

CONCEPT DOCUMENT ON OWNERSHIP AND OTHER REAL RIGHTS

Chapter 1: Introduction

The drafting of the concept document on ownership and real rights is foreseen in the framework of the Government's 2017 Annual Work Plan, Ministry of Justice section (objective 2.1 "Unification and Harmonization of Legislation in the Field of ownership rights"). Likewise, the drafting of this Concept Document is foreseen by the National Strategy on Property Rights (Strategy) approved by the Government of the Republic of Kosovo on 18 January 2017, which reflects the drafting of policies and legislation in the area of ownership rights.

The issues addressed in this Concept Document are:

1. Define types of property in Kosovo
2. Address the legal status of construction land in urban areas and the right to permanent use of immovable property, to create a clearly defined right over the building and land on which it was built.
3. Clarify the legal status of the 99-year lease.
4. Clarify the rights of foreign citizens to own property in Kosovo.

The scope of this Concept Document is to clearly define ownership rights, the holders of ownership titles and their content and to regulate this issue in accordance with EU and international standards, since the areas that are regulated by this document are also a requirement arising from the fulfilment of the criteria set for European integration, namely the SAA.

Rule of Law Standards are established by the Constitution of the Republic of Kosovo (in accordance with the European Convention on Human Rights and Fundamental Freedoms - ECHR), while the principle of legal certainty, a critical component of the rule of law, requires ownership rights that are clearly defined by law. It is important for the law to clearly define the different types of ownership rights, determine who can have those ownership rights and under what circumstances, and determine the authorizations and obligations related to each type of ownership rights.

Kosovo's legal framework must be updated and harmonized to support the economic development of a market economy. Legal concepts from Kosovo's socialist past must be removed and rights and responsibilities of citizens and government entities must be clearly defined in law to provide the basis for a vibrant land market to support economic growth.

Private ownership rights in Kosovo are well defined. However, other categories of ownership rights, such as the right to permanent use of construction land, 99-year leases, rights of foreign citizens to acquire the right of ownership over immovable property in Kosovo, are not clearly defined. Lack of clarity causes legal uncertainty and ambiguity, thus contributing to the confusion over who holds the legal title and what obligations over which type of property. The relevant provisions of the Constitution are generalized and allow for different interpretations, leading to ineffective implementation of the law in practice.

The Government considers it a priority to regulate these issues, since they are currently not regulated by specific provisions, or are regulated by old or unsustainable provisions, and the regulation of this area helps to create the general infrastructure for the advancement of the rule of law and at the same time enables the fulfilment of the obligation of the state to respect and protect the rights in compliance with international standards.

Chapter 2: Description and definition of the main issue/problem

1. Define types of property in Kosovo

The Constitution provides that types of property should be regulated by law (Article 121). This provision creates the impression that the Constitution does not specify the types of ownership rights. However, the Constitution is not silent regarding the different types of ownership rights. Article 119.1 clearly mentions public and private property, which means that both of these types of ownership rights are recognized by the Constitution as legal institutions. However, the Constitution does not define these two types of ownership rights, which leads to different interpretations of their meaning and content. The different interpretations create uncertainty and ambiguity in law enforcement.

Private property is specifically recognized and protected by the Constitution through Article 46, which guarantees the right to own property. This provision should be interpreted in accordance with Protocol 1 to the European Convention on Human Rights which is directly applicable in Kosovo (Article 22). Private ownership rights are sufficiently defined in the Law on Property and other Real Rights, which follow the concept of private property of continental Europe. Use of the term "public property" is less clear in terms of its meaning and content. Article 121.3 of the Constitution mentions publicly owned resources that include natural resources and publicly owned infrastructure. Article 122.1 refers to the natural resources of the Republic of Kosovo, which include the land, flora and fauna, other parts of nature, immovable property and other goods of cultural, historical, economic and ecological importance (Article 122.2). However, the term "natural resources of the Republic of Kosovo" does not necessarily imply that they are under the ownership of the Republic of Kosovo. If all the immovable property that is included as natural resources of the Republic of Kosovo would be owned by the Republic of Kosovo, this would deny the existence of private ownership rights on immovable property, which is also guaranteed by the Constitution. The same argument applies even if all natural resources, including private property, would be publicly owned without distinction. Namely natural resources of public or general interest may also be in private ownership but subject to a special regime of administration and use, provided by special laws. The Constitution also refers to state property. Article 119.9 of the Constitution provides that the Republic of Kosovo exercises its function of ownership over any enterprise under its control. It is not clear whether state property is the same as public property. If it were the same, then the question is why the Constitution uses two different terms for the same type of property. Alternatively, we can consider that state property and public property are two different types of ownership rights.

The 2008 Constitution also referred to socially owned properties. Article 159.2 of the original version of the Constitution determined that all social interests on property and enterprises in Kosovo are owned by the Republic of Kosovo. This provision has been important in two respects: (i) it recognized that the socially owned property was a type of property that existed at the time the Constitution was adopted, and (ii) it converted the socially owned property under the ownership of the Republic of Kosovo through direct action of the Constitution. The conversion of socially owned property into state property has also been confirmed by the Constitutional Court of Kosovo.

However, amendments to the Constitution in 2012 deleted Article 159.2, thus creating confusion as to whether the conversion of socially owned property into state property is still valid, whether it has been cancelled or whether the conversion of socially owned property into state property was concluded in 2008 and the provision is no longer needed to exist in the Constitution.

Therefore, it can be said that the Constitution clearly mentions the types of property as follows: private property, public property, state property and socially owned property.

However, it is not clear what the differences between state and public property are, what is the exact content of these ownership rights and who can enjoy and be entitled to those rights. The Constitution has not resolved these issues and has left room for different interpretations. Also, there is no explanation of these constitutional issues by the Constitutional Court. Pursuant to Article 121.1 of the Constitution, the Assembly of Kosovo should define the substance and content of these types of rights, a task that has not been completed so far.

2. Conversion into ownership of the right to permanent use

Kosovo's property rights legal framework still retains concepts of socially owned property left over from the Socialist Federal Republic of Yugoslavia (SFRY) property rights legal framework. These concepts are no longer applicable in Kosovo and do not support the development of a vibrant land market that will support economic growth.

The right to use of construction land is regulated by the current Law on Construction Land (*Official Gazette of SAPK, No. 14/80, amended in 1986, Official Gazette of SAPK 42/86*), which has not been and cannot be functionally implemented in practice due to the changing of the social, political, economic and legal circumstances in the Republic of Kosovo.

The rules concerning ownership rights in the Yugoslav legal system favoured social ownership, limiting private ownership of land. The aforementioned laws have allowed citizens in urban areas to be owners of the facilities (*such as* buildings or houses) within certain standards, but have only provided them with the right to use lands related to them. Consequently, there are two types of ownership rights on the same property: the right to permanent use of land and the right to ownership of the construction.

This Concept Document is grounded on the policy that land rights are linked to the facility, or are only provided when there are rights to the facility.

Natural and legal persons may obtain from the municipality the right to use urban construction land. The right to use is granted based on a public auction, followed by a contract concluded between the municipality and the recipient, which also determines the payment of compensation to be paid by the recipient. Payment is determined on the basis of the land area to be used for construction purposes. This right of use includes the use of land that is under the building and the land that is needed for the regular use of the building (300-500m²). Since a person may only have the right to use the land, the land will eventually remain socially owned, and that person acquires private ownership over the building which is built on such land. Thus, the law distinguishes between land ownership and ownership of the building.

