

The Normative Framework: International Substantive Rules and Practice Related to Remedies for Homes and Property after Displacement

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Introduction

Since the end of the Cold War, international law increasingly supports the existence of a right to remedies for persons who were displaced by conflict and whose properties were destroyed, occupied or otherwise inaccessible in their absence. Moreover, the experience of countries affected by displacement has provided important practical insights as to how such a “right to restitution” can be put into effect.

The “right to restitution” is increasingly recognized in international guidelines and policies

For refugees who have sought shelter from conflict outside their countries, the UNHCR has recognized non-discriminatory restitution programs as a crucial element of voluntary repatriation to home countries:¹

The Executive Committee [of UNHCR]:

- (h) *Recognizes* that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; *notes*, therefore, the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property; and also *notes* that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin;
- (i) *Stresses* the desirability of ensuring that any restitution and compensation framework takes account of the situation of returning refugee women, in particular, where women, especially female heads of households, are prevented from securing property rights in accordance with inheritance laws or where inheritance procedures prevent them from recovering their property within a reasonable period of time;
- (j) *Encourages* countries of origin to provide homeless returning refugees, as appropriate, with access to land and/or adequate housing, comparable to local standards;

¹ UNHCR, *Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, (No. 101 (LV) – 2004), available at: <http://www.unhcr.org/refworld/docid/417527674.html>.

For internally displaced persons (IDPs) who remain within their country but uprooted from their homes, the UN Guiding Principles on Internal Displacement identify state duties under international law to protect the property and possessions of those displaced and to facilitate their restitution.²

Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.³

For all displaced persons (both refugees and IDPs), the recent “Pinheiro Principles” on property restitution have suggested that restitution should routinely be treated as a remedy for the human rights violations inherent to displacement from one’s home.⁴

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

Finally, another set of recent UN Guidelines clarify that legal remedies should not only include the procedural right to a hearing but also the substantive right to restitution or compensation for all victims of severe human rights violations (including the displaced):⁵

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, ... which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition

The “right to restitution” derives from international law

The basic nature and specific features of this right derive from universal rules of human rights and humanitarian law. The below provide a few examples of human rights rules relevant for Iraq and their significance to restitution for displaced persons.

² UN Commission on Human Rights, The Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), available at <http://www.unhchr.ch/html/menu2/7/b/principles.htm>. See Guiding Principle 21 on the protection of property during displacement and Guiding Principle 28(1) on the general duty to facilitate durable solutions for IDPs.

³ Ibid., Guiding Principle 29(2).

⁴ UN Sub-Commission on Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (2005).

⁵ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147, 21 March 2006.

The 1948 Universal Declaration of Human Rights incorporates the right of property:⁶

Article 17

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

The 1966 International Covenant on Civil and Political Rights (CCPR), ratified by Iraq in 1969, includes several relevant rights.⁷ One of the most important is the right to freedom of movement and choice of residence:

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Although the right to enter one's own country (paragraph 4) has often been described as a "right of return" and is clearly important for returning refugees, the right to freedom of movement and choice of residence (paragraph 1) most strongly supports restitution. Without the restoration of property rights, displaced persons have no meaningful opportunity to exercise this right by resuming residence in their pre-displacement homes, should they so wish.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of ... his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The right to a fair trial is procedural but applies to situations in which domestically defined rights to property or housing may be at stake. Deprivation of such rights without a fair hearing may itself be a violation of the rights of displaced persons.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

People have rights to privacy in their homes even if they do not own them. Unlawful evictions represent a failure to protect against interference with this right. Finally, in the

⁶ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

⁷ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

case of violation of any of the above substantive rights, victims must be afforded a remedy:

Article 2

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The 1966 International Covenant on Economic, Social and Cultural Rights (CESCR), ratified by Iraq in 1969, also contains a number of rights relevant to restitution.⁸ Perhaps most important is the right to adequate housing:

