

## **2006 - 2010 EVALUATION OF THE KOSOVO PROPERTY AGENCY**



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## **ABBREVIATIONS and ACRONYMS**

|       |                                                                                                |
|-------|------------------------------------------------------------------------------------------------|
| CRPC  | Commission for Real Property Claims for Displaced Persons and Refugees, Bosnia and Herzegovina |
| CRLR  | Commission on Restitution of Land Rights, South Africa                                         |
| CRP/K | Civil Rights Program Kosovo                                                                    |
| EAR   | European Agency for Reconstruction                                                             |
| EULEX | European Union Rule of Law Mission                                                             |
| EUR   | Euro (currency)                                                                                |
| GPS   | Global Positioning System                                                                      |
| HPCC  | Housing and Property Claims Commission                                                         |
| HPD   | Housing and Property Directorate                                                               |
| HR    | Human Resources                                                                                |
| ICO   | International Civilian Office/EU Special Representative                                        |
| IDP   | Internally Displaced People                                                                    |
| KPA   | Kosovo Property Agency                                                                         |
| KPCC  | Kosovo Property Claims Commission                                                              |
| KCA   | Kosovo Cadastral Agency                                                                        |
| KTA   | Kosovo Trust Agency                                                                            |
| MDA   | Management and Development Associates                                                          |
| MoU   | Memorandum of Understanding                                                                    |
| NGO   | Non-governmental Organisation                                                                  |
| PAK   | Privatisation Agency in Kosovo                                                                 |
| SOP   | Standard Operating Procedure                                                                   |
| SRSg  | Special Representative of the Secretary-General of the UN                                      |
| UNHCR | United Nations High Commission for Refugees                                                    |
| UNMIK | United Nations Interim Administration Mission in Kosovo                                        |
| USD   | United States dollar                                                                           |

## EXECUTIVE SUMMARY

This report strategically evaluates KPA's effectiveness and efficiency from 2006-2010. The central question posed by the donors for this evaluation was whether the Kosovo Property Agency's (KPA) founding objectives and 'value for money' were achieved. Taking stock of the socio-political contextual dynamics, operational successes and challenges the evaluators were also requested to provide recommendations and strategic food for thought on the future of the KPA/KPCC and how it fits in the property rights puzzle in Kosovo as a whole. Donors, the KPA/KPCC, partner and government institutions in Kosovo are the envisaged audience for this report. In-depth analysis of KPA/ KPCC's procedural and legal mandate<sup>1</sup> or an audit of KPA's financial and administrative procedures, however, were beyond the scope of this evaluation and will not be included.

The report is structured in six main parts: the first sets the context, the second part addresses issues linked to KPA's effectiveness, the third part focuses on questions of efficiency and the fourth deals specifically with the Kosovo Property Claims Commission (KPCC). The fifth and sixth sections then close up by providing ideas about KPA's transition and exit strategy and the evaluators' recommendations for stimulating a discussion among donors on future strategies concerning KPA's completion of mandate. The findings in the report were informed by observations and data collected during a 2 week fact-finding mission (20 September – 1 October 2010) in Prishtina and Belgrade, and by a desk top analysis of relevant documents conducted by two consultants.

### Overall Results

Overall, the evaluation team concludes that *with respect to effectiveness*, the KPA is institutionally relevant and complies with standard international practice. Claimants are also generally appreciative of its services and existence. At present there are no feasible institutional alternatives to the KPA/KPCC for restoring property rights en masse in Kosovo. Among those it collaborates with KPA holds up to a good reputation. It is considered to be transparent, professional, cooperative and responsive in improving its procedures where requested. The effectiveness, of *KPA and KPCC as a dispute resolution mechanism*, however, is premature to judge as it has so far adjudicated decisions in 21 per cent of registered claims, most of which were straight forward, and uncontested cases. Hence KPA's full capacity will be tested as more contentious cases land in its adjudication chambers, and the extent to which it will be able to effectively implement KPCC decisions. Both of these processes should be monitored closely and consistently.

While the KPA has demonstrated to be fairly effective (in the context of a mid-term evaluation), *its efficiency* has been more punctuated with accomplishments as well as setbacks. On the one hand, its institutional transition from HPD and claims registration proceeded smoothly with nearly forty thousand claims registered by December 2007. Its initial claims processing phase was also expedient when referrals and adjudication of claims rose from 498 cases in June 2007 to above 2500 in 2008 per KPCC session, amounting to a total of 26 464 processed claims by August 2010. However, the greatest setback came when 17 654 claims out of the 26 464 were overturned by the KPCC due to erroneous notification procedures. This subsequently brought down the total number of successfully resolved claims to 8 767 (or 21 per cent of the total registered).

Reasons for this institutional hiccup are numerous and are summarised in the Table on *KPA's Constraints and Challenges* below. Non-access to cadastral data administered by the Kosovo

Cadastral Agency, the use of unreliable GPS systems when marking and notifying properties under claim, lack of internal monitoring, signalling and response systems within KPA and potentially lack of technical (notification) field staff are among the key reasons. Collectively, however, they reflect the mix of contextual and internal institutional shortcomings that KPA faces and needs to improve in the future. These include better inter-institutional alignment, strategic (rather than administrative) planning and internal monitoring capacities.

### *Areas of potential future concern*

While the above assessed the past processes, the two areas of potential future concern identified in the evaluation and in need of focused monitoring, resolve and support include: i) the resolution of KPA contested and outstanding (HPD) compensation claims, and ii) KPA's shift from adjudication to implementation of KPCC decisions. During the fact-finding mission, the evaluators were exposed to diverse and often complex scenarios facing claimants during and post-implementation phase. It appears that in practice, the restoration of *de jure* legal property rights by the KPCC is only the beginning of a journey to full repossession and ability for claimants to freely exercise and *de facto* enjoy their restored rights. Fortunately, statistics suggests that this happens only in the minority of cases. Nonetheless, the evaluators would advise for the KPA, donors, local partners and the Kosovo government to err on the side of caution and provide relevant support during but also after KPA's implementation phase. The latter may include an expanded mandate of the KPA or an entirely localised solution.

*In summary*, in spite its trials and growing pains, since its inception in 2006, KPA and its supporting donors have demonstrated a capacity to weather and adapt themselves to series of trying circumstances (see Summary Tables below). The fact that this mid-term evaluation was commissioned suggests that donors are genuinely interested in KPA's continuous efficiency and effectiveness. As a result, the evaluators consider that KPA/KPCC can complete its mandate and should be supported in the future. This is providing it improves its strategic and anticipatory planning capacities, resolves its recent setbacks, consistently delivers and monitors its progress. The evaluators also foresee that the question of property rights in Kosovo will remain a frontline issue for years to come. Integrated, multi-level strategies will need to address the property question in Kosovo before property rights can reach a level of stability where they can positively affect and sustain the socio-economic well being of owners and provide sufficient legal security for a stimulating real estate market as well as investment environment. Hence donors and the Kosovo government should be aware of this reality when making future programming decisions.

## OVERVIEW OF EVALUATION FINDINGS

### KPA's Strengths

- (Post-HPD) program continuity & sustainability
- Institutional relevance & compliance with standard international practice
- Effective external communication, institutional accessibility & responsiveness
- Flexible to change & improve processes
- Transparent & professional conduct
- (apart from KCA) positive inter-institutional relations

### KPA's Constraints & Challenges

- Funding problems & high donor dependency, low local political support
- Inadequate institutional alignment
- Contextual: UNMIK handover, Serbia's non-recognition of KPA, local political support low
- Erroneous notifications, denied (pre-2009) access to cadastral data, use of unreliable GPS
- Weak internal and external monitoring, inadequate strategic planning (pre-2009)
- Commercial/ agricultural and contested claims more complex to process, delays
- Contentious implementation and post-implementation issues

## RECOMMENDATIONS

### For KPA

- Expedite processing of claims to be re-notified
- Assess and prepare for a shift in focus towards adjudication & implementation of claims
- Consistency in processing contested and compensation claims
- Communicate realistic needs & timelines to stakeholder groups
- KPCC to strengthen communication and sensitization of municipal courts to KPA process
- Strengthen strategic/ anticipatory planning, reporting, data gathering

### For KPA Supervisory Board & donors

- Pro-actively monitor KPA's progress and shift to adjudication and implementation
- Engage in developing a strategy for transition & post-KPA scenarios
- Streamline and simplify funding disbursement procedures
- Promote integrated approach on property rights issues in Kosovo
- Facilitate comprehensive knowledge, strategic data gathering linked to property issues in Kosovo
- Hold a strategic planning workshop & commission a study on KPA's exit strategy, future support systems

## I. CONTEXT

During and after the 1998-1999 conflict a large number of people were displaced in and outside Kosovo. Most Albanian IDPs returned after fighting had ceased. Many Serbian IDPs, however, still live in provisional arrangements in Serb enclaves inside Kosovo, Serbia or in IDP camps in both countries. After the war, restoration of secure housing as an incentive for repatriation became a priority in Kosovo. In response, the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) were established on 15 November 1999 under UNMIK Regulation(s) 1999/23 and 2000/60. HPD mandate was set up to exclusively deal with residential property rights and to implement HPCC's decisions. The HPD/ HPCC adjudicated and delivered decisions for all of the 29 160 claims registered within its mandate<sup>2</sup>.

As HPD's mandate phased out in the summer of 2006, under UNMIK Regulation 2006/10 (later amended by UNMIK Regulation 2006/50), the KPA became HPD's legal successor. In addition to its newly expanded mandate to receive, register and resolve 1998-1999 conflict-related claims involving 'property user rights' and 'ownership rights' pertaining to private immovable agricultural and commercial property, the KPA also inherited administrative responsibility over properties previously under HPD's administration, the voluntary rental scheme as well as HPD's outstanding compensation cases<sup>3</sup>. While by the end of 2009 KPA/ KPCC managed to implement all but ten outstanding HPCC decisions, the question of HPD compensation (known as the A and C) claims<sup>4</sup>, assessed total value of approximately 5 million EUR, however, continues to linger and cannot be properly addressed until relevant legislation and funding are made available (KPA Executive and Deputy Directors, Personal Communication, 2010).