The right to use the land was an inseparable and derivative right stemming from the ownership of the building, and the rights of transfer to a third party of part or the entirety of that land existed only if they were transferred together with the building. The right to use exists as long as the building exists on urban construction land.

The 1974 SAPK Constitution prohibits the right of ownership in construction lands. According to Article 81 par. 1 *"There can be no right of ownership over land in cities and townships and in other areas foreseen for housing construction and other complex construction which, in accordance with the conditions and according to the procedure established by law, is designated by the municipality"*. Following this constitutional wording, the Law on Construction Land, in Article 8 paragraph 3, stipulates that: *"On the day of the entry into force of the decision on the designation of the boundaries of construction land, this land becomes socially owned."* This means that when the land becomes a construction land, it automatically converts into socially owned property, regardless of its previous status, which means that there is no private land ownership in urban areas. All private persons, whether natural or legal, hold the right to permanent use of land, regardless of whether that land was privately owned before being converted into a construction land or the right of permanent use was acquired from the Municipality. In these cases, private persons are the owner of facilities (in cases when there are constructed facilities).

Land that is defined by spatial plans as construction land within urban areas, by law is socially owned property (*until the current law on construction land is in force*). If located in such a zone, the private property is automatically converted into socially owned property while the former owners into holders of the right to use. Land outside urban

areas which is designated as construction land can be both socially and privately owned.

In addition to the direct negative impact on property owners, the lack of regulation of this issue has also resulted in Kosovo's negative relations as a state due to the non-fulfilment of this obligation that has affected Kosovo's low ranking in various EU progress reports, which could, among other things, have an impact on the reduction of financial assistance to Kosovo in the area of rule of law. All of Kosovo's construction lands are affected by the fact that these issues are not regulated.

3. Conversion of 99-year lease into ownership

Under the legal regime, arable land owned by socially owned enterprises has undergone a conversion process through 99-year leases, without transferring the right of ownership over land. These leases are not seen as secure in terms of land ownership, thus reducing investment in agricultural production.

Often during privatization of SOEs created for agricultural production, the Privatization Agency of Kosovo (PAK) separated the land from the enterprises and privatized it through a 99-year lease as provided by the UNMIK regulation still in effect. UNMIK chose this form of private tenure as the instrument for conversion because it lacked the legal authority to permanently alienate land due to Kosovo's unresolved political status. Although a 99-year lease is perceived as providing sufficient security of tenure to stimulate agricultural investments in Western Europe and the U.S., it is not a familiar concept in the Balkan region. There are concerns that it is perceived as a type of interim lease by investors from the region and serves as a disincentive to investment.

In Kosovo, as in all parts of the former Yugoslavia, a large part of the immovable property and enterprises were socially owned.

The concept of socially owned property was a novelty and, at the same time, a controversial feature of Yugoslav law, the legal nature of which remained unclear and controversial even during Yugoslavia's time. In very general terms, socially owned property is based on the premise that property belongs to society as a whole and not to private persons or the state. It is a form of collective, though not state owned property, where society is the supreme titleholder.

Historically, socially owned property was developed primarily from state property. At the end of World War II, the Yugoslav socialist regime embarked on a massive nationalization program targeting the properties of enemies and collaborators, the industrial sector and the large private owners of agricultural land. Subsequently, this state property was converted into social ownership by transferring it to socially owned enterprises for economic production. The socially owned property was under the possession, although not under the ownership of the municipality, which decided to whom and for what purpose such property could be transferred. The content of socially owned property was not clearly defined. Its foundations remained largely unclear and it was only clear that a person who had the right to use socially owned property would not own it. Such a person would have the right to possess and use such property for personal profit, but would not be allowed to transfer and encumber it.

The legal nature of socially owned property was also a controversial issue. In the broadest sense, Yugoslav scholars were divided into those who considered socially owned property to represent a form of ownership and those who claimed that socially owned property was not a property but an economic relationship, while other various data remained respectively controversial. The legal nature of socially owned property received attention at international law level by the Badinter Arbitration Commission in 1993, which discussed the separation of state property between the republics of the dissolved Yugoslavia. The Commission found that socially owned property, which was largely held by "united labour organizations", would not be considered as state property and would therefore not be subject to international law during state succession. If socially owned property had to be treated as a private or state property for the purposes of succession, it depended on who owned such property.

Following the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) in 1999, UNMIK ruled that the applicable laws in Kosovo before March 24, 1999 would continue to apply in Kosovo, unless such laws were discriminatory, contrary to Resolution 1244 or subsequent regulations issued by UNMIK. The same regulation foresees that UNMIK will administer movable or immovable property, including money, bank accounts and other property registered on behalf of the Federal Republic of Yugoslavia or the Republic of Serbia or any of its organs, which was in the territory of Kosovo. Initially, socially owned property was not included here and therefore was not under UNMIK's administrative authority. Only at

the end of 2000, UNMIK amended this regulation, including socially owned property in the list of properties to be administered by UNMIK.

The 2001 Constitutional Framework for Provisional Self-Government in Kosovo determined that there will be public, state and socially owned property in Kosovo. The Constitutional Framework explicitly pointed out that the authority to administer public, state and socially owned property, ~~and~~ as well as to regulate public and socially owned enterprises remained a "reserved power" of UNMIK. It was under this authority that UNMIK embarked in 2001 on a privatization program that would privatize socially owned enterprises and convert the right to use into ownership.

Following Kosovo's declaration of independence in 2008, the new Constitution of the Republic of Kosovo changed the legal nature of socially owned property. The Constitution provides that all socially owned interests in property and enterprises in Kosovo were owned by the Republic of Kosovo, effectively converting socially owned property into state owned property. Thus, with the entry into force of the Constitution, socially owned property formally ceased to exist as a type of property right in Kosovo. The privatization of socially owned property, interpreted in consistency with the Constitution, was henceforth the privatization of state property. However, Article 159 of the Constitution was deleted in 2012 opening the door to controversies if socially owned property was reinstated as a property rights type or if the previous conversion of socially owned property into state property was still in effect.

The conversion of socially owned property into state property is presently reflected in the Law on the Privatization Agency of Kosovo which established the Privatization Agency of Kosovo as the successor to the Kosovo Trust Agency. This law explicitly states that any and all socially owned interests, including social capital, in any Enterprise or other legal entity, by operation of Article 159.2 of the Constitution, are now owned by the Republic of Kosovo. This provision remains in force despite the fact that Article 159 of the Constitution was deleted in 2012 when the Constitution was amended. Under the law, socially owned property is therefore state property. This interpretation of the Constitution and of the law has certain implications for property types which are still considered to be socially owned property.

First and foremost it has implications for the 99-year leasehold on socially owned property. The 99-years leasehold is still regulated by UNMIK regulation 2003/13 as the Assembly of Kosovo has not yet passed a law on it. Socially owned enterprises were not the owners of the socially owned land, which they held. The privatization of a socially

owned enterprise did not mean that the socially owned land in their possession was automatically privatized as well. A separate legal instrument was necessary to address the legal aspects of socially owned land for privatization purposes. UNMIK did not convert socially owned land belonging to a socially owned enterprise into private ownership. Instead, the right of use of socially owned land of the socially owned was converted into a leasehold right for a term of 99 years and this was transferred to the enterprise which was privatized. Although the leasehold was not supposed to affect or change the underlying ownership of the land, it contained certain features which are specific for ownership rights. The holder of such a leasehold right was entitled to possess, transfer and encumber the property, and it could be inherited and transferred to third persons. The leasehold right was subject to expropriation pursuant to the same rules as ownership and the exercise of rights associated with such leasehold were subject to the limitations and restrictions set out by law for ownership rights.