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The right to adequate housing in the CESCR reinforces the right to privacy in the home in the CCPR (Article 17), in that both protect rights to be free from arbitrary interferences with property that residents do not own but consider their home and depend on for shelter, safety and privacy. The right to adequate housing includes the right to security of tenure, meaning that all persons should be free from the threat of evictions without legal process.⁹ This right applies even to residents of informal settlements.¹⁰ The UN Human Rights Commission described “forced evictions” in violation of this right as gross breaches of international law and recommended that states provide legal remedies where they occur.¹¹

⁸ International Covenant on Economic, Social and Cultural Rights (CESCR), G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

⁹ UN Committee on Economic, Social and Cultural Rights, General Comment 7 (1997), paragraph 3: Arbitrary or “forced” evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

¹⁰ UN Committee on Economic, Social and Cultural Rights, General Comment 4 (1991), paragraph 8(a).

¹¹ UN Commission on Human Rights, Resolution 1993/77 (1993), paragraphs 1 and 4. The Commission called for “immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted....”

Finally, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified by Iraq in 1969, forbids racial discrimination in the exercise of numerous rights relevant to restitution.¹²

Article 5

... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(d) Other civil rights, in particular:

- (i) The right to freedom of movement and residence within the border of the State;
- (ii) The right to leave any country, including one's own, and to return to one's country;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(e) Economic, social and cultural rights, in particular:

(iii) The right to housing;

The “right to restitution” is reflected in domestic practice

Commitments to provide remedies for lost homes and property, as well as institutional mechanisms to implement such remedies are an increasingly common component of peace agreements. Pursuant to such agreements or on their own initiative, an increasing number of states have drafted and implemented legislation allowing for such remedies.

The relationship between property remedies and national laws and legal institutions is often complex. In order to ensure clarity, continuity of rights and legal certainty, post-conflict legal frameworks for property remedies should only deviate from existing domestic legal frameworks where strictly necessary. However, in some cases it may be necessary to undertake one or a combination of the following measures on a provisional basis in order to address displacement situations:

1. Interpret or amend substantive rules related to property
2. Simplify procedural rules related to the submission, substantiation and adjudication of claims
3. Set up an ad hoc adjudicatory body to apply provisional substantive and procedural rules to a specific caseload of displacement related claims

¹² International Convention on the Elimination of All Forms of Racial Discrimination (CERD), G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969. Similar provisions exist in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Conventions on the Rights of the Child (CRC), both of which Iraq has acceded to without yet having ratified.

This presentation focuses on the first question – how substantive rules related to property may be interpreted or amended in order to address the challenges of displacement related property claims. Although domestic law typically sets out perfectly adequate substantive rules on property relations during normal circumstances, some degree of interpretation or provisional amendment of these rules may be necessary in response to displacement situations. Why?

1. Legal drafters and legislators rarely anticipate the contingency of conflict and mass-displacement. As a result, the application of domestic legal rules that function well during normal situations may have the effect of denying rights to the displaced unless their objective circumstances are taken into account.
2. The failure to interpret and apply domestic law in a manner that takes into account the situation of displaced persons may result in further violations of their rights. The Guiding Principles on Internal Displacement recognize that displacement gives rise to specific vulnerabilities and protection needs on the part of those affected and recommends special measures that can address these needs. The implementation of such special measures, including restitution programs, often requires legal interpretation or amendment.¹³

How should substantive rules on property be interpreted in order to facilitate post-displacement restitution rights?

Numerous examples exist of how legal principles common to many domestic property legal frameworks can be interpreted to take into account the circumstances of displaced persons. The below cases set out a number of typical legal principles and provide examples of how they have been interpreted in post-displacement settings.