Through its 2006-2007 intake procedure, KPA initially registered 38 500 claims. This number, however, has risen since to 41 067 (2010 figure at the time of this report). 90 per cent of the KPA claims fall in the agricultural category, 7 per cent are residential and only 2 per cent relate to commercial properties. The greatest number of claims was submitted in the Istok, Pejë, Klina, Ferizaj and Prizren municipalities (2009 KPA Annual Report, p.13). Approximately 5 percent (1800) of claims belong in the contested or more complex category while the great majority are simpler uncontested claims. Nearly all claims (99 per cent) concern the restoration of ownership rights and only 1 per cent relate to user rights.

UNMIK's termination of mandate in December 2008 and its subsequent exit had transitional effects for KPA's legal status as well as for its administrative procedures namely concerning funding. The appointment of new management – Executive and Deputy Directors also coincided. Following the non-extension of UNMIK Regulation 2006/50 (after 31 December 2008), the KPA became a Kosovo Independent Agency under Article 142 of the Kosovo Constitution and since operates under a new Assembly of Kosovo Law No. 03/L-079. While the earlier UNMIK Regulations provided timelines for KPA's activities (Reg. 2006/ 10 – 12 months, Reg. 2006/50 – until 2008), the new Kosovo law does not stipulate a time limitation clause for KPA's mandate. Hence the duration of KPA's mandate is open for interpretation.

When KPA became an Independent Agency under Kosovo Constitution in 2008 the Serbian authorities disrupted cooperation with the KPA. They had removed Serbian cadastral archives from Kosovo during the 1999 war and blocked KPA staff's access to them. KPA's regional offices in Serbia were also subsequently suspended from operating until spring 2010. With respect to the KPCC, the contextual volatility and complicated legal environment imposed by changing international administrations did not help to provide an environment for consistent jurisdiction in fair and transparent procedures<sup>5</sup>. While UNMIK Regulation 1999/23 (Article 2.7) stipulated the jurisdiction of HPCC to adjudicate possession

rights with respect to residential properties was final<sup>6</sup>, KPCC's decisions are subject to appeal to the Supreme Court of Kosovo (Law No. 03/L-079 Article 12.8). Property rights cases can however also be brought to the local courts<sup>7</sup>.

Overall, property rights issues and the KPA/ KPCC as facilitators continue to play an important role in the reconciliation process between communities and people in Kosovo. Property rights and housing are fundamental to all peoples' well being and a source of tax revenues for the government. While many of the estimated 200 000 Serb IDPs live in temporary IDP camps only a minority have been able to benefit from their restored property rights in real terms so far. Moreover, majority of KPA claimants do not want to return to their properties for various reasons. Therefore, enabling them to lease or sell their properties will be critical. This seems to be still a distant reality for many. Ensuring fair and transparent judicial procedures will equally a critical role not only in the resolution of individual level disputes, but also in attaining social justice.

## II. EFFECTIVENESS

To determine whether KPA *was effective* from 2006-2010, the evaluation examined: the extent to which KPA's founding objectives were achieved and what reasons may help explain their achievement or the shortfall thereof. To answer the 'effectiveness' question, four areas were evaluated: i) KPA's institutional relevance; ii) founding KPA's mission and objectives versus outcomes; iii) claimants' satisfaction with the KPA process and iv) outreach. The assessment of each area further included subsidiary leading questions. In addition to the four areas, constraints on effectiveness faced by the KPA will also be discussed.

### Institutional Relevance

With respect to KPA's institutional relevance the following questions were asked:

- *Did the establishment of the KPA and its support by the group of donors address a significant development problem of Kosovo in 2006?*
- *Were there alternatives to the agency and support project mode chosen?*
- *Was donors' decision to support KPA consistent with their respective missions/ previous program experiences?*
- *Did the layout of KPA take into consideration relevant best practices in recent history of post-conflict situations?*

All parties interviewed (See Annex 2), be they Kosovo government officials, donor representatives, non-governmental organisations in Kosovo and Serbia, legal and humanitarian entities or claimants agreed that *KPA was and continues to be a necessary mass claims institutional and legal instrument addressing the restoration of property rights* to IDPs affected by the 1998-99 conflict in Kosovo.

In parallel, however, some reservations about institutional parallelism – of KPA not being embedded within the local institutional framework (e.g. local courts) through which local capacities could be bolstered directly did emerge during the evaluators' discussions with local actors. At the same time, noting the reality that:

- i) local courts presently have a backlog of +/- 250,000 cases

- ii) technical legal expertise on property issues in Kosovo is lacking
- iii) in post-conflict situations, restoration of housing and property rights is a fundamental pre-condition and incentive for IDP returns, reconciliation, preservation of sustainable livelihoods, stabilization of the real estate market and stimulation of economic development
- iv) KPA made significant effort to build capacity by nationalizing managerial staff

the noted reservation about KPA's institutional parallelism is operationally unfounded. Hence with fair degree of confidence, it can be concluded that in 2006 and at present **there are no feasible institutional alternatives to the KPA/ KPCC process in Kosovo.**

In addition to being institutionally relevant, **the establishment of the KPA also complies with common international practice** when it comes to setting up property restitution and restoration of social justice commissions in post-conflict situations. KPA is in that sense very similar to the Commission for Real Property Claims for Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina (1999-2003); the Commission on Restitution of Land Rights (CRLR) in South Africa (1994-ongoing); the Iran-United States Claims Tribunal (IUST, 1981) and the United Nations Compensation Commission (UNCC) providing compensation for a wide range of losses caused by Iraq's invasion of Kuwait. Records also show that the HPD transition team conducted a learning fact-finding mission to the CRPC in Bosnia prior to KPA's establishment. It was difficult, however, to determine the extent to which KPA's architects incorporated their lessons learned in Bosnia in KPA's blueprint.

Given that plans for KPA's establishment came successively after the termination of HPD's mandate, it can be also concluded that programming, continuity and sustainability were respected. **Efforts to retain staff from HPD by continuing to employ them under KPA prevented the loss of valuable institutional memory and staff capacities built up during the HPD process.**

At the same time, the perception that KPA is a mere 'extension of the HPD mandate had some minor side-effects. **The procedural assumptions inherited from the HPD experience were not always valid for the KPA process.** KPA deals with substantively different types of claims than the HPD. For the most part, KPA deals with commercial and agricultural land claims. As a result identifying residential properties during notification procedure, for example, was simpler and easier under the HPD process. KPA's claims also range in the size, diversity of land types (e.g. backyards, farmland, forests, shops etc.) and the parcelling of land (e.g. truncated land parcels in different parts of the village within one claim, diverse land uses over time). Informal contracts and division of land among family members without formal registration of such transactions and illegal occupation also render the verification and claims processing procedure in KPA claims more challenging. Hence these are important realities to consider and not to be underestimated when evaluating KPA's performance and comparatively transposing the HPD experience onto the KPA process.

### **Founding Objectives vs. Outcomes**

The four references used in this evaluation for determining KPA's founding objectives include the UNMIK Regulation 2006/10 as amended by UNMIK Regulation 2006/50; the Assembly of Kosovo Law No. 03/L-079 and the Feasibility Study conducted by the European Agency for Reconstruction (EAR) in 2004<sup>8</sup>. Based on these, the leading question(s) in the objectives versus outcomes analysis included:

*Has the KPA carried out its core mission in terms of:  
i) receiving, (ii) registering, (iii) resolving, (iv) implementing  
and v) administering (voluntary rental scheme and abandoned  
properties), claims (within its jurisdiction)?*

The initially expected timeline for the finalization of the KPA/ KPCC mandate by the UNMIK Resolution 2006/10 was set for 12 months which was later extended by UNMIK Resolution 2006/50 until 31 December 2008. The current Kosovo Law No.03/ L-079 leaves the timeline stipulation open ended. The Logical Framework (Appendix E, p.109) in the European Agency for Reconstruction (EAR)'s Feasibility Study, however, set out a three year timeline (36 months from the inception of the program) and elaborated a more detailed set of 'expected results' for the KPA. These included:

- i) to solve approximately 11 000 property disputes concerning IDPs and Kosovo residents affected by discriminatory laws;*
- ii) to create legal certainty facilitating clear transactions; and*
- iii) to discourage illegal activities concerning land and commercial properties by clarifying the title.*

#### *Receiving and registering claims*

Through the 2006 - 2007 claims intake procedure, KPA registered 41 067 claims; an amount nearly four times higher than the initially estimated 11 000 by the EAR Feasibility Study. Moreover, under the pretext that an (unidentified) number of IDPs did not manage to file a claim during the set period, some non-governmental organizations lobbied the KPA to extend the December 2007 deadline. However, setting a limited period for the claims intake process complies with standard international practice. KPA also made concessions to accommodate additional appointments for registering claims, and extended the registration process until January-February 2008. After the 2007 deadline, any outstanding or new claimants could also file their claim in Kosovo's local courts. According to the local court officials interviewed, however, the number of such claims is estimated to be low. Though this figure would need to be verified across Kosovo, it potentially suggests that **the KPA mechanism has captured most of the intended claims, thus concluding that KPA's conduct with respect to claims intake was generally effective.**

#### *Resolving Claims*

Within KPA's operational scheme 'resolving claims' is broken down into three sub-processes: the processing and preparation of claims (for the KPCC); claims adjudication by the KPCC; and implementation or enforcement of KPCC decisions. This section only discussed the processing and implementation as KPCC's adjudication effectiveness will be covered in a separate section.

**Four years into its operations, KPA/ KPCC has effectively processed and restored the right of ownership in 8760 claims. This represents 21 per cent of the total KPA claims registered which falls short of meeting the initially proposed three-year benchmark. If taking this outcome at face**

value, KPA/ KPCC was less than effective in resolving claims under its jurisdiction. To put the latter into perspective, however, three caveats need to be considered.

Firstly, given that the initial timeline was set for a substantially smaller number - 11 000 - claims, it was unrealistic to expect that KPA could resolve four times the amount in the same period of three years. Hence KPA's architects underestimated and mis-specified the scope of KPA's task<sup>9</sup>. Secondly, alternative timeline benchmarks were not found in any of the subsequent program documents at the evaluators' disposal. Apart from the early EAR's Feasibility Study, the KPA therefore lacked clear benchmarks against which it would target its performance and adjust its strategic planning mechanisms to cater for the much higher claims intake. Thirdly, as to be discussed in the 'efficiency' section in some more detail, between 2006 – 2010, the KPA/ KPCC in fact processed 26 468 claims but due to discoveries of incorrectly notified properties KPCC overturned 17 464 of these and returned them back to the KPA Secretariat for re-processing. This became a significant setback for the KPCC's adjudication process hence KPA's mid-term effectiveness in the delivery of one of its core missions – the expedient and effective restoration of property rights.

