

Reforming the Cadastre and Land Administration in Kosovo

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Key words: Land Administration, Governmental Infrastructure, Institutional Building, Legal Framework, Management, Cadastre and Land Information System.

ABSTRACT

The Special Representative of the Secretary-General is governing Kosovo within the United Nations Interim Administration Mission in Kosovo (UNMIK) in parallel with the newly established Provisional Self-Government in Kosovo. Due to the long lasting conflict in the area ending with a war in 1999 the society infrastructure including the Land Administration was almost demolished. Cadastre plans and records were removed from Kosovo. The reconstruction of the Land Cadastre is ongoing with Kosovo Cadastral Agency (KCA) as the coordinating institution and implementer of the Kosovo Cadastre Support Programme.

The Programme is the result of discussions and negotiations for the implementing and financing of a three-year programme involving the Governments of Norway, Sweden and Switzerland as well as UNMIK and United Nations Centre for Human Settlements (Habitat). There is an inevitable need of a well functioning land sector in Kosovo. A land sector that will contribute to economic growth, democratic and sustainable development when supported by a real property market, rights protection and an improved cadastre and land registration system. Some immediate actions in the field of Land Administration is necessary and the development is now also included in the Programme.

The aims for the future Land Administration in Kosovo will be to fulfil the criteria mentioned in "Land Administration Guidelines" presented by MOLA (Meetings of Officials on Land Administration), Economic Commission for Europe.

A long-term Property Law Reform is envisaged. It will include a Transformation Law, which should automatically transform existing possession rights into ownership rights. A comprehensive Land Code should be developed that contains and revises all property legislation in light of modern European standards.

Before entering into a more comprehensive property law reform including transformation of existing possession rights into ownership rights the Land Cadastre must reach a high level of reconstruction and updating.

To have a successful development of any kind and especially in cases like reforming of the Land Administration ideas have to be planted and discussed among the actors at an early stage before the actual development starts. The motivation and the resources have to be there. The Land Administration will have to be developed in light of present-day realities. Consideration has to be taken to historical and cultural heritage as well as modern ideas and

practice in neighbouring countries and in Europe. The ideas and results will have to be adopted and used by the Kosovars.

The KCA has started a gradual development of a more comprehensive Cadastre and Land Information System as a part of a society information infrastructure. To be able to do that KCA is basing the development on user needs. There will be a lot of actor demands and expected results to deliver. A well thought-out prioritising of activities etc has to be done at all times.

Cooperation and coordination is a clear and needed strategy when developing the Land Administration. It has to do with issues like defining of responsibilities as well as financial and technical solutions for data exchange. The roles and responsibilities of the main actors in Land Administration will be out-lined in policy documents and relevant legislations. Gender and ethnic sensitivity should be applied to all activities in development of the future Land Administration.

KCA has initiated drafting of a policy document in a working group consisting of representatives from various UNMIK departments. An Administrative Direction on the Establishment of a Property Rights Registration has also been drafted in the working group. At KCA preparations for the implementation has started.

During the summer of 2001 KCA has participated in a pilot project for Property Tax. Discussions are ongoing with the Ministry of Health, Environment and Spatial Planning about technical and legislative cooperation regarding spatial planning. Actors in Land Administration are getting more and more interested in using the Cadastre identifier in their own registers. They also see the benefit of using cadastral data as such for their own purposes.

The KCA approach is to take initiative as well as participate and influence in relevant development areas regarding Land Administration. These areas are proper legal framework, effective management, appropriate organization and financing. The easiest part in this will perhaps be to develop the technical system.

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1. BACKGROUND ON KOSOVO

Kosovo was an autonomous Province of the Federal Republic of Yugoslavia up to 1989 with its own Administration. The autonomy was revoked in 1989 and most of the administration was moved from Pristina to Belgrade. Kosovo Albanians were expelled from work in the Administration on provincial and municipal level. Discriminating laws were passed. During this period the Kosovo Albanians built a parallel structure for administrative services such as education. The whole situation erupted in an ethnic conflict between the Albanians and the Serbians in the spring of 1999.

