who claimed that \textquotedblleft the Directorate is potentially a very useful institutional tool for managing the return

\textsuperscript{471} Tawil, \textit{Property Rights in Kosovo} p.39
\textsuperscript{472} Ibid, p.40
\textsuperscript{473} Ibid, p.41
\textsuperscript{474} Ibid, p.41
\textsuperscript{475} Smit, \textit{Housing and Property Restitution} p.71
process. However despite this, Smit believes that the HPD/CC neglected this and that it became singularly focused on legal determinations to the exclusion of other concerns such as return. This change is documented in the how the HPD defined its own mandate as to settle legal disputes [but the] HPD is not responsible for actively promoting returns. Smit recognises that the interpretation of responsibility is not the positive obligation to ensure the right to return [but the negative obligation] to ensure that no one is actively deprived of the right due to a lack of a housing and property restitution process. This has impacted on the lack of returns and the sustainability of those displaced persons who do return because of a lack of co-ordination between the HPD/CC and its successor the KPA with other organisations that are dealing with returns.

The result of this lack of coordination is that even with legal entitlements to their property, IDPs and Refugees are reluctant to return as other conditions necessary for successful return are not provided at the same time. Conditions include financial, access to services and security. I believe that the condition the HPC/KPA can alleviate is security, particularly for a displaced person who would be a minority in their village/town/city of origin. Smit states the HPD did not cooperate enough with the UN Office for Returns and Communities (ORC) who coordinate returns in Kosovo. Smit states that the HPD should have aided returns by prioritising and bunching claims together so by considering all the claims for a property in a particular village [or street] at once, HPD could help facilitate a group of families returning at the same time, ensuring safety in numbers. This would be a simple but effective way of helping to facilitate returns beyond a legal determination of ownership.

Smit writes that the HPD and ORC did not cooperate in this way, the former claim that they offered and the ORC did not accept whereas the latter claim ignorance of such an offer. However she notes UNMIK's 2004 Strategy for Sustainable Returns which explicitly mentions that the HPD should do can do this and this will allow returns.

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476 Smit, Housing and Property Restitution p.71
477 Ibid, p.72
478 Ibid, p.72
479 Ibid, p.72
480 Ibid, p.73
481 Ibid, p.73
482 Ibid, p.73
projects to be built around repossession of homes which obviously returns the HPD and KPA to the centre of returns again though Smit remains sceptical that this is happening in practice.

Smit notes an effective HPD defence against the charge that they are not coordinating enough with other returns agency and that is that speed of the claim decisions far outstrips the ability of the other agencies to facilitate returns owing to their own inefficiency. She quotes an HPD official who states that the ORC and police cannot respectively facilitate the return of the displaced nor protect their property to keep up with HPCC claims decisions. Essentially, in this sense the HPD/CC and KPA are a victim of their own efficiency when it comes to facilitating returns.

Whether the HPC/CC was going too fast for the other agencies, that it is not coordinating with them enough, or that the other conditions are not in place for sustainable return effects the displaced by undermining making the option to return more difficult or closing it entirely. Smit explains that though they might have their legal determination and property deeds, years of uncertainty will create a yearning for a durable solution, and many cannot afford to wait until the conditions are right to return and will simply sell their home of origin property in order to fund another durable solution either local integration or relocation elsewhere.

Previously, one noted that Leckie believes a consistent policy to HLP issues and a framework that includes a Housing Land and Property Rights Directorate (including a claims mechanism) will support the rule of law. So, has the HPD/CC and KPA supported the rule of law in Kosovo? Carlowitz believes that they have contributed significantly to international efforts to re-establish the rule of law and to protect human rights for all ethnic groups. He believes that the mass-claims mechanism and its remedies have been an important, dispute resolution and settlement mechanism for the

\[483\] Smit, *Housing and Property Restitution*, p. 74
\[484\] Ibid, p. 75
\[485\] Ibid, p. 76
\[486\] Ibid, p. 75
\[487\] Leckie, *Housing, Land and Property Rights*, p. 9
\[488\] Carlowitz, *Contribution to Peacebuilding*, p. 554
various ethnic groups of Kosovo in an impartial and legal way encouraging aggrieved persons to pursue legal channels for remedy rather than resort to force.  