### *Implementation*

**So far, between 2006 - 2010, most of KPA's institutional attention has focused on claims intake, claims processing and adjudication. Only less than 10 per cent of claims (see below) have so far reached the implementation stage.** The implementation, however, forms the last but critical phase in the KPA process. It is in this phase where the restoration of claimants' *de jure* property rights is facilitated to become a *de facto* right. In other words, the implementation phase ensures that a claimant fully (legally and materially) *receives* or *repossesses* his/ her property and can do with it as he/she pleases. The implementation phase activities may include: request by claimants to place properties under KPA administration; eviction; seizure and demolition of unlawful structures, auctions and entry into lease agreements. At the time of this report:

- *KPA delivered:* 3 570 KPCC decisions to claimants (less 137 Executive Secretariat dismissals; 131 to the respondent or occupant). Prior to claims being overturned by the KPCC due to incorrect notifications, however, KPA delivered 14,365 decisions (11,208 directly; 3,133 through publication list where claimant failed to attend the appointments; and 24 through the KPA website).
- *Implementation choices:* In 2009, out of the delivered KPCC decisions, 50% involved requests for administration by claimants, 19% for repossession and only 10.5% for case to be fully closed.
- *Evictions:* Between 2006-2010, KPA conducted 5824 evictions<sup>10</sup>, and 534 re-evictions in 2009-2010<sup>2</sup> (KPA Executive Director, Personal Communication).

As most of the claims have not reached implementation yet and as there were no set strategic benchmarks for this phase, it is premature to assess the overall effectiveness of KPA's activities in this area. However, in view that only around 10 per cent of cases have so far been fully closed during implementation, and as claimants face various problems in gaining full repossession (*de facto* right) of their properties during and post-implementation (see Claimants Satisfaction section below) – this area requires a cautious and pro-active approach in the future. **The evaluators urge the KPA and donors to strategically monitor the progress and arising challenges in this final phase of the KPA process. The current team of 4 staff in the implementation unit needs to be proportionally enlarged as more cases will gradually reach the implementation phase in the near future.**

**Currently, the KPA administers more than 3300 properties on behalf of claimants;** majority belong in the 'agricultural property' category. By 2009 approximately 50 per cent of successful claimants requested to have their property placed under KPA administration (2009 KPA Annual Report, p.20). According to KPA officials, claimants choosing to put their properties under KPA administration has also increased over time. This trend corresponds with UNHCR observations that less than 20 per cent of Serbian IDPs interviewed are willing to return back to Kosovo, a number which tends to decrease with each subsequent year that IDPs are displaced (UNHCR, personal communication). The common trend in claimants choosing to place properties under KPA's administration potentially suggests:

- i) that KPA's rental scheme is trusted and serves as a useful alternative for claimants who do not wish to return to Kosovo and who do not want to sell their properties;
- ii) that claimants face difficulties in selling and fully repossessing their properties; and
- iii) that (irrespective of the reasons), should this trend persist as more claims reach the implementation stage, it will bear implications for the continuity of KPA's existing or transformed mandate as an administrative body for residual post-implementation scenarios.

At the same time, it has come to the evaluators' attention that **a high proportion of properties under KPA's care are not actively rented out due to properties being too destroyed (by occupants), or due to lack of maintenance by their owners hence becoming inhabitable. This matter should be strategically evaluated further to find preventive measures to remedy this situation in the future.**

### **Claimants' satisfaction**

The limited time and scope of the fact-finding mission unfortunately prevented the evaluators from spending more time interviewing claimants. The four cases individually assessed, however, were highly informative about the **realities and complexities that both claimants and the KPA face in the verification but especially in the implementation process.** The most striking was the diversity of issues faced by claimants ranging from:

- *complicated inheritance and informal subdivision of land among family members*
- *continuous inability to fully repossess properties linked to their HPD claim*
- *recurring occupancy and illegal use of land under claim*
- *claimants seeking parallel compensation in local courts for retroactive damages caused to their properties by occupants*
- *lengthy, unclear (potentially non-effectual) execution procedures when damages are awarded by courts*
- *alterations made to claimed properties (destructions/ new constructions) by occupants*
- *unsuccessful attempts to settle claims via sale transactions outside the KPA process*
- *sellers/buyers' mixed and subjective perceptions about properties' market values*
- *claimants being coerced by occupants to sell their land*
- *contested claims based on fraudulent documentation*
- *elderly claimants fearing they won't be able to benefit if process too long.*

From the four claimants interviewed, only one claimant was willing to move back to the property while others plan to sell or lease the land. However, *in spite the complications (listed above and in Case study below), the claimants seem to be overall satisfied with the KPA process.* NGO

representatives providing legal aid to claimants also confirmed the general positive sentiment among most claimants toward KPA - *“they are glad that something is being done for them and that they have a concrete point of reference for dealing with their claim”*. Moreover, apart from the KPA or going to local courts, there are no mediation alternatives for claimants to resolve potential disputes. At the same time, as time passes and after residing nearly a decade, unemployed, in makeshift IDP camps many are growing impatient.

Because the above represent only four cases, **the evaluators recommend that in the near future donors commission a survey of a random selection of claimants or a qualitative study using structured interviews, targeting a cross-section of claimants in order to gain more accurate claimants’ perspectives about the KPA process and the realities claimants face in the implementation process.** Such a survey will provide useful information for preventive troubleshooting to ensure the sustainability of KPA’s implementation process.

### **Box 1: Claimant Case Study**

#### **One claimant, residential and multiple truncated land parcels, illegal land use**

The claimant couple has been living in Brezovica in a UNHCR shelter for IDP’s for the past 8 years. The couple first filed a claim under HPD and then under KPA; they think they have a fair ownership right to the property in question. The size of land under claim is 7 hectares, includes a house with an orchard and several parcels of arable land in other parts of the village. On few occasions the couple visited their property and found a Kosovo Albanian family residing on the premises; the other claimed land parcels are also being used by different occupants. Occupants offered to buy the property from the claimants for EUR 250/ Ar. while another Kosovo Albanian buyer residing in Canada also offered to buy the land for EUR 1300/ Ar. When the latter went to inspect the land, however, he was threatened by the occupant not to enter the bidding contest. Though the claimants do not wish to move to the property, they considered both offers to be low hence no sale transaction occurred. The claim has been uncontested so far, it is awaiting KPCC’s final decision but claimants feel the procedure is taking too long. Once the claimant’s ownership right is restored, the ideal scenario would be to sell or lease the land for a suitable price. If not, however, as it has been the case so far, the implementation of KPCC’s decision may require an eviction intervention on the residential property and on the illegally used agricultural parcels.

### **Outreach**

During the claims intake period, KPA resorted to a range of outreach channels – via the KPA Gazette, TV and newspaper ads, radio announcements, town hall meetings, public billboards, maintaining a Call Centre, visits to and information campaign in IDP camps. Mobile KPA units were also established in each of the provinces and a special information campaign bus toured to more remote rural areas, visiting 200 villages. Currently, the KPA communicates with claimants via its five regional and 2 field offices in Kosovo<sup>3</sup>, two field offices in Montenegro and Macedonia and three UNCHR/ KPA offices in Serbia; the KPA website, KPA Gazettes and mail outs. The projected budget for KPA’s 2007-2009 outreach activities was listed at 1 million EUR (2007 KPA Annual Report).

**KPA has also invested fair amount of effort to recover its outreach capacity in Serbia post-2008 since its Serbian offices were shut down.** With the aid of donors, in April 2010, KPA managed to sign an MoU with the UNHCR which enabled it to resume its activities in Serbia under UNHCR’s umbrella. Presently, the Belgrade office receives approximately 20 claimants per day and 100 per week. A collaborative

relationship with the Balkan Centre for Migration (BCM), a Serbian NGO was also struck for the latter to act as the power of attorney (on behalf of KPA) when delivering KPCC decisions to claimants living in Serbia. The agreement with BCM hence facilitates KPA's wider outreach in Serbia. **According to the evaluators, these measures jointly taken by the KPA and donors to ensure outreach in spite arising obstacles are commendable and have been effective.** Though once again, a more thorough analysis by interviewing or surveying a larger group of claimants would be informative for verifying this conclusion.

## **Constraints on KPA's effectiveness**

### *Dependency on donor funding*

It is unavoidable that dependence on external contextual effects, donor funding and political support have a bearing on KPA's effectiveness. While the funding constraints will be discussed in more detail in the next section, the role of adverse contextual effects and need for political support by donors was apparent during: (i) Kosovo government's suspension of KPA's implementation activities in 2007 (Executive direction No. 2007/41); (ii) the termination of UNMIK's mandate in 2008; (iii) the negotiation of access to KCA's cadastral data by KCA; and more recently (iv) in renegotiating the re-opening of offices in Serbia under UNHCR's umbrella. KPA's vulnerabilities and the intervening role of donors' political support linked to KPA's effectiveness in this respect need to be recognized.

In the future, donors' and EULEX's support is envisaged in assisting KPA to liaise with the Kosovo government to resolve the outstanding HPD/ HPCC (A and C) compensation claims (see Footnote 5) from UNMIK Regulation 2000/60 which (under Law 03/L-079) fall under the Government of Kosovo and KPA's responsibility. **KPA's increasing shift toward implementation of KPCC decisions may also require donors' involvement, namely assisting the KPA to deal with arising contentious implementation scenarios and in strategizing on how to effectively manage KPA's post-implementation transition and its full exit or termination of mandate.**

### *Precarious political & public opinion in Kosovo*

KPA stakeholders and local partners note that KPA enjoys low political support from the Kosovo government and the public at large. The Kosovo government currently contributes 42% of the KPA budget whereas donors would like to see this number increase to 60%. The Kosovo Parliament has also found it difficult to approve (until recently fall 2010) the appointment of two local (KPA) Supervisory Board members. As a result, KPA's Supervisory Board has not officially met since 2008. The same situation is pending at the Supreme Court where the Kosovo government has so far failed to appoint two local panel judges for KPA related hearings. When approached, however, Kosovo government officials were willing to discuss and were well informed about KPA's activities. Some of them, however, expressed that KPA competes with other pressing needs such as the dilemma of privatizing socially owned properties, in the stabilization of the property question in Kosovo.