United Nations Interim Administration Mission in Kosovo (UNMIK) was established on June 10, 1999 when the Security Council in resolution 1244 authorizes the Secretary-General to establish in the war-ravaged province of Kosovo an interim civilian administration led by the United Nations under which its people could progressively enjoy substantial autonomy.

The peace-enforcement force KFOR entered Kosovo on June 12, 1999 under a UN mandate. KFOR is a NATO-lead international force responsible for establishing a security presence in Kosovo. The strength of KFOR is about 50 000 men and women.

Due to the long lasting conflict in the area ending with the war in 1999 the society infrastructure including the Land Administration was almost demolished. Cadastral plans and records were removed from Kosovo. More than 300 000 buildings were destroyed.

Kosovo has about 2.2 million inhabitants in an area of 10 000 square kilometres. There are 30 municipalities. Five of them are Serbian dominated and eight are ethnically mixed municipalities. Pristina is the biggest municipality with a population of about 500 000 inhabitants to be compared with 100 000 just before the war. The number of parcels in Kosovo are about the same as the inhabitants (2.2 million) and the possessors to parcels are about 340 000. That means in average six parcels per possessor.

2. GOVERNMENTAL STRUCTURE

UNMIK has been acting as the transitional administration for Kosovo. UNMIK initially brought together other multilateral organizations as full partners under United Nations leadership. This was organized into four “pillars”. Currently the pillars are:

- Pillar I: Police and Justice, under the direct leadership of the United Nations
- Pillar II: Civil Administration, under the direct leadership of the United Nations
- Pillar III: Democratisation and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE)
- Pillar IV: Reconstruction and Economic Development, led by the European Union (EU)

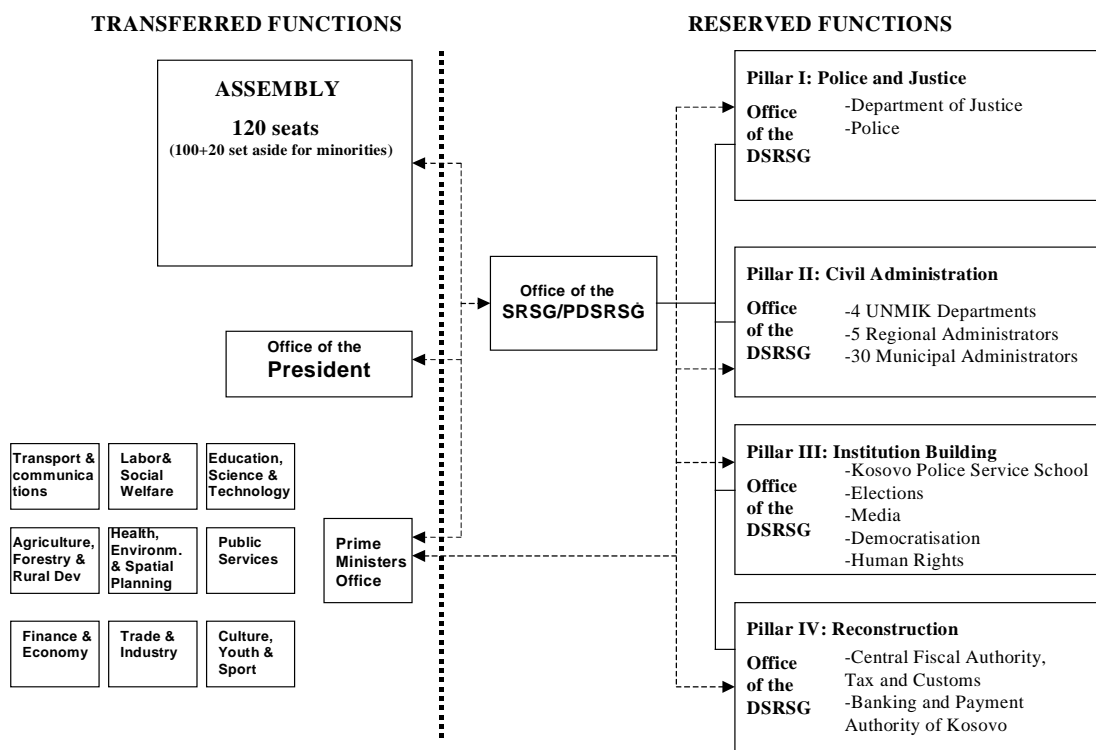
The head of UNMIK is the Special Representative of the Secretary-General (SRSG) for Kosovo.