Principle 1: No effect will be given to coerced transfers of property between private individuals

In situations of mass displacement, and particularly where individuals were displaced based on their ethnic or religious identity, it may be possible to presume the existence of a general atmosphere of coercion during the time and in the places where conflict and forced evictions occurred. Such a presumption can allow for:

- All cases of private transfers of homes and property that happened in the relevant time and place to be subject to systematic reexamination, with the possibility of voiding contracts found to be the result of coercion; and
- Shifting of the burden to persons seeking to uphold contracts on sale or exchange undertaken in the relevant time and place to prove no coercion existed (particularly where the party that claims coercion received inadequate compensation for their property).

¹³ Many countries have found it necessary to enact special laws or regulations in order to be able to fully address the effects of widespread internal displacement. A compilation of such laws and policies can be accessed at: http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.

- In cases where there is clear evidence of ethnic or sectarian cleansing, all contracts on sale or exchange undertaken in the relevant time or place might simply be voided *ex lege*.

Constitutional Court of Bosnia, Case No. U-15-99:¹⁴

In the present case, the Constitutional Court finds it clearly established that the appellant concluded the exchange contract under the influence of her vulnerable position as a member of an ethnic minority at a time when a policy of ethnic cleansing was being pursued in large parts of Bosnia and Herzegovina. It is also clear that the contract was not in conformity with what would have been her wishes under normal conditions, and it must be assumed that [the party defending the contract] was, at least in a general way, well aware of the reasons which made her willing to accept the contract.

Bosnian Law on Property Restitution¹⁵

In case of a dispute as to the validity of the contract on exchange, the competent authority shall suspend proceedings and shall refer the parties to the competent court according to the provision of the Law on Administrative Procedures ... regulating preliminary issues, in order to rule on the allegation. Notwithstanding the provisions of the Law on Civil Procedures ..., the burden of proof shall lie upon the party claiming to have acquired rights to the apartment through the contract on exchange to establish that the transaction was conducted voluntarily and in accordance with the law.

Principle 2: Failure to meet legal conditions can result in loss of rights

Many legal rights can be prescribed or terminated for failure by the rights-holders to meet legal conditions or requirements without a justified reason. As a general matter, it is crucial to recognize the involuntary nature of conflict-related displacement and treat it as a justified ground for failing to meet legal conditions or exercise legal rights in a continuous or timely manner. This has several implications related to property remedies:

- Where homes or land are held subject to requirements of continuous use or residence, periods of displacement should, in principle, not be treated as unjustified periods of absence or non-use.
- Where displaced persons were on the way to meeting use or residency requirements necessary in order for them to acquire rights to homes or lands (or in order to improve or strengthen existing rights), they should, in principle, not be penalized for the period during which they were displaced. This means that they should be allowed to resume residency and/or use of the original or equivalent homes and lands with the time accrued there prior to displacement (and, possibly, the time that they were displaced) counting in their favor.
- Persons who occupy abandoned property that is technically subject to acquisitive possession should not, in principle, be treated as eligible to acquire rights to that property until the claims of the pre-displacement users have been addressed.
- Prescription periods for displaced persons to assert legal claims to homes and lands left behind should be tolled for the period of displacement.

¹⁴ Decisions of the Bosnian Constitutional Court can be accessed at: <http://www.ccbh.ba/eng/>.

¹⁵ Federation of Bosnia and Herzegovina, Law on Cessation of the Law on Abandoned Apartments, consolidated text as most recently amended in May 2003, Article 2a.

Principle 3: Public authorities may not interfere with the peaceful enjoyment of property rights except where necessary in the public interest

Public authorities have a clear obligation to respect the rights of the displaced to homes and property they left behind, including an obligation to protect such homes and property from arbitrary occupation, confiscation or destruction by others.¹⁶ However, in extreme displacement crises, public authorities may lawfully allocate property and homes left behind to displaced persons from other parts of the country. However, such allocations must meet specific protective criteria:

- They must be in the public interest – in the case of displacement, this means that allocation of abandoned homes to displaced persons must be based on strict criteria of humanitarian need, excluding applicants who have other means to house themselves and their families. *Abandoned homes should not be allocated to public officials charged with upholding the law, such as politicians, civil servants, military officials, judges or police officers.*
- Allocations must be necessary – in the case of displacement, this implies that (1) such allocations may only proceed based on specific findings that no other means of sheltering displaced persons exist; and (2) that such allocations must explicitly be temporary and should immediately be terminated when the humanitarian need no longer exists.
- In order to avoid arbitrariness, such temporary allocations should be based on laws or regulations. Such regulations should include specific mechanisms for restoring the rights of prior residents of allocated homes and for providing them with compensation for any damage or permanent expropriations of their property.