Though it was difficult for the evaluators to establish Kosovo government's exact position on the KPA, the role of the public and political opinion is not to be underestimated in the reconciliation, media coverage and awareness building about the KPA and in the overall stabilisation of property rights process in Kosovo. The mediatization and high public value vested in the South African and Bosnian restitution processes, for example, maintained the property question in the frontlines of the political agenda and played an active role in keeping the restitution process accountable. This seems to be missing in Kosovo. **Hence KPA stakeholders, the KPA and the Kosovo government**

**need to continually strive toward a constructive and collaborative working relationship to facilitate an optimal environment for the KPA process to succeed.**

*In summary of this section, it can be concluded that the KPA is addressing an important development and restoration of justice question in Kosovo. When it comes to its institutional relevance, KPA is and has been effective. Its beneficiaries (claimants) also express a general satisfaction. At present, there are no feasible alternatives to the KPA in Kosovo. At the same time, to fully assess KPA's effectiveness is yet premature as it has only delivered and implemented decisions in less than quarter of the total claims registered. Noting the diverse pre- and post-implementation complications that claimants face suggests, however, that KPA's process is only entering its critical period where its full 'effectiveness' will be tested. Donors need to be aware of this. Donors also need to acknowledge KPA's institutional vulnerabilities and its dependence on donor as well as Kosovo government's political support and funding. The implementation phase may face various challenges where political resolve will be needed at multiple levels.*

### **III. EFFICIENCY**

In the founding documents KPA was envisaged to be a more efficient alternative for processing IDPs' claims to ownership rights than any existing local institution. The central question underlying in this section therefore asks: *since its inception in 2006 - October 2010, was the KPA efficient and did it provide 'value for money'?* The following indicators were used to answer this question:

- *KPA's efficiency in terms of cost incurred per claim*
- *time it takes KPA to process claims*
- *the determinants and constraints to KPA's efficiency*

To be noted, the figures below are mere approximations. As the KPA is still in the operational mode of running multiple and highly interlinked processes, many aspects were difficult to disentangle with great accuracy and to attach unit values to them at this point. Moreover, relevant (and strategic) statistical data are still in the process of being compiled by the KPA.

#### **2006 - 2010 Value for Money**

In EAR's (2004) Feasibility Study (p.3), the study team estimated that the extended HPD mechanism – i.e. KPA, would need less than 3 years at the cost of 18 million EUR to fully process 11000 claims. The KPA mechanism was conceived to be more efficient when compared to local courts which were expected to take 9 years at the cost of 33 million EUR or the KTA which was anticipated to complete the same task in no less than 4.5 years for 30 million EUR.

From 2006 - 2010, four and a half years into KPA's operations, KPA finalised 8 760 or 21 per cent of the total registered claims at the cost of 11.6 million EUR (September 2010 KPA figures). This means that **so far per unit, a successfully processed and adjudicated KPA claim cost 1324 EUR to resolve.** This is in effect lower than the amount initially envisaged of 1636 EUR in EAR's Feasibility Study. Therefore, when it comes to cost efficiency, KPA is performing in a more cost efficient way than anticipated by the EAR study. Moreover, the cost per claim would have been even lower (+/- 499 EUR) had the KPA not erroneously notified the mentioned large batch of claims. In other words, in effect KPA processed and submitted a much higher number of claims to the KPCC - 26 468 (66 per cent of the total), but because 17 654 of these were erroneously notified, the number cannot be counted in the category of 'successfully' processed claims .

## Box 2

### 2006 - 2010 KPA deliverables in a nutshell:

**Received & registered:** 41 067 claims  
**Claims processed:** 26468 (incl. false notifications)  
**Fully adjudicated:** 8 760 claims (21% of total registered)  
**KPCC decisions overturned:** 17 654 (false notifications)  
**KPA administered properties:** 3356  
**Properties actively rented:** 918 (27% of total admin.)  
**Evictions conducted:** 5824 (majority HPD)  
**Contested cases:** 1800  
**Cost per claim (2006-2010):** 1324 EUR

NOTE: Budget refers to the 2006-2009 period, but some figures may be from the latest statistical count 2010 (hence the rough estimation)

## Time efficiency

**Though KPA seems to be on target in terms of costs incurred per claim, it has been somewhat less efficient in terms of time.** Going back to the initial estimate set out by the EAR Feasibility Study, KPA was expected to restore property rights for 11 000 claims in 'less than three years'. Currently, it is in its 4.5 years of operation (April 2006 – October 2010) and has *correctly* processed and adjudicated 8760 claims which amounts to 1947 correctly processed and adjudicated claims per year. Hence, if KPA kept going at this rate, the outstanding 32 307 claims would take it an additional 17 years to verify, adjudicate, deliver and implement. From any stand point, this not efficient.

When compared to the HPD process which has adjudicated 29 160 in 77 months (November 1999 – March 2006), in other words, at a rate of 4944 claims per year and to the results of the Bosnian Commission for Real Property Claims for Displaced Persons and Refugees (CRPC) which settled +/- 240 000 claims in 93 months, i.e. 30 968 claims per year, KPA's time efficiency is visibly low.

At the same time, **two caveats should be taken into account when putting KPA's time efficiency into perspective.** The first is **the general difficulty in pinning down accurate and valid measures of time (or cost) efficiency in mid-term of a program as each restitution program is unique, has its own contextual specificities, learning curve(s), dynamics and challenges.** Hence the amount of claims settled per year may vary from year to year depending on a combination of factors. KPA's problems with accessing cadastral data coupled with unreliable GPS equipment, inadequate internal monitoring system which has lead to a vast number of the claims to be wrongfully notified, UNMIK's hand over, and pre-2008 problems with funding are some such examples.

Secondly, **if the procedural expediency was to be assessed on the basis of including the 17 464 erroneously notified claims, KPA's processing rate would amount to 5881 claims per year.** Nevertheless, though the overturned claims will be easier to speed-track as most of the verification work on them was already finalised, **even at the above rate, it is unrealistic to expect that all outstanding claims (be it those not yet submitted to the KPCC or those falsely notified) by the end of**

**2011 or 2012.** In other words, KPA has to reinforce and increase its claims processing capacity or extend its deadline accordingly (see section V on Transition and Exit Strategy).

### Box 3: Comparative Deliverables of Other Restitution Commissions

| Commission on Restitution of Land Rights (CRLR) - South Africa                                                                                                                                                                                   | Commission for Real Property Claims and Displaced (CRPC) - Bosnia                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Duration:</b> 1994 – 2010...still ongoing<br><b>Total claims:</b> 79 000<br><b>2010 Status:</b> at 94 % (exp. closure in 2011)<br><b>Budget:</b> approx. 2.3 billion USD<br><b>Staff:</b> 511 (top ups up to 700 during implementation phase) | <b>Duration:</b> 1996 – 2003<br><b>Total claims:</b> 240 223<br><b>Beneficiaries:</b> 1 million, refugees/ displaced<br><b>Properties restored:</b> 320 000<br><b>Budget:</b> varied, from initial annual budget of 600 000 USD to a peak of 6.5 million USD.<br><b>Staff:</b> +/- 300 |
| <b>Key challenges:</b> groups/ community rather than individual based claims; large rural claims and lucrative commercial estates most difficult to settle; unwilling sellers; high staff turnover, post-settlement support                      | <b>Key challenges:</b> implementation of decisions, ethnically divided municipalities, initially reluctant municipalities to accommodate process                                                                                                                                       |

### Managing case loads: uncontested, contested, compensation claims

KPA has different types of claims in its portfolio. So far, the KPA has predominantly focused on processing and adjudicating uncontested, or ‘easy claims’ where claims’ documentation is complete and easy to assess. However, roughly 5 per cent, +/- 1800 KPA claims (1100 with confirmed respondent; for 700 confirmation needs to be conducted) fall into the contested category where a claim is contested by a third party or is missing documentation, among other issues. Though seemingly small in proportion, these claims are complex, contentious and will likely take longer time to resolve. If not properly addressed and managed they can cause procedural delays in the future. The procedural status of these claims as to how many are at what stage of processing is unclear at this point. *KPA’s 2010 Action Plan for Claims Processing* provides some strategic thought in this direction, however, **the evaluators recommend that the treatment of the contested claims is not underestimated. Immediate and consistent steps need to be taken by the KPA to effectively address this issue. The Supervisory Board needs to pro-actively monitor the effective implementation of KPA’s 2010 Action Plan for Claims Processing.**

**HPD compensation (or also known as A and C) claims and claims related to the loss or the damaged of property resulting from the March 2004 riots are additional categories of claims in need of resolve.** The KPA has been cooperating with the EULEX war Crimes unit in relation to these properties (KPA Executive Director, Personal Communication) but once again progress needs to be consistently monitored.

### Human resources and staffing

The KPA currently employs 268 staff (255 locals and 13 internationals). Since 2006 personnel costs have on average consumed about two-thirds of KPA’s budget annually (KPA Annual Reports). For distribution of staff per KPA unit, see Annex 4. A full account of KPA’s efficiency and ‘value for money (per unit cost)’ in terms of human resources (HR) would require an in-depth audit. This was

beyond the scope of this evaluation. Based on interviews with the KPA Executive and Deputy Directors and KPA staff, however, HR have not been an impediment in KPA's efficiency so far. At the same time, in the absence of property rights expertise in Kosovo, **KPA is highly dependent on qualified technical (international) staff**. Because the latter is conditioned by donors' and international organisations' discretion to second staff, the numbers of KPA's technical staff have tended to fluctuate in the past hence rendering the KPA susceptible to human resource volatilities and delays in its output. **Due to specific donor disbursement procedures and the general lack of funding pre-2008 and in the early phases of post-UNMIK's exit, the KPA also faced difficulties in being unable to issue employment contracts longer than 6 months**. This had repercussions for its ability to recruit qualified staff. Since 2009, this situation has improved significantly. However, the evaluators recommend that in spite the current satisfaction with its HR capacities, the KPA consistently and strategically reviews its staffing needs proportional to the undergoing processes. **A shift from processing to adjudication and implementation will be one of such important shifts in institutional focus in need of staffing re-alignment, hence to be monitored closely**.