Carlowitz adds that they have also ensured that the human right to property could be adequately protected for all ethnic groups which is an important point. Crucially, the mechanisms have generally protected the right to legal remedy for HLP violations especially property restitution. However whilst Carlowitz is right generally, there are notable exceptions including the Kosovo Serb and Albanian claims that have been suspended by the local courts at the behest of UNMIK. Additionally the RAE community property rights have not been sufficiently protected which have been explained previously. As informal housing settlements were omitted from the claims mechanism the RAE community have particularly suffered and that along with having no access to remedy is a violation of General Comment 4 on the Right to Adequate Housing which states that informal settlements should have legal security of tenure. Additionally, Roma housing has been destroyed, its inhabitants displaced (up to 50,000) and housing has only been rebuilt in some cases. Whilst the Standards for Kosovo plan has remedied this situation with words, practically, progress has been slow. The other problem for this community has been a systematic lack of documentation that has prevent their attempts to regain their property. Since estimations state that one in four of the community do not have basic civil documents and most have lived lived for generations in informal settlements without title deeds. However, the authorities have attempted to improve this situation by the housing section of the Strategy for the Integration of Roma, Ashkali and Egyptian Communities, not charging such communities for late registrations of births and provided legal help and successful registration programmes.  

Finally Carlowitz believes that the mass claims mechanisms have provided title security and allowed computerized information to be included in the newly established property registration systems. The Immovable Property Rights Register is indeed a great
innovation that helps the rule of law and title security has been provided in the legal sense though this was not until was only the creation of the KPA. As mentioned before, this is because for Claims the HPCC only decided who had lawful jurisdiction over a property but this did not amount to a title deed. Since a title deed was necessary to be registered in the Property Rights Register and the absence of such a deed would make the legitimate owner/occupier vulnerable to future court challenges, the newly created Property Claims Commission’s decisions on cases included a title determination.

The Kosovo Cadastral Agency has helped the rule of law with the reform of the Cadastral and Property Registration system and at the same time has been sensitive to local laws and used them whenever they could. Additionally, the Regulation on the Repeal of Certain Discriminatory Legislation has helped to make the current laws legitimate, and the Registration of Contracts for the Sale of Real Property in Specific Areas of Kosovo) has protected Serbs from things like being forced to sell their properties.

On the whole, I agree with Carlowitz with only a few exceptions, however there is an important distinction between the rule of law and what Smit calls a property rights-respecting culture. This is because legal improvements and protections can only offer limited protections. If the police and local courts cannot or will not enforce these laws and protections, which as we have seen is sometimes the case, they will not be fully effective. The fact that once secondary occupants have been evicted from properties they have been looted and vandalised without the culprits being prosecuted is a good example to show that both civilians and law enforcement agencies are not respecting property rights. Smit states that in focusing mainly on the dispute mechanism, the HPD/CC and KPA have neglected fostering a property rights-respecting culture, the consequence being that their claims decisions are sometimes not being respected (by civilians or law enforcement agencies).

Aside from the evidence already shown, the March 2004 riots where some ethnic Albanians reportedly took advantage of the chaos to make grabs of residential properties is a sobering reminder of how much more work needs to be done on this front. Smit states that the authorities having realised

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496 Smit, Housing and Property Restitution p.77
497 IDMC, Kosovo p.7
498 Smit, Housing and Property Restitution p.77
499 Ibid, p.77
the problem have belatedly launched campaigns\textsuperscript{500} to improve the rights-respecting culture and HPD decisions but all the examples of the problems faced by the displaced show that this is an area that remains stunted.

I will now examine the HPD/CC and KPA’s contribution to reconciliation between the ethnic groups of Kosovo. I will use Carlowitz’s definition of reconciliation as the process through which a society moves from a divided past to a shared future\textsuperscript{501} One way that these organisations can aid reconciliation is by facilitating direct contact between the various groups to resolve property disputes. As Smit states the restitution process has the potential to bring individuals of differing ethnic groups face to face\textsuperscript{502} which is the first step towards reconciliation because the groups have to engage with each other to resolve their property disputes where otherwise they would have little contact especially considering the extensive parallel structures. Smit notes that in the beginning claims were intended to reach the Claims Commission when mediation between the two individuals had failed or was not appropriate\textsuperscript{503} and so originally direct contact was the first choice. But she explains that due to HPD not employing mediators to enable this and because of the \"new push towards efficient procedures,\" the mediation option has been dropped altogether\textsuperscript{504} Presently Smit explains, beyond making the claim, claimants have very little to do with the process and though this helps efficiency it represents an opportunity lost.\textsuperscript{505} Though agreeing to a solution between themselves on housing sounds slightly trivial in its contribution to reconciliation it would be one of the few situations where the groups would have to meet and engage with each other\textsuperscript{506} and would represent progress on this front. In of judgement of simplicity and efficiency over a more long-winded process that would offer crucial reconciliation opportunities the HPD/CC and KPA have not contributed to peacebuilding as much as they could have done. This judgement is justified because had they chosen this option, it would undoubtedly have slowed the speed of claims mechanism depriving people of a legal remedy and returns to their homes of origin.