To obtain early results UNMIK set up a regional structure with five Regional Administrators and 30 Municipal Administrators. It established 20 Kosovo-wide Administrative Departments in the Joint Interim Administrative Structure (JIAS). The JIAS was set up as a means for sharing the responsibility to re-establish and deliver central and municipal administrative services. One key department, the Central Fiscal Authority prepares the Kosovo Consolidated Budget.

Each of the 20 Administrative Departments was led by two Co-Heads, one Kosovar and one UNMIK international staff. This part of the JIAS is now replaced by the Provisional Institutions of Self-Government (PISG) presented in UNMIK regulation 2001/9, which brings about a new stage of self-government to Kosovo.

At local level, 30 Municipal Assemblies were elected on October 28, 2000. Supervised by their respective UNMIK Municipal Administrators, they appointed professionally qualified Chief Executive Officers and members of their Municipal Boards. The Municipal Board acts as the executive body and is responsible for the day-to-day running of services.

Figure 1: The Governmental infrastructure in a combined UNMIK/PISG chart.



The Kosovo Assembly was elected at the general elections held on November 17, 2001. The Assembly has after some difficulties endorsed the Presidium but not been able to elect the President of Kosovo. When elected, the President will nominate a Prime Minister, who will submit his Cabinet to the Assembly for approval.

UNMIK will retain direct responsibility for certain governmental functions, reserved functions, as set out in the Constitutional Framework and further elaborated in UNMIK regulation 2001/19. UNMIK will also retain a monitoring and oversight role over the PISG. At municipal level UNMIK core functions have been defined. International staff in the Municipalities will be reduced to an appropriate level in order to meet these requirements. Gradually these core functions should be transferred to the regional level so that there will be no international staff operating in individual municipalities.

The establishment of the PISG and the division of responsibilities into transferred and reserved functions will initially increase the political and administrative complexity. Experience from the municipalities indicates that implementation of policies and decisions will become more difficult during the transition period. This is coupled with serious constraints arising from the lack of trained and experienced local staff at all administrative levels. It is therefore important that institution and capacity building including comprehensive training efforts become an integral part of the process.

3. PRESENT LEGAL SITUATION

The current applicable 1980 Law on Property Relations stipulates that a real property right is only validly created on the basis of a transaction if it is registered in a public book of land. Due to different Ottoman legal traditions and a general lack of emphasis on property rights in the socialist era, the public book of land was never introduced in Kosovo or in any other southern parts of the former Yugoslavia. New laws passed between 1992-96 introduced the radical change of transforming the land cadastre into a real property cadastre. However there were neither funding nor qualified professionals to implement the proposed change. These laws were revoked by UNMIK in December 1999 (UNMIK Regulation 1999/24).

As a consequence, property transactions are verified by the Courts and entered in the possession list of the land cadastre as previously done. No ownership but merely possession rights are therefore created through property transactions in Kosovo. This causes considerable problems for the property market, since possession rights normally do not entail the right to dispose of the property. However, in light of the current situation, possessors registered in the land cadastre are nevertheless mostly regarded as “owners” entitled to property transactions. The situation was worsened because cadastral information was often not updated for several reasons, one being the property tax, another the discrimination regarding property transactions.