The reason for this arrangement was the refusal of the United Nations to convert socially owned land into private ownership due to concerns about its mandate. On the other hand, the United Nations' intention was to make socially owned land useful for privatization purposes, and for this reason there had to be the legal possibility of freely transferring and encumbering such land. Thus, without addressing the ownership question, the leasehold right was meant to be a legal equivalent to private ownership though not conveying, in a formal sense, private ownership. The expectation was that during the 99 years leasehold term, the question about Kosovo's final political status would be resolved, and the final sovereign would then convert the leasehold into private ownership. The 99-years leasehold is therefore a property right which is unique in Kosovo and which has no equivalent in other states of the former Yugoslavia.

The 99-years leasehold is also not harmonized with the Law on Property and other Real Rights. This law requires private ownership in order to establish mortgages and other encumbrances and to transfer immovable property as it explicitly does not apply to non-private property rights. The application of the Law on Property and other Real Rights means that the 99-years leasehold is not considered a property right equivalent to private property due to inconsistent legislation

A further complication follows from different terminology and legal concepts due to translation. The English word "leasehold", which was used in the English version of the legislation establishing the 99-years leasehold, has a different legal content than the Albanian word "qira" or the Serbian "zakup". "Leasehold" in English legal terminology and as a common law institute implies a private property right. However, the Albanian "qira" and the Serbian "zakup" are, following European civil law principles, contractual rights and not property rights. A literal translation of "leasehold" into "qira" and

“zakup” has neglected the fact that these terms have different legal content depending on the legal culture and context within which they are used.

4. Ownership rights of foreign citizens in Kosovo

There is uncertainty as to whether and to what extent foreigners can own immovable property in Kosovo. Relevant provisions in the Constitution are ambiguous and allow for different interpretations that lead to ineffective application of the law in practice.

Article 121.2 of the Constitution states that foreign natural persons and foreign organizations may acquire ownership rights over immovable property in accordance with conditions established by law or international agreement. One line of interpretation argues that, according to this provision, foreign persons may only acquire immovable property in Kosovo if either a law or international agreement permits it. In the absence of a law or international agreement, foreigners would not be permitted to acquire ownership of immovable property.

Although the Stabilization and Association Agreement between Kosovo and the European Union is an international agreement, upon which Kosovo takes the obligation to treat nationals of EU member states equally with its nationals in buying immovable properties, it is needed to clarify and define these rights, as well as the rights of other nationals which are not of the EU member states but based on the Constitution can acquire ownership rights on immovable property in Kosovo.

However, it can be argued that this provision is instead affirming foreigners’ rights to property as long as the conditions of ownership align with the Constitution and constitutional authority. Article 119.2 supports this argument by stating that foreign investors and enterprises must have the same legal rights as domestic investors and enterprises to own immovable property.

This argument is further supported by provisions in the Law on Foreign Investment. The law requires that foreign nationals and companies be treated equally. It would appear that this requirement would extend to the right to acquire property.

However, foreign citizens in their attempts to register ownership rights in the cadastre, in practice, have faced resistance from municipal cadastral offices (MCOs). Obstruction of the registration of ownership rights of foreign nationals has arisen because the legislation has not clearly defined the registration of ownership rights of foreign

citizens, who has the right to register these rights, and what is the documentation necessary or other conditions for registration. In the absence of clear guidelines, legislation is interpreted in different and inconsistent ways.

It is also noted that such practices violate the terms of the signed Stabilization and Association Agreement between Kosovo and the European Union. Article 65.3 of this Agreement requires Kosovo to grant national treatment to EU nationals acquiring immovable property on its territory within five years from the entry into force of this Agreement. Article 51.4 of the Agreement similarly states that subsidiaries and branches of EU companies will have, from the entry into force of this Agreement, the same right to acquire ownership rights over real property as Kosovar companies and, with regard to public goods/goods of common interest, the same rights enjoyed by Kosovo companies. These rights are crucial to economic development and activity.

Current policy

Different draft laws, which have an impact on property rights, are currently in process. The Ministry of Justice has drafted the draft Law on Public Property which defines what public property is and how such property should be managed. The new draft Law on Forests intends to amend the existing legislation on forests and to establish a comprehensive regulatory framework for the management of forests and forestland. The Law on Strategic Investment in the Republic of Kosovo includes provisions authorizing the government to transfer property rights over state and publicly owned property to strategic investors qualified as such by the government. A key problem with this draft law is that it considers the property of publicly owned enterprises as the property of the Republic of Kosovo without taking into consideration that the Republic of Kosovo is only a shareholder in these enterprises, which have a completely separate legal personality from the state. The Government may transfer the property of a publicly owned enterprise to a strategic investor, i.e. to expropriate the enterprise, and the draft law does not require any compensation to be paid to the enterprise for such expropriation. This example shows again the consequences of a lack of clearly defined property rights system.

Under the *Law on Construction Land*, construction land is defined as land on which construction has been built or is planned, land within the boundaries of the urban plan defined for expansion of the city, and land in other areas intended for the construction

of residential complexes and other facilities. The municipal assembly is authorized to issue decisions to determine the boundaries of what would be considered urban construction land.

Consequently, the land defined as construction land is registered in cadastral registers with the title "*user of socially owned property*" and with the abbreviation "P.SH.SH." placed before the name of the holder of this right of use. In practice this did not happen in all cases, but there are cases that due to technical errors it has been registered as a property right in the deed.

The right of use of socially owned construction land may be transferred to a third party only together with the private ownership right on the building. The right of use exists as long as the building exists on the urban construction land. In the event that the building is destroyed or is depreciated, the owner of the building has a right of first refusal to re-construct the building. If this right of first refusal is not used, the land reverts to the administrative authority of the municipality which may then grant the right of use to another person.

Urban construction land is also limited in respect of encumbrances. The law allows only for real servitudes to be established on such land which excludes mortgages. *The Law on Property and Other Real Rights* also explicitly provides that a mortgage may be established only based on a contract between the owner of the immovable property and the mortgage creditor. Since there is only a right of use of urban construction land, it means that it cannot serve as collateral for mortgages. This diminishes significantly the use of such land for financing purposes.

The conversion of socially owned property into state property is presently reflected in the Law on the Privatization Agency of Kosovo which established the Privatization Agency of Kosovo as the successor to the Kosovo Trust Agency and UNMIK Regulation No. 2003/13 on the conversion of the right to use socially-owned property. As noted below, it is recommended to adopt legislation that would *de facto* enable the conversion of the right of use of construction land and 99-year lease into permanent private ownership (with full availability, use and sale).

In order to ensure Kosovo's compliance with the Stabilization and Association Agreement concerning the treatment of EU nationals' property rights in Kosovo, the recommended policy measure is to amend the Law on Property and other Real Rights.

The revision must explicitly provide for the right of foreign nationals to acquire and transfer immovable property rights in Kosovo.