\textsuperscript{500}Smit, \textit{Housing and Property Restitution}, p.77
\textsuperscript{501}Carlowitz, \textit{Contribution to Peacebuilding}, p.554
\textsuperscript{502}Smit, \textit{Property Restitution and Ending Displacement}, p.203
\textsuperscript{503}Ibid, p.199
\textsuperscript{504}Ibid, p.199
\textsuperscript{505}Ibid, p.198-199
\textsuperscript{506}Ibids, p.201
Another contribution of the HPD/CC and KPA has been their role as a transitional justice mechanism and their rights-based approach. It has been demonstrated that they have followed the rights-based approach by perceiving housing, land and property abuses causing and resulting from the conflict as human rights violations and have provided legal remedies for them through property restitution or compensation as well as repealing discriminatory laws. Indeed Smit notes that considering the housing, land and property rights abuses and discrimination a rights-based approach is appropriate.\textsuperscript{507} The great benefit of the rights-based approach too has been to provide legal remedies and too legally resolve peoples HLP grievances through the mass claims mechanism which despite being hampered by the political and security situation, other returns agencies and some of their own problems the HPD/CC has generally achieved. In this way, Carlowitz believes that they have provided œpost-conflict justiceô\textsuperscript{508}

Another classic transitional justice characteristic of the mass claims mechanism that has contributed to peacebuilding is what Carlowitz calls œacknowledging past wrongsô\textsuperscript{509} He explains that the work of the HDP/CC and KPA alongside repealing discriminatory legislation represents a public condemnation of past abuses and a recognition that they require remedy. Carlowitz writes that œit provided a necessary outlet for ethnic Albanian angerô and was indispensable to the coming to terms with the legacy of violent ethnic conflict\textsuperscript{510} that has facilitated reconciliation at the individual and national level. It has also contributed to sustainable peace because as it has been an outlet it is has stopped the group from taking matters into their own hands in the search for remedy. Admittedly, there is a lack of respect for property and discrimination, but it could have been much worse and it has stopped widespread violence. Whilst the riots of 2004 might spring to mind as a challenge to this statement Carlowitz points out that despite property issues being the most sensitive issues during and after the conflict the riots were not caused by property grievances.\textsuperscript{511}

\textsuperscript{507}Smit, ŕProperty Restitution and Ending Displacementô p.203
\textsuperscript{508}Carlowitz, ŕContribution to Peacebuildingô p.555
\textsuperscript{509}Ibid, p.554
\textsuperscript{510}Ibid, p.555
\textsuperscript{511}Ibid, p.555
In conclusion, housing and property restitution emerging from the right to return to one’s home of origin and the right to remedy represents an important development in post-conflict peacebuilding. It is one of the few examples where ESC right abuses have been perceived as human rights violations and have provided legal remedies for them. This has offered an important durable solution for vulnerable groups such as Kosovo Serbs and after the amendment of the KPA, to the RAE Community. Whilst the impartiality and non-discriminatory aspect of the organisations have protected vulnerable groups like minorities, in other areas, as has been demonstrated they have not been adequately protected.

The claims mechanisms of the agencies have succeeded in deciding property claims in an efficient and timely manner providing a legal remedy and property restitution in particular to thousands. They have done so on a tight budget and in a time period under what was estimated and have shown what an effective mass-mechanism can achieve. Property restitution or the security of tenure that a positive decision gives has provided a crucial remedy to forced eviction and other housing, land or property violations. Although the HPD/CC have been quicker with claims than the KPA the latter has a bigger and more difficult mandate considering the addition of commercial property and agricultural land, of which claims were four times higher than predicted.

Regarding returns, ethnicity dictates the numbers, accordingly the vast majority of Kosovo Albanian displaced have returned to their homes whereas minority groups of Kosovo particularly the Kosovo Serbs and RAE community the rate of returns is much lower despite many having their home returned to them. The poor return figures for these groups can be explained by the failure of the HPD/CC and KPA, the political and security situation and finally, the failure of other organisations or bodies whose mandate includes refugee and IDP returns. The dispute over sovereignty and existence of the parallel systems has not been conducive to integration and reconciliation between the ethnic groups which has deterred them from choosing to return to their homes of origin. The situation not only affects the work of the KPA and the access to legal remedy of potential claimants for Kosovo Serbs, the RAE community as well as Kosovo Albanians North of the Ibar river. The hostile atmosphere and insecurity of these groups whose homes of
origin lie in an area where they are minority makes them reluctant to return. This will only ease when there is a political solution.