The Law on Property Relations does not define real property. Private property rights can be created only over buildings, apartments and some agricultural land, but construction and much agricultural land are socially owned. This leads to complex legal situations where a person can, for example, own a house built on socially owned land, but only has a right of use to the area around the building. In this case, the possession list only contains the information that the parcel is socially owned. In addition the list might give some indication that a house was built on the plot but without mentioning the owner of the building. A separate register of buildings and apartments does not currently exist. Respective property rights can only be proved with individual deeds (e.g. tapias, verified contracts, court decisions, etc.)

4. KOSOVO CADSTRE SUPPORT PROGRAMME AND THE KOSOVO CADASTRAL AGENCY

One of the main priorities for UNMIK is to re-establish efficient mechanism of governance in Kosovo. In that context a functioning Land Administration is a prerequisite. As outlined in the Kosovo Cadastre Support Programme (Programme) the establishment of an institution at Kosovo level responsible for cadastral issues was critical and necessary to continue all sorts of cadastral activities in Kosovo.

4.1 Kosovo Cadastre Support Programme

The Programme is the result of discussions and negotiations for the implementing and financing of a three-year programme involving the Governments of Norway, Sweden and Switzerland as well as the UNMIK and the United Nations Centre for Human Settlements (UNCHS Habitat). Programme preparations have been made by funds allocated from the Government of Finland to the UNDP/UNCHS (Habitat) Balkan Task Force for the year 1999 and to UNCHS (Habitat) for the first six month of the year 2000.

Exchange of Letter between UNMIK and UNCHS (Habitat) dated January 14, 2000, has established the framework to the re-establishment of a cadastre system in Kosovo and assigned UNCHS (Habitat) to implement and coordinate the activities to that purpose. At the request of UNMIK and UNDP/UNCHS (Habitat) Balkan Task Force, UNCHS (Habitat) carried out a rapid assessment of the state of the Cadastre.

Based on that assessment UNCHS (Habitat) together with the Government of Sweden carried out a study of the needs and developed a strategy for future support in Kosovo. The study is presented in a report prepared by Blom International.

A Logical Framework Analysis seminar was held in Sweden in February 2000 with the participation of a team of Kosovar professionals, international experts and representatives of UNMIK, UNCHS (Habitat) and the Governments of Norway, Sweden and Switzerland. During the seminar the “Blom report” was reviewed and recommendations for improvements were made and presented in a new report.

The Programme document was finalized in a meeting during May 2000 in Pristina and presents objectives and activities covered by each donor.