The rights of foreign persons to acquire and transfer immovable property may, however, be restricted in certain geographic areas such as the practice in several countries of the region (Croatia, Montenegro) where the legislator determined that it is in the public interest to reserve ownership solely for nationals, provided such restrictions are in accordance with the Stabilization and Association Agreement. The legislator may also opt for a policy of no restrictions for foreigners to acquire and transfer immovable property rights, as is the practice in Germany. However, it is necessary that foreigners' rights to acquire and transfer immovable property are codified in law in order to eliminate speculations about whether such rights exist and to establish a uniform administrative practice. The amendments to the Law on Property and other Real Rights would be supported by guidelines/requirements arising from the Stabilization and Association Agreement between Kosovo and the European Union, respectively Article 65.3 and Article 51.4.

Following are the institutions that are responsible for the management of construction land, either directly or indirectly.

- 1- Ministry of Justice;
- 2- Ministry of Environment and Spatial Planning (MESP);
- 3- Ministry of Local Government Administration (MLGA);
- 4- Ministry of Agriculture, Forestry and Rural Development (MAFRD);
- 5- Ministry of Finance, Department of Property Tax;
- 6- Kosovo Cadastral Agency (KCA);
- 7- Kosovo Property Agency (KPA);
- 8- Privatization Agency of Kosovo (PAK);
- 9- Municipalities.

Laws and bylaws

Law on Construction Land (OJ of former SAPK 14/80 and 42/86)

This Law regulates property-legal relations and other real legal relations on construction land and establishes principles on the regulation and use of construction land. Draft Law on Construction Land is underway that will be consistent with this Concept Document.

Law No. 04/L-174 on Spatial Planning

This Law determines the basic principles of spatial planning, methodology of spatial development and regulations, types, procedures, contents as well as the responsibilities of the administrative entities at central and local level for the drafting and implementation of spatial planning documents, administrative supervision for enforcement of this Law, and related activities undertaken in spatial planning and territorial regulation in the Republic of Kosovo.

The purpose of this Law is to provide sustainable governance, efficient use of public funds, preconditions for balanced economic development, sustainable space regulation, ensuring equal treatment, provision of free movement, and adequate access to public services for citizens

Law No. 04/L-110 on Construction

The purpose of this law is to set forth the provisions governing the issuance of a construction permit, the compliance with the construction permit requirements and the issuance of an occupancy certificate within the territory of the Republic of Kosovo. This law governs construction of all construction objects in Kosovo, design, construction, reconstruction, demolition, if not otherwise contemplated by a special law.

Law No. 04/L-034 on Privatization Agency of Kosovo

This law establishes the Privatization Agency of Kosovo (Agency) as the successor of the Kosovo Trust Agency that was established and regulated under UNMIK Regulation 2002/12.

The Agency is authorized to administer the enterprises and assets they have been socially owned holding company as of 31 December 1988 or after that date, including authorization for the sale, conversion and/or liquidation of the enterprises and assets.

The Agency has exclusive competence to administer:

- 1). socially-owned enterprises, whether or not subject to conversion, including all property in possession or owned by the enterprise, including property located outside of Kosovo.
- 2) all assets located in the territory of Kosovo, whether or not they are organized as entities that were socially owned property within or after March 22, 1989, except as regulated by paragraph 2 of Article 5 of this law; and
- 3) all shares in corporations and subordinated corporations established under this law; and all state-owned interests in an enterprise or other legal entity, whether or not that enterprise or legal entity is subject to conversion.

UNMIK Regulation 2003/13 of May 9, 2003, on the conversion of the right of use to socially-owned immovable property

Subject to the limitations and restrictions set out in the present Regulation, any right of use to Property registered in the name of a Socially-Owned Enterprise, which is transferred to a subsidiary corporation of the Socially-Owned Enterprise in accordance with section 8 of Regulation No. 2002/12, shall be converted into Leasehold.

It provides that such Leasehold shall include:

- a) The right to possess and to use the Property subject to the Leasehold for any purpose not prohibited by the applicable law;
- b) The right to freely effect Transfers of the Property subject to the Leasehold to third parties;
- c) The right to establish encumbrances on the property subject to the leasehold to the benefit of third parties.

It also determines is the manner of setting the leasehold, transfer, deadlines, formalities, expropriation registration etc.

The Law amending the Law on Property and Other Real Rights will contain basic provisions for transformation of 99-year lease, while detailed issues will be regulated with a special law that is expected to abrogate this Regulation.

Law No. 2002/5 on the Establishment of the Immovable Property Rights Register

This Law establishes a register of immovable property rights as a mechanism to implement and validate immovable property rights in Kosovo under the Applicable

Law, overall administration of the Register, record immovable property rights in the register under the authority of the KCA and in compliance with the provisions of the present law.

Law No. 03/L-154 on Property and Other Real Rights

This law governs the creation, content, transfer, protection and termination of ownership rights. Also, this law regulates ownership and, as limited real rights, possession, real security rights and real rights of use. This law defines ownership as the comprehensive right over a thing, authorizing the owner to freely dispose of it, use it, sell it and exclude others from any interference (Article 18). The law also clearly distinguishes between ownership and possession, where the latter is a factual control over an asset that includes certain legal consequences.

Law No. 04/L-077 on Obligational Relationships

This Law contains the basic principles and general rules for all obligational relationships. The provisions of this Law shall apply to obligational relationships regulated by other acts of law regarding matters not regulated in such acts.

Law No. 2004/26 on Inheritance

This Law regulates the inheritance rights. Inheritance is a transfer of a person's property based on the law or based on a will (inheritance) from a dead person (descendent) to one person or several persons (heirs or legatees), according to the provisions set out in the present Law. This law regulates the procedures that courts, other bodies and authorized persons follow during inheritance matters.

Law No. 03/L-007 on Non-Contentious Procedure

This law sets out the rules under which the courts act and decide on personal, family and other rights and interests, and the legal and property interests that are resolved in a non-contentious procedure. The provisions of this law are also applied in other legal matters for which it is not foreseen by law to be resolved according to the rules of contested procedure.

Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality

The purpose of this Law is to regulate the manner of allocation of municipal immovable property for use, exchange of municipal property between the municipality and natural and legal persons, and exchange with central institutions and Privatization Agency of Kosovo (PAK).

This Law determines the rights and obligations of the municipality in management of municipal immovable property in relation to natural and legal persons, central institutions and PAK.

Law No. 04/L-061 on Sale of Apartments for which there is Tenure Right

This law regulates the conditions and the manner of sale of public and socially owned apartments for which there is a tenure right or the right to rent indefinitely, along with common parts and building equipment, and ways determining the selling price of the apartment and termination of tenure rights. This law applies to socially owned apartments and public housing for which there is tenure right.

The deadline for application for privatization of apartments under this law expired in January 2016. MESP is in the process of drafting the Concept Document for amending and supplementing this law, in order to extend the deadline.

Law No. 03/L-139 on Expropriation of Immovable Property, as amended by Law No. 03/L-205 on Amending and Supplementing the Law No. 03/L-139 on Expropriation of Immovable Property

This law defines:

- 1.1. the rules and conditions under which the Government or a Municipality may expropriate a Person's ownership or other rights in or to immovable property;
- 1.2. the rules and conditions under which the Government may authorize the temporary seizure and use of immovable property;
- 1.3. the procedures governing the conduct of such an act of expropriation or seizure;
- 1.4. the rules and procedures that shall be used in determining the amount and payment of compensation for such an expropriation or seizure; and
- 1.5. other provisions governing ancillary matters related to such an expropriation or seizure.

Law No. 02/L-26 on Agricultural Land

This law determines the use, protection, regulation and lease of agricultural land for the purpose of permanent preservation and protection of agricultural potential, based on the principles for a sustainable development.