The performance of the organisations who are responsible for returns is another reason for poor return numbers. As has been made clear the Kosovo Police Force have had problems in re-evictions, not charging people for offences and reposing property re-occupied illegitimately. But the local courts also cause significant problems for IDPs and refugees returning. The good work of the HPD/CC and KPA is being undermined because without judicial and law enforcement protection a successful claimant cannot or will not return to their home. UNMIK act of freezing tens of thousands of Kosovo Serb and Kosovo property dispossessing and damage claims against the international organisations and Serbian government respectively has violated the claimants right to a trial and right to a legal remedy.

Another reason for the lack of returns is the failure of the HPD/CC and its successor the KPA to facilitate returns. It has been shown that facilitating and protecting the right to return is the main purpose of these agencies. However, they have neglected this by only dealing with legal determinations of housing, land and property and not co-ordinating with other organisations dealing with returns. I believe this is a problem of their mandate, facilitating the right to return is a very ambiguous term and the complaints against the HPD/CC and KPA are only valid if their mandate includes a positive obligation to facilitate returns and not just to ensure that the right to return is not deprived.

Regarding the contribution to the rule of law, the HPD/CC and KPA have supporting the this through the mass-claims mechanism resolving claims disputes in an impartial and legal way as well as offering a legal remedy in the form of property restitution. Additionally, they have protected the human right to housing and property. The exception to these have been the RAE community though improvements have been made and the suspended claims. They have additionally provided security of tenure and though the police and courts have perhaps undermined this in practice. The Kosovo Cadastral Agency has helped the rule of law with the reform of the Cadastral and Property Registration system and at the same time has been sensitive to local laws and used them whenever they could. Additionally, the Regulation on the Repeal of Certain Discriminatory Legislation has helped to make the current laws legitimate, and the
Registration of Contracts for the Sale of Real Property in Specific Areas of Kosovo) has protected Serbs from things like being forced to sell their properties.

But a property-rights respecting culture has been more difficult to achieve. Whilst this is mainly down to the other organisations who have a responsibility to enforce property rights once legal tenure has been established, the HPD/CC and KPA in focusing purely on legal determinations have neglecting promoting a rights-respecting culture but perhaps this is beyond their mandate. The 2004 riots and regular damage to property after secondary occupiers have been evicted shows that a property-rights respecting culture has not been cultivated yet. However, again, it is debatable whether fostering a property-rights respecting culture is within the mandate of these organisations, they cannot do everything. The wider their mandate the more ineffective they will be at performing their various responsibilities.

As for the contribution to reconciliation, the HPD/CC and KPA have by excluding those involved in property disputes from contributing to the process by mediation with each other have missed an opportunity for people of different ethnicities to take a step towards reconciliation. However, whilst this is well worthwhile to peacebuilding and is one potential for such organisations, it would slow down the claims mechanism and adversely affect the speed of legal remedy. There has to be a decision between speed and efficiency of legal determinations and the other aspects of peacebuilding that could be harnessed.

The HPD/CC and KPA have been successful as a transitional justice mechanism by following the rights-based approach by perceiving housing, land and property abuses causing and resulting from the conflict as human rights violations and providing legal remedies for them through property restitution or compensation as well as repealing discriminatory laws. Their contribution to peacebuilding has been to provide justice through legal remedies and to legally resolve peoples HLP grievances through the mass claims mechanism which despite being hampered by the political and security situation, other returns agencies and arguments over their own mandate the HPD/CC has generally achieved. The existence and work of the agencies has represents a public condemnation of past abuses and a recognition that they require remedy. It has removed an issue (HLP
grievances for all the ethnic groups) that could manifest itself in violence and adversely affect peacebuilding.

What is clear from the Kosovo example is that, housing, land and property directorates and claims commissions harnessing the right to return to one's home of origin and the right to legal remedy can contribute to peacebuilding in many ways. They are limited by the political and security situation and the performance of other agencies both of which they are not responsible. However, I believe their own failings result from an unclear mandate or at least the perception that the mandate is ambiguous. There is needs to be careful consideration of what the exact mandate should be and implications of this for peacebuilding because the mandate will determination their contribution to peacebuilding. They cannot be a cure-all medicine. There are difficult decisions that have to made that will negatively impact on their effectiveness in some areas of peacebuilding but improve others. The Kosovo example has shown what such organisations can (and have the potential to) achieve, the ways in which their effectiveness is impeded and the challenging decisions that face them.

**Word Count:** 27,053
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The role of property in the Kosovo conflict: an examination of the contribution and limits of the rights-based approach to housing, land and property to peacebuilding in Kosovo

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