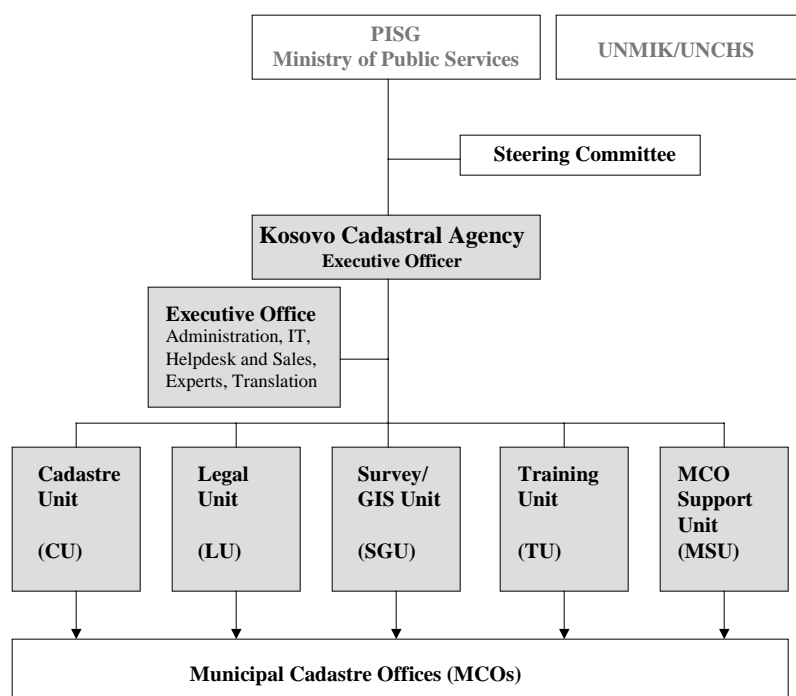
4.2 Kosovo Cadastral Agency

The Kosovo Cadastral Agency (KCA) has been formally established by virtue of UNMIK Administrative Direction 2000/14 of June 7, 2000 signed by the SRSG. The KCA is a government body and has been an implementing organ of the Department of Public Services of UNMIK Civil Administration.

KCA is now as set out in the Constitutional Framework and further elaborated in UNMIK regulation 2001/19 a transferred function and as such an Executive Agency under the authority of the Ministry of Public Services in the PISG. Some powers and responsibilities reserved to the SRSG presented in the Constitutional Framework will have an impact on the KCA's responsibilities.

As set out in an UNMIK regulation in progress KCA will be responsible for the development of the legal regime and the coordination of its implementation relating to the cadastre and other matters concerning the land information system in Kosovo. The KCA's areas of competence are mainly geodesy, surveying, geographical information systems, real property registration and mapping. In practice this means that KCA will evolve into a mapping and cadastre authority.

Figure 2: KCA organization chart.



KCA has been and will be the coordinating institution on Kosovo level for the cadastral activities that is mainly carried out at the municipal level.

A Steering Committee is established to advise and support the KCA in its role as the implementer of the Programme to ensure that the results of the implementation activities achieve the objectives and purposes intended in the Programme.

The organisation of KCA is established with international and local Co-Heads and with both local and international staff within the units. Since KCA is a sustainable Executive Agency the local Co-Heads are trained to take over within the programme period.

At present there are 56 staff members at KCA including 13 international experts and 25 local experts.

5. CADASTRE AND LAND ADMINISTRATION IN KOSOVO

5.1 Overall Objective

The overall objective for the Programme is presented as follows:

A well functioning land sector which will contribute to economic growth, democratic and sustainable development when supported by a real property market, rights protection and an improved cadastral and land registration system.

Equally, municipal cadastral offices will be able to render proper land and property services to the beneficiaries.

This could also very well be the overall objective for the Land Administration in Kosovo. The development of the Land Administration was not a part of the Programme from the beginning. The Steering Committee soon came to the conclusion that some immediate actions in the field of Cadastre and Land Administration were necessary and the development is now included in the Programme.

There is an inevitable need for both a vision and a strategy on Land Administration issues for Kosovo. That is also a necessary background to the implementation of the Programme. At least parts of the vision and the strategy have to be developed. One ought to bear in mind that all actions taken now will bind actions in the future. But of course it is also necessary to have a readiness to adapt to changing circumstances.

The aims for the future Land Administration in Kosovo will be to fulfil the criteria mentioned in “Land Administration Guidelines” presented by MOLA (Meetings of Officials on Land Administration), Economic Commission for Europe. These criteria are as follows:

- Guarantee ownership and security of tenure;
- Support land and property taxation;
- Provide security for credit;
- Develop and monitor land markets;
- Protect State land;
- Reduce land disputes;
- Facilitate land reform;
- Improve urban planning and infrastructure development;
- Support environmental management;
- Produce statistical data.

The following subchapters present a brief description of a conceivable and also adjustable vision regarding the future Cadastre and Land Administration in Kosovo. The vision has to be further developed and have the support of parties concerned.

