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Ms/Mr. Moderator, Excellences, distinguished participants,

It is my great pleasure to be able to address you today on behalf of Praxis, NGO from Serbia, and a legal aid provider, that aims to protect the rights of refugees, IDPs and members of minorities (Roma, Ashkali and Egyptian) in relation to civil status, property issues and domestic violence.

Today I would like to talk about

HOSTAGES OF THE KOSOVO CONFLICT

Ever since the 1999 conflict in Kosovo, internally displaced persons (IDPs) who fled from Kosovo to Serbia have been facing numerous obstacles in exercising their basic human rights and reaching a durable solution. Today I will be talking about two major obstacles in this regard – access to documentation, both in Serbia and Kosovo, and access to property in Kosovo.

I – Documentation issue

Documents concerning birth registration, citizenship, employment, education and other personal information are essential for enjoyment of all human rights. Following the conflict in Kosovo, a variety of records on Kosovo citizens were transferred to Serbia, some were lost or destroyed and others still remain in Kosovo. Due to such problems related to documentation, IDPs face an ongoing problem in accessing their rights and obstacles in re-establishing normal life after displacement.

Access to documents in Serbia

Majority of registry books were transferred from Kosovo and are administered in registry offices in 7 municipalities in Central and Southern Serbia. Police stations, cadastre and courts were also dislocated from Kosovo. Unlike registry offices, police stations, cadastre and courts, IDPs are often not concentrated in one specific geographic area, but dispersed all over the country. Thus, IDPs are often obliged to travel to places far away from their current residence, since certain documents can only be obtained in person. Such practice represents a serious impediment for regular access to these institutions by vulnerable IDP population as it is costly, entailing long travels and occasional stay in places where these offices are dislocated.

Additional problems are related to cases where some registry books were lost or destroyed during the conflict or remained in Kosovo. In such cases many IDPs are facing problems in proving their citizenship and/or legal identity in Serbia, having to conduct procedures of re-registration into registry books. In this regard unequal practice of the competent bodies, as well as unequal interpretation of the existing laws results in constant altering of jurisdiction between administrative and judicial bodies and lengthy, inefficient and complicated re-registration procedures. Lack of digitalization of these registry books and insufficient capacities of registry offices is additionally hampering IDPs' access to documents. Adding to the complexity of the issue is the fact that the authorities in Serbia do not recognize as valid UNMIK-stamped documents issued in Kosovo after 1999 and Kosovo authorities do not recognise documents issued by institutions and offices in Serbia administering dislocated registry books and archives. Little has been done to date to establish a simple and efficient procedure which would facilitate the issuance of new documents or provide for the replacement of documents lost or destroyed in the course of displacement.

The documentation issue most seriously affects the IDP Roma population, since a great number of them have never been registered into birth registry books, often through generations, which makes them legally “invisible” to the authorities and further aggravates their position, depriving them of basic human rights. As a consequence, they usually live in illegal settlements, in extremely poor living conditions, without the possibility to prove their identity or register residence. Although the State has a positive obligation to recognize every human being as a legal subject, the authorities have made no progress in providing effective legal framework for regulating this issue.

In the attempt to remedy the current situation, Praxis jointly with the OSCE Mission to Serbia, UNHCR and several other NGOs, has prepared the Model Law on the Procedure for Recognition of Legal Subjectivity which was presented to the authorities. This Model Law serves as an advocacy tool for lobbying the competent authorities, aiming at finding a systemic solution for this problem.

Access to documents in Kosovo

Access to documentation in Kosovo is equally difficult and entails equally complex procedures. Some of the files and archives from Kosovo companies and institutions are missing or destroyed during the conflict, while other records are available but poorly maintained and unclassified. Even when the files are available, the precarious security situation prevents IDPs to travel freely within Kosovo. Without all these documents, IDPs are unable to prove their education, work experience, ownership and other rights.

II – Protection of Property Rights in Kosovo - lack of effective legal remedies and fair trial guarantees

The Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) were mandated by UNMIK in November 1999 to provide resolution of property disputes and restitution of property rights, exclusively related to residential property in Kosovo. HPD was granted quasi-legislative, judicial and executive authority. It had exclusive jurisdiction to decide and act upon matters that according to the local applicable law would have fallen within the jurisdiction of the local courts and administrative structures, which were believed unable to carry out these functions at the given time.

The vast majority of claims were submitted by IDPs, predominantly Serbs, whose homes were illegally occupied after the March 1999 conflict. This category of claimants encountered the biggest problems and obstacles in exercising their property rights and in reaching durable solutions. The HPD mechanism was not able to provide the claimants with an effective remedy. Property repossession, and thus return, was impossible due to lingering ethnic tensions and a high level of insecurity. A significant proportion of properties were destroyed and only the more fortunate ones managed to sell theirs.

There have been two crucial flaws in the HPD/HPCC legal framework. HPCC did not secure necessary insight into submissions, arguments and evidence to the parties, and did not clearly and properly justify its decisions and evaluation of evidence. As a consequence, the claimants could not successfully argue the grounds of the opposite party, due to lack of essential information. The IDP claimants were, thus, not placed in the position of being equal in opportunities with the opposite party, belonging to the ethnic majority.

In March 2006, the HPD had been subsumed into a new institution, the Kosovo Property Agency (KPA) and the Kosovo Property Claims Commission (KPCC), which were established to resolve claims related to immovable property, including agricultural and commercial property. Unlike HPD which had the mandate only to decide upon the right to possession, KPA is envisaged to adjudicate ownership claims and claims involving property use rights. The decisions of KPA are open to appeal before the Supreme Court of Kosovo.

KPA did not only inherit HPD mandate, but also inherited its flaws and procedural deficiencies. KPA legal framework did not stipulate the right of the claimant to receive the reply to the claim from the opposite party, thus impeding the claimant to examine and respond to the arguments and evidence of the opposite party, and *de facto* excluding him/her from participating in the procedure.

It has been more than 2 years since KPA was established. However, we have not seen any of the decisions that KPA brought and there is still a serious concern that, as was the case with HPD, these decisions will not be properly justified and evidence ambiguously evaluated. In addition, Serbian authorities have suspended KPA mission in Serbia, following Kosovo's decision to declare KPA a state institution of the newly declared Republic of Kosovo, independent of UNMIK. Verification of evidence in Serbia and processing of IDPs' claims have thus also been suspended, impeding IDPs' access to KPA mechanism and resolution of their property rights.

The deadline for submitting property claims to KPA expired on 3rd December 2007, thus leaving a number of IDPs who, for justifiable reasons, could not submit the claims within the given deadline, without a legal remedy, depriving them of their property rights. All appeals requiring the extension of deadline were made in vain.

Aim of establishing the KPA was to respond to the pressing need to start tackling agricultural and commercial property claims, in addition to residential claims, through a process that is non-discriminatory and ensures effective repossession, which was deemed essential for boosting prospects for the sustainable minority return and participation in the economic life. However, none of the above-mentioned has been achieved and we are still far from resolving the property issues in Kosovo, and even further from successful return prospects than ever.