### **Transparency, external relations and responsiveness**

**With respect to its external relations and institutional responsiveness, the evaluation team observed that KPA has an overall good reputation**. Local partners consider KPA to be transparent, accessible and professional. Its public communication via its website is actively updated, newsletters and Gazettes are regularly published and regional offices are operational. KPA (and its staff) was also praised for its level of cooperation and responsiveness to external requests for documentation and for its willingness to improve procedures. Offering claimants the option to be present and witness evictions (not done initially), its pro-active response together with the KPCC to come up with new procedures to re-absorb the affected claims by erroneous notifications, and its continuous maintenance of a positive relationships with the Municipalities, KP, UNHCR and local NGOs are some examples that attest to KPA's overall institutional flexibility and capacity to adapt to arising and unforeseen circumstances - a staple institutional requisite when steering a complex process such as restitution. In no other international instances was this an easy task.

### **Constraints to Efficiency**

#### *Funding problems*

**The KPA was confronted with substantial funding problems from its inception**. In 2007 KPA lacked enough funds to disburse the salaries of staff and had to tap into the SRSG's Contingency fund to cover them through a temporary loan. This also forced KPA "to downsize a number of international posts" and prevented implementation activities from being executed (KPA Annual Report 2007, p.5-8). As already mentioned, prior and shortly after UNMIK's handover in 2008-2009 KPA faced a similar situation when funding disbursement procedure changed substantially. KPA's inability to issue long-term employment contracts, as pre-2009 funding was disbursed on a half-year basis, seriously hampered its staff recruitment capacity and contributed to higher staff turnover. However, **since 2009 the funding situation has positively stabilised**.

#### *Limited access to cadastral data (KCA/ Serbia), unreliable GPS pre-2008*

As already numerous references were made, the false notifications in 17 464 claims had a severe impact on KPA's effectiveness. There are several factors that contributed to this institutional hiccup. Firstly, the lack of access to cadastral data of the KCA due to conflicting legislative mandate

(namely pertaining to KCA requesting fees for its services); secondly the use of unreliable (pre-2009) GPS used by KPA staff when they decided to take the matter into their own hands and bypass their lack of access to cadastral data, and thirdly potentially due to human error by KPA field employees who conducted notifications. Also the original cadastral registers and plans were taken to Serbia in during the war in 1999 and have still not returned. The lack of effective monitoring systems in place within KPA to signal the gravity of the emerging errors and the arising political or inter-institutional stalemate due to weak political will to solve the situation only further exacerbated the problem.

Hence, in this sense KPA tried to be efficient by trying to circumvent their lack of access to KCA's cadastral data (not to mention that it held 20 meetings with KCA to address the issue) but failed to be effective. Since the KPCC began detecting the mistakes and overturned the batch of potentially wrongful notifications, however, serious efforts were made to rectify the situation by Norwegian government providing new and highly accurate GPS devices (in addition to increasing KCA's orthographic capacities), a formal MoU was signed in July 2009 between KPA and KCA and a fast-track, expeditious procedure was set in place between KPA and KPCC to address the re-notification claims as most of them do not need to be fully re-processed again. **The estimation of the number of contested claims in the re-notification batch is still outstanding. Even though this number may be low, KPA and the Stakeholders Group should have this estimate.**

#### *Institutional Alignment*

At the same time, the evaluators question the extent to which the KCA-KPA stalemate could have been prevented. It is unclear why MoU with KCA, for example, a pivotal source for cadastral data necessary for verifying a claim, was not signed or clarified at the very beginning of the KPA process (in 2006)? From a program design perspective, the alignment of key institutions (via a legislative mandate or bilateral institutional agreement) linked to the restitution process was necessary for KPA's capacity to carry out its core mission. A special clause excluding KPA from KCA's service fees, for example, could have been inserted (in UNMIK Resolution 2006/10 and subsequently as amended by 2006/50). As KPA, unlike other public institutions, is a special temporary, mass claims legal instrument dependent on high volumes of cadastral data for accurate and expedient processing of claims, could have been used as a pretext for the clause. The delay in KPA/ KCA signing an MoU (in July 2009, three years after its establishment) has lead to a domino effect of negative repercussions for KPA's capacity to perform its core duties. It is questionable, however, that even if an MoU would be signed earlier whether the KCA had the necessary capacities to provide the relevant data to the KPA.

A similar thing can be said for KPA's MoUs, or the intermittent lack thereof, with the Kosovo Police (KP) and municipalities. For KPA, collaboration with the KP is critical during evictions, but relations with KPA via functioning bilateral MoUs were periodically interrupted; the latest MoU was signed in 2010. Formal MoUs between KPA and municipalities are presently non-existent. **The supporting role of municipalities, while not explicit in the KPA process, it is considered as an important feature of effective governance protocol(s) in Restitution processes.** Especially, in municipalities where claims are numerous (e.g. Pec, Prizren, Istok, Ferizaj). **KPA's founding design hence underestimated KPA's operational dependency on other local institutions and the need for formalized relations with them.** As demonstrated, these oversights lead to operational setbacks and should be prevented in the future.

### *Agricultural and commercial claims being more complex*

Though staff and procedural know-how was certainly gained from the HPD process, KPA's successor-ship of the HPD has been both an asset and a liability. Unlike the HPD which targeted residential 'right of use' and 'repossession' property claims, KPA's claims concern ownership rights linked to commercial/ agricultural land. KPA claims are more difficult to notify and post-adjudication implementation issues are more diverse. **Dealing with land related scenarios** (i.e. retroactive and current land use on the property, informal sub-division of land based on customary practices, added infrastructure/ housing while claim is in process, village/ community dynamics) **is more complex and poses delays in the verification and claims processing stages.** These realities hence need to be considered when evaluating KPA's procedural efficiency.

### *Weak strategic planning and claims processing procedures (pre-2008)*

Because the executive management changed in 2008 and due to relevant documentation missing, it was challenging to reconstruct with great precision the status of KPA's standard operating procedures (SOPs) pre-2008. However, judging from KPA's current results and interviews held with KPA staff, in its early phase **(pre-2009) KPA had only a limited strategic planning framework in place** with objectively verifiable indicators and benchmarks on deliverables, internal claims processing procedures, HR needs and monitoring systems to guide their implementation.

In spite this, the transition from HPD to KPA proceeded fairly smoothly. Judging from evidence, the claims intake procedure was also conducted efficiently as it probably did not differ much from the intake previous HPD procedure. In the later claims processing stages, however, it is less clear what strategic internal approach the KPA used to distinguishing between - e.g. uncontested, contested, easy to solve and complicated cases in order to complete the mandate and ensure procedural expedience. As pressure mounted for KPA to deliver results, contested cases privy to various complications also tended to be left on the backburner. Not dealing with such cases which are likely to be the most complicated and lengthy to resolve, though may seem a short-term strategy, it is one that may backfire in the long run.

Moreover, looking at two interviewed claimants' files suggests that there might be a certain level of inequality when it comes the procedural expedience. The following are some observations:

- Claim KPA 10288 (case study 1) was submitted on 20 February 2007. It was notified on 20 August 2008. The Claims Processing Report with KPA's recommendation to the KPCC was signed on 2 October 2008. The KPCC decision dates to 23 October 2008. The Implementation Order was issued on 15 April 2009 with instructions on how to further proceed.
- Claim KPA 11708 was submitted on 09 May 2007. Notification was done on 9 September 2008. The consolidated verification document was signed on 23.08.2010 (One day after evaluators' meeting with the claimant).

These two randomly selected cases show that expediency between cases varies. As of 2009, in view of the re-notifications caseload, in July 2010, an Action Plan for Claims Processing was drafted to address the issue of a balanced and more expeditious approach towards different types of cases.

### *Serbian government's non-cooperation*

According to the 2009 KPA Annual Report (p.5) the suspension of KPA's outreach via its regional offices in Serbia, has prevented "KPA's access to the vast majority of its beneficiaries and has proved particularly problematic with respect to the service and implementation of adjudicated decisions, the delivery of additional information from the claimants required to support their claim and access to the property archives held in Serbia". Though clearly a hindrance to its efficiency in the verification process, KPA exerted a great amount of effort to function as much as possible within the constraints it faced. In spite the physical closure of KPA's offices, according to the Director of the KPA field office in Belgrade, the KPA team, though in a reduced capacity, tried to continue to carry out its duties informally. In conjunction with other local partners, KPA mobilised a local lobby group to pressure and maintain its liaising functions with the Serbian government. Since spring 2010, with donors' support, the situation has now significantly improved as the KPA was enabled to resume its operations in collaboration with the UNHCR and the Balkan Centre for Migration. Moreover, the KCA is in the process of acquiring new orthographic capacities which will enable it to restore large parts of the archival data missing.

## IV. KPCC & DISPUTE RESOLUTION

Though it is still too early to assess *KPA's effectiveness as a dispute resolution instrument* as it has adjudicated on relatively a small number of mostly uncontested cases, the evaluation looked at three aspects: (i) KPCC's current efficiency; (ii) its ability to ensure due process rights; and (iii) its capacity to ensure de jure as well as de facto property rights.

### **KPCC's effectiveness and efficiency**

The low number of cases that so far reached the adjudication stage and as majority of these cases involve simple and uncontested cases, makes it difficult to fully assess the quality of KPCC's decisions and KPCC's effectiveness as a dispute resolution instrument. The dependence of KPCC's outputs on KPA Executive Secretariat's work is in this sense critical. The Supreme Court also received only about a dozen of cases, but has not been able to proceed as the local panel judge for the appeals hearings has not yet been appointed by the Kosovo Parliament.

At the same time, since 2006 – 2010, the KPCC held 18 sittings and adjudicated 26 464 cases that on average amounted to approximately 1470 claims per sitting (see Annex 4). Statistics in Annex 4 also show that KPCC has been an effective quality control mechanism for KPA's claims in reducing the number of inadequately processed claims and returns back to the Executive Secretariat over time. This role was particularly amplified when out of the 26 464 claims, KPCC discovered and subsequently overturned 17 967 decisions due to the notoriously falsely notified claims. In this sense, it can be concluded that the **KPCC has acted effectively, as an adjudication instrument as well as an additional check and balance mechanism on the accuracy of KPA's claims processing capacities.**

The KPCC also overlooks the appropriateness of procedures and means of communication to claimants, to third parties and liaises with local courts where a KPCC decision calls for claimants to seek alternative remedies outside KPCC's jurisdiction. Though KPA/ KPCC's relations with other local institutions are in general positive, **local court representatives interviewed called for (KPCC's)**

**more active communication with them. Increased sensitisation of municipal courts to ensuing realities concerning future case loads arising from unfulfilled or conflictual post-implementation scenarios is also recommended by the evaluation team.**

### **Due process questions**

Those providing legal aid to claimants aired concerns about KPCC's (non) compliance with fair procedures and due process rules. Though KPCC proceedings in principle are up to international standards and are in fact quite liberal as to the time frames when the claimant or a third party can introduce new arguments or evidence (in a claim), the mass claims procedures inherently carries the risk that in individual cases persons' procedural rights may be violated. This is specially the case if claimants do not get all the relevant documents and are not exposed to arguments provided by counter claimants. Or if they do not get the documents and communication in a language they can read and understand. Claimants interviewed, were also not always sure where they stood in the adjudication process. An additional potential risk for violating peoples' rights might arise if proceedings by HPD/ HPCC and KPA/ KPCC are not strictly separated (Case of Radmila in PRAXIS p.15-24). Though the evaluators were not commissioned to analyze the legal dimensions of KPCC decisions, the above merely highlight the inherent risks in a mass claims legal instruments where parties' procedural rights may be easier to violate (due to the sheer volume of cases) than in a case by case approach in conventional courts of law.