5.2 Future Legal Framework

A long-term Property Law Reform is envisaged. It will include a Transformation Law, which should automatically transform existing possession rights into ownership rights, and address

issues of possible restitution and compensation for expropriated properties. There should also be a system for claiming better property rights. A comprehensive Land Code should be developed that contains and revises all property legislation in light of modern European standards. The Land Code should be based as much as possible on existing legislation. The 1980 Law on Property Relations should form the basis. Socialist laws like Law on Transfer of Real property should be abolished, revised and useful parts incorporated in the Land Code. The reform would also address the methodology of the valuation of property.

A legislation regarding real property rights registration into a special register should be introduced to create the technical basis for the implementation of a Transformation Law. Further there will be an update of current cadastre and surveying legislation to be adapted to the ongoing development in these fields.

5.3 Responsibilities and Cooperation within Land Administration

The roles and responsibilities of the main actors in Land Administration will be out-lined in policy documents and relevant legislations. As a first step in that direction the responsibilities of the KCA, municipal cadastre offices and local courts will be clarified regarding the implementation and maintenance of the Cadastre and Land Information System. They will play a major role in the future property rights registration, where the verification of documents is done by the courts and the registration by the municipal cadastre offices.

There are many different actors in the governmental and private sector, that are interested in cadastral information or are dealing with the issues related to the Cadastre or the development of Cadastre and Land Administration. When the information is available in digital form the number of users will increase. They will use the information for all the different purposes presented earlier (e.g. physical planning, land management and statistics). Certain users will probably also want to be able to process the cadastral and land data together with their own specific data. They will be able to do so in their own user system. There are also a lot of producers of land information among these actors and there will be means for them to contribute with their data to the Cadastre and Land Information System.

There are also currently a lot of international non-governmental institutions working in Kosovo that will be considered. The roles for these actors are to share information and experiences to support the development process and avoid mistakes and duplication.

The main actor at local level is the Municipality with all its departments, which are both data producers and data users. The municipalities are responsible for setting and collecting property tax. They deal with spatial and environmental planning. More and more responsibilities are handed over to the municipalities.

Municipal companies, banks, institutions and private companies are also actors in relation to the Cadastre and Land Administration. Currently the banks are not using the mortgage system because the property rights situation is too uncertain, but the willingness to have a well functioning system is strong.

5.4 Future Cadastre and Land Information System

In a society's information infrastructure the Cadastre and Land Information System plays a vital role. In addition there should for instance be databases for persons and enterprises as well as for land use. The information infrastructure should be based on a Geographical Information System (GIS) making it possible to manage, integrate, analyse and display georeferenced information.

In order to integrate data from different systems relations between register units in different systems must be described. Unique identifiers do that. The design of identifiers system must be on a sound theoretical basis and known to all parties concerned. Basic changes in the system design later will be very difficult and costly.

In the future Land Administration and Land Management will be supplied with information from a Kosovo-wide computerized Cadastre and Land Information System. The system consists of several databases with both textual and geographical data that are highly integrated. In the Information System there are four major parts:

- The Cadastre with descriptions of every cadastral unit
- The Property Rights Register with information on ownership and mortgages for every cadastral unit as well as every building and dwelling
- The System for Buildings and Dwellings provides information about buildings and dwellings, their physical descriptions
- The Land use rights and restrictions.

The system should be transparent and the information accessible for everyone.

6. STRATEGY FOR REFORMING THE CADASTRE AND LAND ADMINISTRATION

To have a successful development of any kind and especially in cases like reforming of the Land Administration ideas have to be planted and discussed among the actors at an early stage before the actual development starts. The ideas to be discussed should be visualised by piloting whenever needed. It is also most essential to have the timing right. The motivation and the resources have to be there.

The Land Administration will have to be developed in light of present-day realities. Consideration has to be taken to historical and cultural heritage as well as modern ideas and practice in neighbouring countries and in Europe. The ideas and results will have to be adopted and used by the Kosovars. To realise that a two-way communication have to function.