Law No. 2003/03 on Kosovo Forests with respective amendments/supplements

The purpose of this law is to establish a legal basis for the sustainable protection and management of forests and forest lands as renewable resources of general interest.

This Law is based on the principles of sustainable development, conservation of biodiversity, as well as precautionary and preventive measures for forest protection and environmental conservation.

Law No. 04/L-188 for Treatment of Constructions without Permit

The purpose of this Law is to treat the unpermitted constructions in the Republic of Kosovo, and it applies to unpermitted constructions identified in the digital orthophoto map based on aerial photogrammetric assessment in the Republic of Kosovo of 30 August 2013.

This Law provides a uniform program for the treatment of unpermitted constructions that will be implemented throughout the Republic of Kosovo. Categorization of constructions shall be based on the Law on Construction, Categorization I, II and III, of the urban and rural areas.

The new Draft law that will treat unpermitted constructions is completed which is consistent with this Concept Document.

MESP Administrative Instruction No. 11/2015 on the basic elements and requirements for the design, implementation and monitoring of the Municipal Development Plan

The purpose of this Administrative Instruction is to define the content and the basic requirements for the design, implementation and monitoring of the Municipal Development Plan. The provisions of this Administrative Instruction are mandatory on all institutions and all persons involved in the process of drafting, consultation, adoption, implementation and monitoring of the Municipal Development Plans.

MESP Administrative Instruction No. 24/2015 on Basic Elements and Requirements for Design, Implementation and Monitoring of the Municipality Zoning Map

This Administrative Instruction defines the procedures, elements and basic requirements for the design, implementation and monitoring of the Municipality Zoning Map.

The provisions of this Administrative Instruction are mandatory on all institutions and persons involved in the process of drafting, consultation, adoption, implementation and monitoring of the Municipality Zoning Map.

Administrative Instruction No. 41/2006 on changing the destination of agricultural land as amended and supplemented by Administrative Instruction 10/2010

This Administrative Instruction sets administrative procedures and decision criteria for permanent or temporary change of destination of agricultural land (conversion to construction land). The foreseen procedure requires in particular close cooperation between relevant competent bodies for spatial planning and agriculture. Whereas Administrative Instruction 10/2010 has determined the powers for deciding on the temporary use of forests and state-owned forests and the decision to change the destination of forest and state forestry and private land by the PAK.

Current Program

The Ministry of Justice, with the support of the USAID Property Rights Program (on 26.05.2015), has established a working group for drafting the National Strategy on Property Rights, within which five thematic Working Groups have been established. Key stakeholders related to the ownership rights sector from the government, experts, international partners, civil society, etc., participated in the drafting of this Strategy. This strategy was adopted by the Government on 18.01.2017.

Among the issues addressed in this Strategy are the definition of the types of property in Kosovo, the conversion of social ownership including the right to permanent use of construction land, 99-year lease, foreign ownership rights and other issues. In this context, preliminary analyses on the current legislation on the aforementioned issues were conducted, starting with the Constitution of the Republic of Kosovo, the Law on Property and Other Real Rights, UNMIK Regulation 2003/13, Construction Land Legislation, etc. The issue of construction land was also analysed by the EU-funded

"Support to Civil Code and Property Rights" project implemented by GIZ. EU support under IPA continues in the second phase with current activities on drafting and finalizing this Draft Code.

The conversion to property of the right to use socially owned immovable property, respectively the 99-year lease, is awarded by the Privatization Agency of Kosovo

Experience in other countries

Germany

Unification of land rights and ownership rights (German problem of "construction land")

After the reunification of East Germany with West Germany and their agreement on the implementation of the Constitution and the laws of West Germany in the territory of East Germany, the country had to deal with the similar problem of all the socialist legal systems, i.e. the separation of land ownership from ownership of the building, which is also a current problem in Kosovo with regard to construction land. While immovable property was a people's property, an individual could be the sole private owner of a facility built on such land and had the right to use the people's property for the purpose of using the building. In 1994 Germany passed the Law on the Clean-up of Real Rights for the purpose of unification of ownership of immovable property and ownership of the building. By law, the user of a building had the opportunity to acquire the immovable property and thus become the private owner of both assets, immovable property and building. The law foresaw that the purchase price of immovable property would be 50% of the market value of the property. The alternative option was for the user to create a hereditary construction right (*Erbbaurecht*) on immovable property, which is similar to the construction right as defined by the Kosovo Law on Property and Other Real Law. The owner of the building will have the right to use the immovable property for up to 90 years and pay a fee between 2% and 3.5% of the market value of the property to the incumbent holder of the title of the immovable property.

Conversion of "people's property" into private property

After its unification, Germany faced the problem of converting East German socialist ownership rights into West Germany's social-market ownership rights system. The socialist property of East Germany is divided into (i) people's property, (ii) property of socialist associations and (iii) property of social organizations of citizens. The people's

property was the dominant form of socialist property. Like socially owned property in Kosovo, people's property was limited in terms of rights. It could not be used as a mortgage, was exempt from attachment to another property and protected from third party claims. The right to use people's property was the only legal right an individual could have and the state could take it back almost at its convenience.

Likewise, the Law on Privatization and Reorganization of People's Property ("Trust Law") was adopted to establish the Trust Agency to privatize popular enterprises, which were similar to socially owned enterprises in Kosovo.

The main purpose of the law was to privatize people's property as soon as possible. For the purpose of privatization of the people's property, the Trust Agency converted people's enterprises into joint stock companies as a result of which their right to use public property was converted into private property. While the similarity between the privatization process in Kosovo and in Germany is great, the difference is that in Kosovo, the right to use the property was not converted into a private ownership, but into a 99-year leasehold, which has all the attributes of private property. As an exception from privatization, people's property can by law be transferred to municipalities, cities, counties, lands ("Länder") and the state. All people's property which is used for municipal public services should have been transferred to municipalities and cities. The property, which in the past was taken from local governments by the state and turned into people's property, was returned to the respective local governments.

Despite these privatization efforts, there are still many immovable properties that continued to be registered as people's property because it was not clear who had the right to use them or had any other right over them. This caused legal uncertainty and was widely perceived as a barrier to private investment. To clarify this, the Law on the Determination and Allocation of Former People's Property was adopted in 1991.

According to this law, some entities were designated as authorized agents to dispose of and transfer the people's property and where it was impossible to determine such an entity, the Federal Republic of Germany, represented by the Federal Agency for Immovable Property, was the predetermined entity. This means that in all cases when there was uncertainty about who owned the immovable property, the German government was in fact the one who was authorized to act as a trust agent. The designated entities had to apply to the Trust Agency, namely to the "Land", which will issue a decision on the allocation of such property to the respective entity.

Current problems with the conversion of people's property

Despite all attempts to privatize socialist property and divide it among various public entities and to harmonize East German property law with West Germany, it was reported that in 2014 there were thousands of immovable properties that are still registered as a people's property. The reason for this is the poor implementation of the Law on the Determination and Allocation of Former People's Property, since not all designated entities have applied for ownership rights over people's property.

Foreigners and ownership rights

German law makes no distinction between domestic and foreign nationals regarding investment or establishment of companies. German law has no restrictions on the acquisition of immovable ownership rights by foreign nationals.