### **De jure vs. de facto property rights**

The KPCC dispute resolution component empowers KPA not only to restore claimants' legal rights to property ownership but also to ensure legal certainty in the facilitation of clear transactions' (EAR Feasibility Study 2004, p.109). In other words, KPA/ KPCC is first and foremost mandated to restore legal, *de jure* right to property ownership, but also to ensure that claimants can freely and *de facto* exercise that right (e.g. return to the property, to sell it, lease/rent it or further sub-divide it etc.).

Though it is too early to judge KPA/ KPCC's effectiveness in terms delivering both levels of remedies, the evaluators observed that the securing of *de facto* rights linked to the implementation and post-implementation of KPCC decisions is an area worthy of more attention and relevant support. This concern is informed by the fact that:

- i. 5 years after the end of the HPD mandate, KPA is still dealing with the administration and implementation of more complicated cases it inherited from the HPD.
- ii. Based on the HPD experience only 10% of cases were fully closed after the delivery of HPC decision, 20% were repossessed after eviction of illegal occupants, 11% were placed under KPA administration, while 34% properties were destroyed.
- iii. Similar diversity in the KPA's post-claim delivery of adjudicated decision is noted. In 2009, out of 10'199 KPCC decisions delivered to claimants, 50% involved requests for administration, 19% for repossession and only 10.5% for case to be fully closed.
- iv. Diverse post-implementation complications prevent claimants from enjoying their restored *de jure* rights (see Claimants' satisfaction section)

**In summary, KPCC was established and continues to serve as an expedient alternative to the court system which would highly likely not be able to address the high number of claims brought forward by IDPs. Though as outlined, there may be inherent risks in the mass claims mechanisms, judging by**

*KPCC's performance in returning quality-wise 'unacceptable' claims back to the Secretariat and by capturing the notification errors in a large number claims suggests that the KPCC was effective in acting as a procedural as well as judicial quality assurance measure in the KPA process.*

## V. TRANSITION & EXIT STRATEGY

### Finalization of KPA's mandate

In order to finalize KPA's mandate, the KPA, donors and the Kosovo government face two tracks of possible tradeoffs:

- i. to speed up the process at a greater short-term cost (mostly to cover the increase in human resources) hence to infuse larger amounts of funding over short time; or
- ii. to maintain steady and consistent pace yet at a slightly higher speed (processing, adjudicating) than the status quo with funding spread out over longer period of time.

The scenarios below propose three possible timelines and necessary deliverables for the completion of KPA's mandate by taking into account its existing capacity to process, make referrals and for the KPCC to adjudicate<sup>4</sup>. It needs to be emphasised that these are merely hypothetical projections with the intention to provide donors some general points of reference.

#### **SCENARIO # 1: OVERLY OPTIMISTIC - MEETING THE 2011 DEADLINE**

Noting the current 32 307 outstanding claims to be (re)processed & adjudicated, at the existing rate of 6 KPCC sessions/ year, **to meet the currently assumed December 2011 deadline, between September 2010 - December 2011, KPA/ KPCC would need to refer/ adjudicate 4038 claims per KPCC session.**

The rate of delivery in Scenario 1, however, is nearly three times the current average of KPA's 1567 referrals and KPCC's average adjudication of 1470 claims per session (See Annex 4). It also makes the following assumptions:

- i. it assumes equal processing time per claim which is in practice difficult to guarantee as different types of claims require different amount of time/ attention; the outstanding caseload includes 1800 contested and more difficult to resolve claims; 13 450 uncontested fall in the 'easier category' but have not been previously submitted to the KPCC; 17 654 claims to be re-notified (where legal preparatory work was already completed and can be speed-tracked)
- ii. the above estimate does not include other administrative processes within KPA's mandate: the issuance/ delivery of KPCC decisions (for approximately 5000 remaining individual

claimants)<sup>5</sup>; the implementation of decisions; administration of rental properties; and dealing with residual HPD compensation cases

- iii. it also does not factor in the necessary alignment of (substantially increased amount of) human resources needed proportional to the changing focus and needs.

Hence for the full closure of administrative processes in i) and ii) within 1 year's time frame and at the present amount of human resources, the evaluators do not envisage as feasible. Risk of high stress-levels hence potential errors and inefficiencies are the foreseeable in this scenario. Moreover, even if adding an additional year for the actual completion of KPA's mandate → 2012 is considered too optimistic.

#### **SCENARIO # 2: REALISTIC – FINAL COMPLETION IN 2013**

**To push the current (i) deadline to December 2012 would require KPA/ KPCC, in 14 sessions to prepare/ resolve current number of outstanding claims at 2307 claims/ session; as well as to add 1 year to complete other remaining processes within its mandate.**

Though Scenario 2 slightly exceeds KPA's existing average referrals/ adjudication rate but noting that both KPA and KPCC in their previous maximum capacity exceeded this number (the highest previous referral/ adjudication rate of 3050/ 2920 per session, in August 2008) suggests that KPA and KPCC would be capable to deliver at this rate. An extra year, however, would still need to be added in order for KPA to complete all administrative procedures under its mandate (i.e. including ii) and iii) activities above ) hence bringing it to full completion by December 2013. This is also assuming that no major contingencies would come in its way.

#### **SCENARIO # 3: ARISING CONTINGENCIES & COMPLICATIONS →2014/ 2015**

**Scenario 3 involves the 'worst case' scenario of unforeseen negative circumstances and contingencies, hence delays added to Scenario 2.**

Even though the KPA has been in operation for four years and has (hopefully) passed through most of its learning curve(s), unforeseen complications and contingencies (e.g. political, previously the KCA dilemma and false notifications) may arise and cause delays. As noted earlier, these are most likely to arise in connection to resolving contested cases and in dealing with contentious situations during the implementation phase. The failure to strategically allocate human resources and funds may also add delays in the KPA and KPCC processes, as both shift into high gear.

Though the above are mere hypothetical speculations, donors should be aware that unforeseen circumstances may stall KPA's progress and therefore prepare for such possibilities. **Prescient contingency funds need to be budgeted (irrespective of the actual Scenario).** The contingency or worst case scenario would see the KPA adding on 3-4 years (to the current projection, depending on circumstances), hence KPA finalising its mandate in 2014. Still, much of the latter can be

avoided if procedures are consistently and effectively monitored and troubleshooting is proactively practiced jointly by the KPA Secretariat, KPCC and the Supervisory Board.

### **Future transition and exit strategy**

While KPA's core mandate might come to an end in the foreseeable future, its accessory obligations such as implementation of HPD decisions, administration of property as asked by owners or as part of its mandate (demolished property) and rental scheme might not be finalized at the same time. It may also take years until the courts in Kosovo will be ready to deal with property rights issues in an expedient and professional way.

Administration of property and the voluntary rental scheme might be needed to run and protect properties owned by members of the minority population for a long period until the owners can repossess the property in safety or sell at an appropriate price. This activity will continue to need international oversight until it is not needed any more or until the Kosovo government is ready to assume full responsibility after the "Ahtisaari benchmarks" are fully in place.

The managerial and legal capacity built up in KPA might be an important contribution to the future of judiciary or alternative dispute resolution mechanisms set up for real estate or other specific property rights issues in Kosovo. Both aspects need to be addressed in future strategic plans and/or legislation of the Kosovo Government and its judiciary, as well as in the programming of international donors and support administrations (EULEX and ICO).

The implementation of an exit strategy would also mean to start thinking about appropriate future structures (judicial and administrative) in Kosovo to deal with the property issue in an integrated manner. Such initiatives should take into account, that while the court system in Kosovo might not be capable to absorb complex, difficult and sensitive property rights cases for some time to come, some administrative legal procedures concerning real estate property issues could be conducted by legally trained administrative bodies instead.<sup>11</sup> Hence taking off the unnecessary administrative burdens from the overloaded courts.

**In summary,** *planning for KPA's transition does not only imply to come up with a comprehensive plan on how and when to finalize KPA mandate. It also includes finding ways on how to deal with issues arising during the adjudication and implementation processes. It means to come up with ideas on how and to whom to effectively hand over KPA's activities or remains thereof at the end of its mandate. Here the donors will have to re-evaluate their commitments and use their discretion to the extent they want to interpret and extend KPA's mandate. Whether to close the shop full stop and let the local institutions take over or to ensure that claimant's defacto property rights are secured which may include softer but continuous post-implementation support activities to claimants. Regardless, a strategically comprehensive transition and exit strategy will need to be worked to assure the sustainability of immovable property rights issues in Kosovo as a whole.*

## VI. RECOMMENDATIONS

### For KPA

- **Expedite the processing of claims affected by erroneous notification procedures** - a cautious fast-track approach might bring this large number of claims to a final decision in due time.
- **Consistency in processing contested claims** (KPA & KPCC need to provide a realistic strategy on how to bring these cases to a settlement within the time frame of the overall operation and taking the implementation phase into consideration.
- **Implementation of KPCC decisions:** KPA needs to prepare adequate resources and institutional mentality shift toward a phase of the operation when large numbers of cases will await implementation. A strategy needs to be set in place to deal with complex implementation situations (evictions, illegal occupancy post 1<sup>st</sup> and 2<sup>nd</sup> evictions, removals, repossession of damaged properties, contested lucrative commercial, agricultural/ forest land).
- Together with donors and the Kosovo Government establish a strategic plan to **to facilitate the resolution of compensation and destroyed property claims**
- **KPCC to strengthen communication, cooperation and sensitization of municipal courts to KPA's process** & potential post-KPA issues (property damages, illegal occupancy, evictions), do more than referring cases by KPCC (i.e. create legal liaisons)
- KPA needs to **adopt an anticipatory/ strategic rather than administrative/ reactive planning approach on a consistent basis**. This includes setting concrete benchmark, estimating processing time, and spelling out human resources, funding and political support required for the completion of the mandate. This should include developing a comprehensive strategic planning and monitoring system. Estimate the time to process different types of claims and anticipate potential bottlenecks, challenging areas (i.e. implementation). *2010 Action Plan for Claims Processing* is a step in the right direction.
- (Linked to previous point) **Improve analytical statistics gathering** – in addition to creating lists of statistical updates, develop a quarterly or semi-annual practice of putting statistics into perspective (best case scenarios, worse case scenarios, timing issues – estimate approx. duration of different claims categories, HR needs etc.)