Evolving the Land Administration infrastructure will require many steps and must be considering many interacting factors. Development of technical systems is perhaps the easiest part. The other factors to consider are a proper legal framework, effective management, skilled staff in an appropriate organisation and financing.

A clear vision of the future Cadastre and Land Administration has to be established and decided. A policy document and an implementation plan should be produced describing all the aspects that have to be considered. The actors have to draft these documents and present them to the PISG and UNMIK Reserved Functions.

Before entering into a more comprehensive property law reform including transformation of existing possession rights into ownership rights as well as possible restitution of land rights the Land Cadastre must reach a high level of reconstruction and updating.

Developing a modern Cadastre and Land Information System is a task of several years and high cost. Institutions in Kosovo are being reshaped and established, creating emerging needs for cadastral and land information that cannot be programmed on a clear time frame all together. The evolution of conditions in Kosovo and the uncertainty regarding the long-term availability of donor resources, are all factors that call for a gradual and incremental approach to the implementation of the Programme.

In accordance with its coordination responsibilities the KCA approach is and will be to take initiative as well as participate and influence activities in development areas such as taxation on immovable property, the functioning of mortgage systems, improvement of urban planning and infrastructure development, support environmental management and protection as well as produce statistical data to assist in economic and development planning.

The actors ought to have influence on the outcome of the development of the future Cadastre and Land Information System. There will be a lot of actor demands and expected results to deliver. A well thought-out prioritising of activities etc has to be done at all times. However the final prioritising of user demands has to be done by the implementer.

Cooperation and coordination is a clear and needed strategy when developing the Land Administration. It has to do with issues like defining of responsibilities as well as financial and technical solutions for data exchange. There also has to be a long-term strategy for the management of the future Cadastre and Land Information System that will contain data from different sources and actors.

Gender and ethnic sensitivity should be applied to all activities in development of methodology and legislation as well as in providing training in the future Land Administration. Special attention should be paid to the involvement of Kosovar women in the Land Administration field.

7. RESULTS UP TO NOW

The need of a policy regarding land administration and a property law reform has been addressed by the KCA in presentations at different UNMIK Councils as a preparation of the work ahead.

KCA has initiated drafting of a policy document in a working group consisting of representatives from the Department of Public Services, the Department of Judicial Affairs

and the Department of Trade and Industry. The policy document is a draft starting with the focus on a property law reform and later continuing with the other interacting factors mentioned above.

All involved departments, offices and persons have emphasized the urgent need for the establishment of a real property rights register in Kosovo. The introduction of such a register would be the first step of a long-term property reform to normalize the property market, as was recently requested by the SRSG.

An Administrative Direction on the Establishment of a Property Rights Registration has been drafted in the working group. The draft has also been intensely discussed in two consultative meetings of the working group with the responsible OSCE officer as well as selected Kosovar professors and judges from Supreme, District and Municipal Courts.

At KCA preparations for the implementation of the Administrative Direction has started. The modelling of the Cadastre and Land Information System, including Property Rights Register is done. In November 2001 preparations started regarding instructions and guidelines for the registration, training of staff at KCA and municipal cadastre offices, cooperation with the courts and the municipalities etc.

KCA has during the summer of 2001 participated in a pilot project for Property Tax. The established Property Tax Register is connected online to the Cadastre (textual part) in the municipalities in question. Information about parcels and possessors are selected from the Land Cadastre while information about buildings, dwellings and their owners are collected and entered into the Property Tax Register. The building and dwelling part of this register will be analysed and possibly included in the future Cadastre and Land Information System at KCA.

Discussions are ongoing with the Ministry of Health, Environment and Spatial Planning about technical and legislative cooperation regarding spatial planning. Actors in Land Administration are getting more and more interested in using the Cadastre identifier in their own registers. They also see the benefit of using cadastral data as such for their own purposes. One more example of that is the Ministry of Culture, Youth and Sport in their effort to establish a register of built heritage.

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