Croatia

Conversion of the right to permanent use of construction land into ownership

In Croatia, the process of converting socially owned property into other forms of ownership under Law No. 91/96 on Property and Other Real Rights, amended several times, converted the holders of the right to permanent use of socially owned immovable property into owners of that immovable property under the following conditions: (i) private property may be established on such property (e.g. public goods, such as air, sea, water, etc., are excluded), (ii) the immovable property has not been subject to conversion by any law and (iii) the right to use has been established in accordance with the law which was in force at the time the right was established. This provision has resulted in conversion of socially owned construction land into private property, provided that the holder of the right of use is a private person. It also reinstated the municipalities and cantons as owners of the former socially owned immovable property for which they had the right to use. Specifically, in the case of construction land and the separation between the private ownership of a building built on socially owned immovable property, the Croatian law united the ownership of the facility and the land. The predetermined rule in this respect is that the owner of the building has acquired the ownership of the land (formerly socially owned).

Also, with the Law on Property and Other Real Rights, Croatia has abolished the Law on Construction Land No. 48/88,-procisceni text, 16/90, and 53/90)

Since the conversion of the right to permanent use has been converted into ownership, with the Law on Property and Other Real Rights, the management (definition, division,

regulation etc.) of the construction land has been regulated by the Law on Spatial Planning (No. 153/13) which entered into force on 01.01.2014.

General policy regarding the conversion of socially owned property

The Constitution of the Republic of Croatia of 1990 formally abolished socially owned property and initiated the legal process of converting socially owned property and allowed for this issue to be defined by legislation. Croatian lawmakers applied three methods for converting socially owned property: (i) conversion of legal entities, including their property, (ii) conversion of property and its allocation to certain entities, and (iii) conversion of certain socially owned property into state property under the law. The Law on Property and Other Real Rights states that a socially owned enterprise that does not undergo conversion under the special law, is the legal entity registered as legal holder of the right to use that property. If such an entity could not be identified, the socially owned property would become the property of the Republic of Croatia (state property).

Conversion of socially-owned enterprises into joint stock companies or limited liability companies in accordance with the Law on Conversion of Socially Owned Enterprises included the conversion of the right to use socially-owned real property into private ownership of immovable property. Socially-owned enterprises based in Croatia should apply to the Croatian Privatization Fund to approve their conversion into private joint stock companies or limited liability companies.

Based on the approval of the Croatian Privatization Fund, the enterprise files a claim with the court to register as a joint stock company or as a limited liability company and to register as the owner of the immovable property which it was entitled to use. After the registration of the immovable property under the ownership of a private joint-stock company or a limited liability company, the immovable property has been converted from former socially-owned property into private property.

Given that initially the judicial practice of registration of private immovable property based on such a conversion was not unified, Croatia adopted the 1996 Law on Privatization. Based on the provisions of this law, the Croatian Privatization Fund issued a decision confirming the list of immovable properties which the socially-owned enterprise were entitled to use. The courts harmonized their practice with this law and used the decision of the Croatian Privatization Fund as an official document on the basis of which they registered the right to use socially owned immovable property as the private property of the new company. In 2006, Croatia amended its Law on

Property and Other Real Rights and established the criteria to determine when a newly established company could be considered as a legal successor to a former socially owned enterprise and owner of the immovable property held by such a socially owned enterprise.

Foreigners and ownership rights

As for the acquisition of immovable ownership rights by foreigners, some immovable property, such as arable land and forests, protected natural areas, protected immovable property, cannot be acquired by foreigners, unless otherwise provided by international agreements signed by Croatia. Otherwise, EU citizens and legal entities from member states of the EU can gain rights over immovable property in Croatia, in accordance with the principle of national treatment, respectively, on equal terms with domestic natural and legal persons. Foreign persons who are not citizens or legal entities of EU member states can acquire right on immovable property in Croatia, with the prior approval of the Croatian Ministry of Justice, and if there is reciprocity between Croatia and the respective foreign country. No approval is required if the immovable property is acquired through inheritance, provided there is reciprocity.

Serbia

Conversion of socially/state owned construction land

According to the Law on Construction Land (44/95), the construction land, which was previously socially owned, was converted into state property. The municipality was authorized to administer such state property and any transfer should have the approval of the Government of Serbia. Other construction land, i.e. construction land in the construction area and construction land outside the construction area could be both state-owned and private. In 2003, Serbian lawmakers changed the right to permanent use of state-owned construction land into 99-year leasehold without changing the state ownership structure.

The other reforming process, i.e. the conversion of state construction land, is still ongoing. The Law on Planning and Construction foresees the conversion of the right to permanent use, i.e. the 99-year lease on state land for construction, into private or public property. The guiding principle is that the owner of the building becomes the owner of the construction land so that the private ownership of the building and the land are unified in private ownership. According to this law, the owner of the facility

or, in the case of construction free land, the registered owner of the right to use acquires the private ownership of the construction land. The right to use construction land registered on behalf of the Republic of Serbia, the autonomous unit or the municipality, or any other legal entity created by them, is converted into public property. Foreign states may acquire ownership of the construction land which they had the right to use and which they needed for their diplomatic or consular functions. Similar to the previous Croatian construction land reform, Serbia unified the legal regime both of the facility and the construction land, treating them as a single asset, as a result of which all private rights and obligations related to the facility are expanded, including the construction land under them.

The law also foresees for some subjects the conversion of the right to permanent use, that is, the 99-years lease for on state construction land, into a private or public property, through compensation (payment). These entities include legal entities that are subject to privatization and former socially-owned enterprises. However, the provisions of the Law on Conversion through Compensation were declared as unconstitutional in 2012. Consequently, in June 2015, Serbia adopted the Law on the Conversion of the Right to Use into Ownership of Construction Land. The implementation process has started and may be too early to make an objective assessment of the success of this policy.

The Law on Construction of the Republic of Serbia has been repealed by the Law on Planning and Construction.

Compared to Croatia, Serbia has in some respects been oriented towards a different approach regarding the conversion of socially owned property. Serbia's Constitution foresees three types of ownership rights, namely public property, property of cooperatives and private property. Public property consists of state property, autonomous provinces property and communal property. Serbia's Constitution also mentions socially owned property, but requires that such property be privatized in accordance with the law. Therefore, there is a clear constitutional mandate to privatize all socially owned property. Serbian lawmakers have partially fulfilled this mandate by repossessing some types of immovable property, such as agricultural land, which is nationalized through confiscation (*Law on the manner and conditions of recognition of rights and return of land that has been transferred to socially ownership based on the agricultural land fund and confiscation due to obligations not fulfilled by the compulsory acquisition of agricultural products 18/91*), formerly owned immovable property of churches and religious communities (*Law on Restitution of Church and Religious Communities Properties 46/2000*), and rural pastures (*Law on Return in Use to Villages of Meadows and Pastures 16/92*).

However, Serbia has not privatized all socially owned property. According to the law on conversion of socially owned property on agricultural land into other property types (49/92), the socially owned agricultural land acquired by the legal entity through agrarian reform or nationalization has been converted into state property, namely property owned by Republic of Serbia. The socially owned agricultural land, which the legal person has acquired through a contractual transaction, has been converted into private property. According to the Law on construction land (44/95), urban construction land, which was previously under social ownership, was converted into state ownership. The municipality was authorized to administer such state property and any transfer should be approved by the Government of Serbia. Other construction land, i.e. construction land in the construction area and construction land outside the construction area could be both state-owned and private. In 2003, Serbian lawmakers changed the right to permanent use of state construction land into 99-year leasehold, without changing the state ownership structure.