### To KPA's SUPERVISORY BOARD & DONORS

**Awareness concerning KPA's shift to adjudication and implementation** As the pressure for KPA to resolve and speed-track claims affected by erroneous notifications and those yet to be verified and processed (both contested and uncontested) for the KPCC mounts, KPA will shift into high or even maximum gear. The implications for human resources and effective institutional shift toward implementation need to be considered.

**Contested and compensation claims** Though the contested and compensation claims belong to two separate categories and are misleadingly smaller in proportion to the rest, they do share one thing in

common – they are likely to be the most difficult and contentious to implement. Oversee that these categories of claims are tackled on a consistent basis; request progress/ status reports on them.

**Pro-active monitoring** Donors need to strike a fine monitoring balance by employing a realistic but pro-active, persistent approach to monitoring. At the same time, as issues related to commercial and agricultural properties tend to be more complex, donors need to provide KPA enough space and support to do deliver but at the same time expect consistent deliverables. Proposed key areas to monitor:

- the implementation of 2010 KPA's *Action Plan on Claims Processing*;
- Ensure sufficient alignment of 'technical' staff for relevant processes (e.g. expedite recruitment of 2 UN Volunteers; increase implementation team)
- Steps taken to resolve outstanding compensation (A&C, destroyed properties) claims
- Advancement and sustainability of implementation procedures
- Effective institutional alignment of actors needed to expedite undergoing processes
- KPA's analytical statistics gathering

**Trouble shooting and provision of relevant political back up** – Supervisory Board members need to anticipate potentially contentious or problematic situations in advance (i.e. to prevent the stalemate & delays in resolving the KCA situation) and take concerted steps to provide KPA with optimal environment (to the extent possible) to function in.

**Streamline and simplify funding disbursement procedures** to facilitate administrative planning and recruitment for KPA. Focusing on longer term funding security (i.e. one-year minimum) and simplifying rather than making grants/ funding allocations more complex is necessary for KPA to be able to effectively plan in advance and facilitate recruitment procedures.

**Continue support to KPA coupled with forward strategic thinking** As KPA/ KPCC's mandate approaches completion, donors will be required to make choices about: i) interpreting KPA's effective end of mandate and/or ii) the extension of KPA's mandate hence further funding commitments. The evaluation team projects that it is highly unlikely that the adjudication and implementation of remaining 78% KPA cases will be met by 2011. Forward thinking and planning will need to take this into account.

As a first step, the evaluators propose the **hold a (or a series of) moderated strategic brainstorming workshop(s)** outside of the regular KPA Stakeholders' meeting schedule. It is proposed that all existing stakeholders attend but the workshop(s) should also involve an expanded participation of representatives from municipalities, local courts, legal aid offices, NGOs and/or other pertinent local actors. The objective of this undertaking would be to come up with transparent, comprehensive, collective decisions and solutions concerning KPA's transition and possible extension of mandate.

**Promote a comprehensive/ integrated approach to property rights in Kosovo** Through their funding commitments, donors hold a fair amount of influence and leverage. Given that stabilization of property issues and real estate question in Kosovo is of strategic importance on many levels (economic development and restoration of the real estate market, reconciliation, tax revenues generation) adopting a comprehensive approach when monitoring current and devising future programming activities is critical. Strategic activities in this regard may include:

- i. How to effectively involve municipalities in post-implementation as support systems.
- ii. Standard setting for post-KPA process (alignment of courts, police, municipalities, mediation alternatives).
- iii. Legal aid issues post-KPA process to claimants (dealing with residual issues via local remedies – property damages, compensation).
- iv. Build up and institutionalize legal expertise on property issues in Kosovo.

Linked to the above, a **more comprehensive overview and knowledge is needed over the property situation in Kosovo**. Consolidating findings from (contemporary) studies and/ or commissioning new studies/ surveys in the following aspects may be considered:

- i. Profiling of returnees/ claimants as well as claimants' realities faced during and post-implementation process (could be jointly conducted with UNHCR)
- ii. Macro-perspective on KPA properties under claim (and general property/ real estate situation in Kosovo): % of the real estate market, properties under claim as a % of arable land & commercial property, impact on property values & the real estate market as such
- iii. Current and future role of municipalities/ post-KPA implications: municipalities most affected by KPA claims, overview of claimed land as a % of municipal land, claims/ possible areas for contentious situations and design of preventive interventions where necessary (sensitization and alignment of local institutions to implementation of decisions, arising situations – social housing, and post-KPA responsibilities)
- iv. KPCC decisions and implications for the legal system post-KPA mandate

## CONCLUSION

Though the section on recommendations implicitly outlines the objectives as well as results of this evaluation, it can be overall concluded that in spite the many trials, growing pains and setbacks it endured, the KPA is a relevant institution, with no existing alternatives. In this regard it has been effective and needs to be supported in the future. In terms of its efficiency, inevitably the greatest setback which has spurred a domino effect of delays and has negatively affected KPA's rate of successful deliveries of KPCC decisions to the hands of claimants (its principal mission), has been the falsely notified properties in a significant number of claims. The evaluation team views this mishap could have been prevented and stands as a fair lesson learned for the KPA Secretariat as much as for the (non-functional) Supervisory Board. At the same time, we see that since 2009 much has been done to correct this setback. Hence the evaluation team trusts that KPA can deliver the completion of its mandate (all other things equal) by December 2013. Moreover, all those involved need to put the complexity of the task at hand into perspective. Establishing and/or restoring the proper foundations for effective property rights systems was a significant undertaking for any country. There are no real shortcuts in this process. For most countries it took decades if not centuries to develop a level of stable property right equilibria where land can be legally secure in the hands of private owners, effectively utilized to sustain peoples' livelihoods, freely bought and sold by its owners, to be invested in and used as an investment, and to be protected from environmental harm, among other things. Such understanding is required in the comprehensive and sustainable shaping of Kosovo's property rights system.

## **ANNEXES**

## ANNEX 1 – DOCUMENTS USED

### Regulations

*Constitution of the Republic of Kosovo* (15 June 2008)

*Kosovo Law No. 03/L-079 – Amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property*

*UNMIK Regulation 1999/23 – On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission*

*UNMIK Regulation 2000/60 – On residential property claims and The Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*

*UNMIK Regulation on the Kosovo Trust Agency 2005/18*

*UNMIK Regulation 2006/10 – On the Resolution of Claims Relating to Private Immovable Property, Including Private and Commercial Property*

*UNMIK Regulation 2006/50 – On the Resolution of Claims Relating to Private Immovable Property, Including Private and Commercial Property*

*UNMIK Administrative Direction 2007/5 – Implementing UNMIK Regulation No. 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property*

### Other Documents

Centre on Housing Rights and Evictions (COHRE) (2008) *Property Return and Restitution: Kosovo, Working paper prepared for Review of Covenant Law Issues in Kosovo by the UN Committee on Economic, Social and Cultural Rights*. [www2.ohchr.org/english/bodies/cescr/docs/info-ngos/COHREUNMIK.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/COHREUNMIK.pdf) (Last accessed 25 October 2010)

European Agency for Reconstruction. (2004) *Feasibility Study (to Assess the Scope and Nature of Work for an Alternative Dispute Resolution Mechanism for Land and Commercial Properties in Kosovo)*.

Management and Development Associates. (2007) *Kosovo Property Agency Evaluation*.

Deloitte, KPA Audit Document (July 2006 - December 2007).

Minutes of the KPA Supervisory Board and Stakeholders' Meetings

Progress Reports to Donors

UNOPS Financial Reports

Kosovo Property Agency. (2006) *Annual Report*.

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OSCE (2009) *Report on Litigating Ownership of Immovable Property in Kosovo: OSCE Department of Human Rights and Communities*.

Praxis. (2009) *Problems of Internally Displaced Persons in Accessing Property Rights in Kosovo: In 7 Cases*, Praxis, Belgrade, Serbia. [www.praxis.org.rs](http://www.praxis.org.rs)

Secretary General of the UN Security Council. (2007) *Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Plan) Document*.

Swiss Development Cooperation. *Support to the Kosovo Property Agency (KPA), Project Document (November 2006 to December 2008)*.

Swiss Agency for Development Cooperation. *Support to the Kosovo Property Agency (KPA), Project Document (2009 - 2010)*.