Montenegro

Ownership rights policy and current ownership rights reform

Montenegro started a major ownership rights reform in 2009 with the adoption of the Law on Property rights (19/09) as well as the Law on State Property (21/09). Although the 1992 Constitution of Montenegro abolished socially owned enterprises by converting most of them into state property, such as the construction land, the right to use remains in force and had not been converted into a private right. This was seen as anachronism and increased legal insecurity, to the detriment of investment and economic development. In some cases, socially owned property was returned in accordance with the Law on Restitution and Compensation of ownership rights (21/04) and thus converted into private property, but in most cases, the right to use continued to exist. The 2009 ownership rights reform converted the right to use of former socially owned property, now state property, into private ownership. Unless otherwise provided by law, the registered owner of the right to use has the right to be registered as the owner of the respective immovable property. This applies equally to private individuals and legal entities, such as municipalities. Correction in cadastral books is done at the request of the interested party.

Foreigners and ownership rights

The Law on ownership rights also defines the rights of foreign citizens who acquire ownership rights in Montenegro. The principle of national treatment applies, namely foreigners can acquire property under the same conditions as citizens of Montenegro. Exceptionally, foreign nationals cannot secure ownership of (i) natural resources, (ii) public goods, (iii) agricultural land, (iv) forests and forest lands, (v) cultural monuments, (vi) immovable property in the area of the state border, and (vii) immovable property, which is considered to be of interest to national security matters. As an exception, a foreign citizen may acquire ownership rights in agricultural land, forests and forest land up to an area of 5000 m² if the transaction is related to the transfer of ownership of a building.

Assessment

The four states share the fact that, like Kosovo, they had to convert socially owned immovable property into different types of ownership rights that are in line with the market economy and provide legal certainty and transparency in relation to ownership rights. All have followed different legal strategies, but the end result is the conversion of socially owned property into private or state property. Germany and Croatia have used the privatization of socially owned enterprises for the conversion into private property of the socially owned assets of these enterprises, something Kosovo has not done. Germany converted into private property the largest share of socially owned property, while Serbia and Montenegro initially converted it into state owned property. Croatia has followed a middle path, giving priority to conversion into private property, leaving state ownership only as an option if it is not possible to designate any entity that may be eligible for a socially owned enterprise. Croatia's approach also avoided the problems that Germany faced with its efforts to regulate by law the separation of the socially owned enterprise into several entities, a difficulty still faced by Germany. A common feature is that all states have opted for the option of converting into owner of the property the person who is legally registered as a holder of the right to use the socially owned property. The new legislation adopted in Serbia shows that Serbia still faces difficulties in converting into private ownership the right to use state owned construction land. In terms of clarity and legal certainty, Montenegro offers an elegant legislative solution that avoids numerous special laws that convert socially owned property into other types of ownership rights. Montenegro has a law on private property and another on state property, and both are harmonized with each other. The conversion of socially owned property is achieved through a general conversion either into private or state property of the right of use, depending on who is registered in

cadastral records. Thus, the complications of German law are avoided, there is less legislation than Croatia but with the same result, and it is more advanced than Serbia's in relation to the conversion of the right to use construction land.

Chapter 3: Goals and Objectives

Goal

The overall goal of this concept document is the clear definition of ownership, including the definition of the right to permanent use of land, the definition of the ownership of the construction land, the ownership of the land and the ownership of the facility in order to create one type of land ownership, define the 99-years lease and ownership rights of a foreign citizen in Kosovo.

Proper regulation also contributes to better land use and respect for ownership rights. This will help achieve the goals of aligning with EU policies and legislation, strengthening and protecting human rights and strengthening the market economy.

Chapter 4: Options

Option 1: Status quo option (no change)

The first option is for the issues dealt with in this Concept Document to remain as they are currently regulated, and not changing this policy means:

- not converting socially owned property of construction land into other forms of ownership;
- Failure to convert the 99-year leasehold into ownership would result in further preservation of social ownership despite intentions to remove this type of ownership, and the current practice of different interpretations and obstacles in the legal circulation and the use of this property will continue;
- Failure to define ownership rights of foreign nationals in Kosovo will affect foreign investment in Kosovo.

Option 2: Changing the existing policy

The second option is to change the current policy by amending and supplementing the *Law on Property and Other Real Rights*.

The purpose of this option is to address, through the amendment and supplementation of the *Law on Property and Other Real Rights*, the issues identified above and to better regulate them.

The amendment and supplementation of the *Law on Property and Other Real Rights* will include provisions regarding:

- definition of types of ownership rights
- Conversion of the right to permanent use of the socially owned property into ownership by persons registered as permanent holders of the right to use, without including the immovable assets registered on behalf of the socially owned enterprises administered by the PAK, and the buildings in which there is right of tenure. Assets for which the municipality or any of its organs is registered as a holder of the right to use, would become municipal assets
- Private owners of facilities, which are lawfully constructed in public or socially owned property, are converted into private owners of the land in which the facility is built, under the terms provided by law.
- convert 99-year lease rights into private ownership rights under the terms set out in the new law, which will amend UNMIK Regulation 2003/13, will clarify the legal status of socially owned property and the related rights of use.
- explicit establishment of the right of foreign citizens to acquire and transfer rights to immovable property in Kosovo.

Responsible for the implementation of this law will be MESP - Kosovo Cadastral Agency, MoJ, Ministry of Agriculture, Forestry and Rural Development, MLGA, Privatization Agency of Kosovo and Municipalities. There will be no need for additional staff, as current staff within Ministries and Municipalities will carry out the duties deriving from this policy, while there will be training needs for the implementation of this policy.

There will be a need for awareness-raising and information campaigns, brochures to inform responsible officials and the community on this policy. This campaign will be implemented by MoJ, MESP and other relevant institutions.

Option 3: Changing the current implementation approach

Change the current approach of Legislative Implementation on issues addressed by this Concept Document through the drafting by the Ministry of Justice of guidelines and explanations, with definitions and legal clarifications regarding the meaning and scope of private property, public property, state property and municipal property, in accordance with the Constitution. These guidelines shall be distributed to all Kosovo institutions to ensure a harmonized and unified use of ownership rights terminology in future legislation and administrative and legal practice.

It is not possible to change the existing approach to the implementation of Legislation on these issues, because of the reasons outlined above in this document, as it is necessary to draft new provisions on these issues, as proposed above, by amending and supplementing the *Law on Property and Real Rights*, since the new policies that have been established or existing laws do not contain such provisions.

The *Law on Property and Real Rights* would provide for the conversion into owners of the holders of the right to permanent use of immovable socially owned property, namely the conversion into private, municipal or state property of socially owned construction land on which there is the right to permanent use, depending on the status that it had before the automatic conversion into socially owned property (*according to Article 8 par. 3 of the Law on Construction Land*) and provided that the right to permanent use has been established in accordance with the law which was in force at the time when the right to permanent use was established.

Chapter 5: Options overview

Options Overview			
Principal Features	Option 1	Option 2	Option 3
Principal features of option	Status Quo	Amending and Supplementing the Law on Property and Other Real Rights	Draft guidelines and explanations on the issues addressed by this Concept Document
Population / Sector / Target Region Segmentation	Property Title Holders	Property Title Holders	Property Title Holders

Characteristics of implementation - who is responsible - a government resource (which), private sector, citizens	Government/Municipalities	Government/Municipalities	Government/Municip
Administration or implementation of the program or service			
Laws, bylaws, amendments to existing laws as well as enforcement and penalties		Amending and Supplementing the Law on Construction Land and UNMIK Regulation 2003/13	
Economic stimuli or incentives - subsidies or taxes			
Education and Communication Campaigns		There will be a need for an awareness-building campaign	
Instructions and Codes			
Time frame - when will the option be in force	Current policy is being applied	2018	2018

Chapter 6: Options Analysis

Benefits

1. Benefits of Option 1 (*status quo*).

It was concluded that there will no benefit from this option, since the current situation is not regulated according to the changes in social circumstances and the old law, which is still in force, is not being implemented.