US State Department (2008) *Investment Climate Statement 2008*, [www.state.gov/e/eeb/ifd/2008/100883.htm](http://www.state.gov/e/eeb/ifd/2008/100883.htm)

## ANNEX 2 - List of Interviews Conducted

| Organisation                                   | Interviewee(s)                                          |
|------------------------------------------------|---------------------------------------------------------|
| <b>Donors and International Administration</b> |                                                         |
| Belgian Embassy                                | Ambassador                                              |
| British Embassy                                | Ambassador                                              |
| EULEX                                          | Deputy Chief of Staff, Head of Property Section         |
| German Embassy                                 | Deputy Head of Embassy                                  |
| German Technical Cooperation                   | Legal Expert in Immovable Property Rights               |
| International Civilian Office                  | Head of Economic and Fiscal Affairs Unit                |
| Norwegian Embassy                              | Ambassador                                              |
| OSCE                                           | Chief of Property Section                               |
| Swedish Embassy                                | SIDA Representative                                     |
| UNHCR (Kosovo)                                 | Property Rights and Field Operations                    |
| UNMIK                                          | Head of Office of Communities, Support and Facilitation |
| <b>Kosovo Government &amp; Public Agencies</b> |                                                         |
| Kosovo Police                                  | Head of Project Coordination Office                     |
| Ministry of Economy and Finance                | Legal Director                                          |
| Ministry of Public Administration,             | Head, Project Coordination                              |
| Kosovo Cadastral Agency                        | Head of Projects                                        |
| Ombudsperson Office                            | Deputy Ombudsperson                                     |
| Parliamentary Committee on Legislative and     | Chairman                                                |
| Judicial Matters                               |                                                         |
| Municipality of Ferizaj                        | Mayor                                                   |
| Municipality of Prizren                        | Mayor                                                   |
| <b>Judiciary bodies</b>                        |                                                         |
| Municipal Court of Pristina                    | President                                               |
| Supreme Court of Kosovo                        | Judge, Property Rights Chamber                          |
| <b>KPA</b>                                     |                                                         |
|                                                | Deputy Executive Director                               |
|                                                | Executive Director                                      |
|                                                | Head of Information Unit                                |
|                                                | Head of Information and Technology (IT) Unit            |
|                                                | KPCC Judges                                             |
|                                                | Regional Offices, Pristina and Prizren                  |
| <b>Claimants</b>                               |                                                         |
| Ferizaj                                        | Claimant #1                                             |
| Prizren                                        | Claimant #2                                             |
| Prizren                                        | Claimant #3                                             |
| Serbia                                         | Claimant #4                                             |
| <b>NGOs (Kosovo)</b>                           |                                                         |
| CRP/K                                          | Executive Director, Legal Manager                       |
| NORMA                                          | Director and Legal Officer                              |
| <b>In Serbia</b>                               |                                                         |
| Balkan Center for Migration (BCM)              | Executive Director, 2 legal officers                    |
| Praxis (NGO, Belgrade)                         | Executive Director, 2 legal officers                    |
| UNHCR/ KPA Regional Office                     | Head of Office                                          |
| UNHCR (Serbia)                                 | Representative and Association Protection Officer       |

### ANNEX 3 - KPA Staff (Per Section)

|                                  |                                                                                                                           |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| • Executive office               | 1 ICO International + 1 Local KPA                                                                                         |
| • Front Office                   | 2 Local KPA                                                                                                               |
| • KPCC Support Team              | 4 Local (1 national commissioner + 2 Int. Commissioners), 1 EULEX Int. and 4 EULEX National Staff                         |
| • Claims Processing Team         | 9 Local KPA+ 2 INT + 1 UNV (+2 UNV and recruitment for 2 International Seconddees ongoing) + 2 Local recruitments ongoing |
| • Language Unit                  | 4 Local KPA (+1 recruitment ongoing)                                                                                      |
| • Administration Support         | 6 Local KPA and 16 KCB                                                                                                    |
| • Finance Office                 | 8 Local KPA (+1 recruitment ongoing)                                                                                      |
| • HR Office                      | 3 Local KPA                                                                                                               |
| • Audit Office                   | 1 Local KPA                                                                                                               |
| • IT Unit                        | 13 Local KPA (1 vacancy pending) +1 International                                                                         |
| • Property Administration(PAU)   | 6 Local KPA + 1 KCB                                                                                                       |
| • Enforcement Unit               | 14 Local KPA + 2 International + 2 Local KCB                                                                              |
| • Information unit               | 13 Local KPA + 3 KCB                                                                                                      |
| • Implementation Unit            | 4 Local KPA (1 recruitment ongoing)                                                                                       |
| • DVU                            | 7 Local KPA                                                                                                               |
| • FDM                            | 8 Local KPA + 1 KCB                                                                                                       |
| • CCU                            | 3 Local KPA                                                                                                               |
| • Prishtina Regional Office (RO) | 8 Local KPA + 15 KCB                                                                                                      |
| • Mitrovica RO                   | 12 Local KPA + 5 KCB                                                                                                      |
| • Gjilan RO                      | 8 Local KPA (1 recruitment ongoing) + 9 KCB                                                                               |
| • Prizren RO                     | 6 Local KPA + 8 KCB                                                                                                       |
| • Peje RO                        | 12 Local KPA (1 recruitment ongoing) + 12 KCB                                                                             |
| • KPA Offices outside Kosovo     | 12 Local staff (1 vacancy pending)                                                                                        |

#### ANNEX 4 - STATISTICS ON CLAIMS ADJUDICATION (August 2010)

| 2007-2010    | KPCC Session             | No. of claims referred to the Commission | Decided claims | Claims referred back to the Secretariat |               |
|--------------|--------------------------|------------------------------------------|----------------|-----------------------------------------|---------------|
|              |                          |                                          |                | Numbers                                 | % of referred |
| June/7       | 1 <sup>st</sup> Session  | 955                                      | 498            | 457                                     | 48            |
| August /07   | 2 <sup>nd</sup> Session  | 1179                                     | 487            | 692                                     | 59            |
| October/07   | 3 <sup>rd</sup> Session  | 544                                      | 528            | 16                                      | 2.9           |
| December/07  | 4 <sup>th</sup> Session  | 1863                                     | 1833           | 30                                      | 1.6           |
| February/08  | 5 <sup>th</sup> Session  | 2415                                     | 2403           | 12                                      | 0.5           |
| April/08     | 6 <sup>th</sup> Session  | 2617                                     | 2586           | 31                                      | 1.18          |
| June/08      | 7 <sup>th</sup> Session  | 2880                                     | 2850           | 30                                      | 0.87          |
| August/08    | 8 <sup>th</sup> Session  | 3050                                     | 2920           | 130                                     | 4.26          |
| October/08   | 9 <sup>th</sup> Session  | 2621                                     | 2594           | 28                                      | 1.07          |
| December/08  | 10 <sup>th</sup> Session | 2190                                     | 2140           | 50                                      | 2.34          |
| April/09     | 11 <sup>h</sup> Session  | 512                                      | 504            | 8                                       | 1.5           |
| June/09      | 12 <sup>th</sup> Session | 2520                                     | 2474           | 46                                      | 1.0           |
| August/09    | 13 <sup>th</sup> Session | 1094                                     | 859            | 235                                     | 21.4          |
| December/09  | 14 <sup>th</sup> Session | 430                                      | 583            | 36                                      | 0.58          |
| February/10  | 15 <sup>th</sup> Session | 1183                                     | 1115           | 89                                      | 0.92          |
| April/10     | 16 <sup>th</sup> Session | 528                                      | 521            | 7                                       | 0.98          |
| June/10      | 17 <sup>th</sup> Session | 611                                      | 595            | 19                                      | 0.97          |
| August/10    | 18 <sup>th</sup> Session | 1007                                     | 974            | 33                                      | 0.98          |
| <b>Total</b> |                          |                                          | <b>26,464</b>  |                                         |               |
|              |                          | Less overturned decisions                | <b>17,697</b>  |                                         |               |
|              |                          | Grand Total                              | <b>8,767</b>   |                                         |               |

| Category of Claims       | Number decided           |
|--------------------------|--------------------------|
| Agricultural Land        | 24,979                   |
| Commercial Property      | 39                       |
| Residential Property     | 1,446                    |
| Overtaken KPCC Decisions | 17,697                   |
| <b>Grand Total</b>       | <b>8,767<sup>6</sup></b> |

## ANNEX 5 - Implementation: Evictions

| Calendar Year | Evictions | Re-evictions             |
|---------------|-----------|--------------------------|
| 2006          | 1712      | N/A (data not collected) |
| 2007          | 1292      | N/A                      |
| 2008          | 1295      | N/A                      |
| 2009          | 833       | 502                      |
| 2010          | 692       | 32                       |

## ENDNOTES

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- <sup>1</sup> The evaluators were informed that the OSCE (Property Section) is currently in the process of conducting a study on the legal implications of KPCC's mandate, to be released in December 2010.
- <sup>2</sup> 5082 of these decision resulted in a request for full repossession by the successful claimant; 10 138 relate to destroyed properties – (HPD/ HPCC, however, did not provide remedies nor compensation for property damages incurred); 2147 claims were withdrawn and settled independently outside HPCC; 5000 remained under HPD (and eventually under KPA) – 3533 of these were by claimants' requests while the rest remained under HPD's ex officio care (COHRE Report 2008; [www.kpaonline.org](http://www.kpaonline.org))
- <sup>3</sup> Once the UNMIK regulation expired in December 2008, the compensation issue which had been outstanding from UNMIK Regulation 2000/60 fell to the responsibility of the Government of Kosovo and the KPA under Law 03/L-079 to resolve (KPA Annual Report 2007, Chapter 5.2.2). The status of these 258 compensation cases, however, is still pending.
- <sup>4</sup> Category A claims refer to losses of occupancy rights to socially owned apartments due to discriminatory policies between 1989 and 1999; Category B restored property title for persons who entered into informal residential property transactions after 23 March 1989 and were unable to register their property rights due to discriminatory legislation; Category C address the property possession for those dispossessed and unable to return to their homes due to the NATO air campaign.
- <sup>5</sup> Applicable laws in Kosovo include UNMIK laws and regulations, and any applicable laws that were in effect in Kosovo as of March 22, 1989 (but effectively can go as far as Ottoman times in some legal cases) while all laws passed by the PISG had to be promulgated by UNMIK. This situation resulted in a complex and - in some cases – incomplete legal framework for businesses in Kosovo concerning property rights (US State Department, 2008).
- <sup>6</sup> There was however the right to request a reconsideration which was if accepted addressed again to the HPCC.
- <sup>7</sup> Examples on how cumbersome it might become to get a final decision, which can be implemented are described in: PRAXIS (2004) or [http://www.praxis.org.rs/index.php?option=com\\_content&task=view&id=151&Itemid=67](http://www.praxis.org.rs/index.php?option=com_content&task=view&id=151&Itemid=67).
- <sup>8</sup> The objectives of the EAR (2004) *Feasibility Study* included: i) to document the nature and scope of work of the legal caseload for disputed land and private commercial properties in Kosovo; to examine ii) existing mechanisms for dealing with property disputes and recommend means to expedite to deal with these claims; and iii) existing legislative and regulatory framework as well as to recommend changes.
- <sup>9</sup> One reason for this miscalculation was the failure to foresee that claims would be processed on the basis of 'parcels' rather than per 'individuals' who file them. In other words, a fairly large number of individuals lodged claims for more than one parcel of land; this has subsequently significantly inflated the number of registered claims.
- <sup>10</sup> This number however does not reflect the full total as 're-evictions' statistics were not collected before 2009.
- <sup>11</sup> In this direction aims also the promotion of a notary public system currently supported by the Swiss Cooperation Office in Kosovo.