2. Benefits of Option 2.

The benefits of this option are: determination of clear criteria for defining and utilizing construction land; efficient management and use of construction land as well as efficient and transparent decision making, determination of the holder of the ownership title of each individual piece of construction land; elimination of the legal uncertainty of landowners in urban areas; legal unification of immovable property (principle of *superficies solo cedit*) as stated in the *Law on Property and Other Real Rights*, which is the fundamental principle of the continental civil law of Europe, that is the new law must provide for the construction land and the constructed buildings to represent one immovable unit and as such should be registered in the *Register of Immoveable Property Rights*. Property owners will be motivated to expand their ownership rights by converting into full ownership their rights of use over their land plots, option to use construction land for mortgages etc.

There is clarity and legal certainty, since the ambiguous socialist right to use socially owned property would be converted into public or private ownership rights. It is clear who owns what kind of property. There is a clear division between private and public ownership rights.

There is legal certainty regarding the rights of foreign nationals to acquire and use private and public property, as well as greater incentive for foreign nationals to invest in Kosovo

3. Benefits of Option 3.

The benefits of this option are very small or insignificant.

Negative consequences

Failure to determine and definition property types in Kosovo will lead to non-fulfilment of the obligations deriving from the Constitution of the Republic of Kosovo, Article 121 par. 1.

There is great legal uncertainty regarding construction land in urban and rural areas. This legal uncertainty in the regulation of construction land in urban and rural areas, in addition to the above mentioned limitations, affects not only the legal instability / uncertainty of property right holders over those properties, but may also have a negative impact on the value of properties and the overall investment climate in Kosovo.

In addition, the way the construction land is treated in the law on Construction Land is problematic in some respects. The law, in its entirety, reflects a socialist mentality and economic relations, which are in full contradiction with the *Constitution of the Republic of Kosovo*. Construction land (which is of high value) cannot be used as collateral for mortgages, hence its usefulness for financing purposes has been considerably reduced and leads to a lack of economic efficiency. Also, the distinction between ownership of the building and the right to use the land creates legal complications during the transfer. Contracts rarely specify which rights and which assets are actually transferred.

The continuation of the 99-years leasehold on socially owned property leads to continued unclear definition of the ownership of these properties and provides grounds for different interpretations of this ownership, which also creates in its legal operations and its use for mortgage.

The different interpretations of Article 121.2 of the Constitution of Kosovo whether foreigners can own immovable property, and the lack of legal or international treaty provisions are an obstacle for foreigners to enter into contracts of immovable property transactions, register them in the cadastre, and the final consequence is the deterrence of foreign nationals to acquire ownership over immovable property and this has hampered foreign investments in Kosovo. Also, the non-definition of ownership rights of foreign nationals in Kosovo leads to non-fulfilment of obligations deriving from the Constitution of Kosovo and the SAA, as well as hindering foreign investment in Kosovo.

Costs

Chapter 7: Consultation

To address the issues that are the subject of this Concept Document, consultation and analysis started earlier and have continued during the process of drafting the National Strategy on Property Rights and the result of consultations was the conclusion that it is necessary to regulate these issues by amending and supplementing the **Law on Property and Other Real Rights** No. 03/L-154.

Preliminary consultations have been conducted in accordance with *Article 7 of the Regulation of Rules and Procedure of the Government* No. 09/2011.

In addition to the National Strategy on Property Rights, in the process of drafting this document have been consulted USAID's Property Rights Program Reports and Analyses within the process of drafting the National Strategy on Property Rights.

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Chapter 8: Comparison of options (asses the consequences of each option)

According to the assessment, Option 1, status quo (no change), would continue to maintain further legal uncertainty and lack of proper definition of land ownership in urban and rural areas, would still retain the right to permanent use of immovable property as a category of ownership rights that does not fit the social and political circumstances and the Kosovo Constitution, and the transfer of social ownership into 99-years leasehold, which suspends the clear definition of ownership of these properties and leaves room for different interpretations of this ownership, which creates an obstacle even in its legal operation. Also, the non-definition of ownership rights of foreign nationals in Kosovo leads to non-fulfilment of obligations deriving from the Constitution of Kosovo and the SAA, as well as hindering foreign investment in Kosovo.

Option 2, adoption of the new Law on Construction Land, would enable clarification of the criteria for defining and regulating construction land; efficient and transparent administration and use of construction land; designation of the holder of the property title over each individual piece of construction land; elimination of legal uncertainty of landowners in urban and rural areas; legal unification of immovable property, so that the construction land together with the constructed buildings represent a single unit. Property owners will be motivated to expand their ownership rights by converting into full ownership their rights over their land plots.

Option 2 seems to be the preferred policy measure. This option follows the practice of the countries of the region, which have successfully converted socially owned property

into public or private property. Through a one-off amendment to the existing Law on Property and Other Real Rights, the right to use would be uniformly converted into a property right. With this, it would become clear when private persons, public enterprises, municipalities and the Republic of Kosovo can acquire ownership rights on an immovable property. The new law on public property, which would be aligned with the amended and supplemented law on property and other real rights, would complement the current legal vacuum caused by the absence of a comprehensive law on public property. It would also be in accordance with the Government's National Program for the Implementation of the Stabilization and Association Agreement and the concept document related to the draft law on public property. This option would also be in line with the Constitution, which refers to public and private property, and which in the past foresaw the conversion of socially owned property into state property, as a sub-category of public property. As a result, there would be a comprehensive law that regulates private property in a comprehensive way and another law that regulates public property, namely state and municipal property, in a comprehensive manner. At the same time, both laws would adopt the same approach to the conversion into public (state or municipal) property or private property of the right to use socially owned property.

The guidelines suggested in Option 3 would not have the power of the law and there is a risk that these will not apply equally to all government institutions. It is also disputable whether the legal interpretation of an executive branch may be mandatory for the judiciary, given the principle of separation of power and the independence of the judiciary. This could lead to other inconsistent interpretations of the meaning of the various ownership rights between the executive and judicial branches.

Chapter 9: Recommendation

The Government of the Republic of Kosovo should approve the Concept Document on Property and Other Real Rights, as recommended in Option no. 2, since an additional provision should be introduced to regulate the ways of acquiring property, including property-rights relationships, property rights and other real rights, including the provision that all holders of the permanent right to use of construction land, who were owners before the conversion of their property into construction land, regardless of whether they are private or public persons, or in cases where the land has been allocated/awarded for permanent use by the Municipality with compensation, must be converted, automatically, into owners; determine the principles of regulation, use and administration of construction land in cases defined by the law; convert into ownership

the right to 99-years leasehold of socially owned property, and define the rights of foreign nationals to acquire ownership on property in Kosovo.

Chapter 10: Communication

The Ministry of Justice will provide information on the drafting process of the Draft Law, and proposals will be considered after consultation with line ministries, Agencies, experts, civil society and other stakeholders working in relevant fields.

There will be different forms of communication, starting from meetings, workshops, working groups and publications on the official website of the MoJ, and the OPM, communication will be active, direct and constructive.