Constitutional Court of Bosnia, Case No. U-14-00:

24. The Constitutional Court considers that [a wartime law temporarily reallocating abandoned homes] initially served a legitimate aim The relevant aim was the protection of the rights of others, i.e. the rights of persons who were forced to leave their homes because of the war. Indeed, the war in Bosnia ... caused mass movements of the population and created a great number of housing problems. Many apartments and houses were abandoned or destroyed, or the inhabitants were forcefully evicted. Empty homes were immediately taken over by others. The authorities of, at the time ... enacted a law which temporarily solved the housing problems caused by the great number of [IDPs].

25. However in the present case, the appellant has still not been able to realize his rights. Therefore, the "interference", which initially could have been justified and in compliance with the principle of "necessity", can no longer, five years after the end of the war, represent a necessary "interference in a democratic society" with the appellant's right to return to his home.

In situations where the conditions that caused displacement have been addressed (for example, when armed conflict is brought to an end), the obligation to protect abandoned homes and property implies that the competent authorities must create or support mechanisms to allow restitution of such properties or compensation where this is impossible:

- Restitution should be provided wherever possible (rather than compensation), regardless of whether the beneficiaries intend to return. This is because the restoration

¹⁶ Guiding Principles on Internal Displacement, Principle 21(3).

of legal and physical possession of property is an important precondition to informed and voluntary choices about whether to return or not. In addition, the sale, lease or exchange of restored properties can be a crucial means for displaced persons who choose not to return to fund their own resettlement elsewhere without being dependent on government help.

- Restitution involves the restoration of legal rights as they existed before displacement, and should, in principle, include rights to properties that displaced persons depended on as homes or for their livelihoods even where they did not own them outright. However, where property was held subject to a requirement of use or residence (see above), such requirements may be deemed to come into effect again when the conditions for safe and dignified return exist, implying that return may be necessary to preserve restituted rights in some cases.
- In some cases, compensation should be considered in addition to (rather than as a substitute for) restitution. This is particularly important in the case of destroyed properties. Even where the state is not legally responsible for destruction or damage giving rise to compensation claims, provision of such compensation can be an important way for states to give effect to their duty to facilitate durable solutions for the displaced.¹⁷

Turkish Compensation Law:¹⁸

Article 1: The objective of this law is to lay down the principles and procedures for the compensation of material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror.

Article 7: The damages to be compensated by this Law through peaceful settlement are as follows:

- a) All damages given to the animals, trees, - products and other movable and immovable properties.
- b) Damages resulting from injury, physical disability and death and the expenses made for medical treatment and funerals.
- c) Material damages due to the reason that people could not reach their assets because of the activities carried out under the fight against terrorism.

Principle 4: Possession of property is presumed to be lawful

One of the obvious preconditions for a property restitution program to succeed is the suspension of any existing legal presumption that possession of property is lawful, at least for the areas that were affected by displacement. In such situations, the rights of all persons resident in or using claimed properties must be re-examined and balanced against the rights of the displaced claimants. Where displacement took place in known, systematic patterns, there may be justification for provisionally reversing the presumption of lawful possession with regard to all persons in affected locations whose tenure began after the outbreak of displacement:

¹⁷ Guiding Principles on Internal Displacement, Principle 28(1).

¹⁸ Republic of Turkey, Law No. 5233 on the Compensation of Damages that Occurred due to Terror and the Fight against Terror (2004), available at: http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.

- Where systematic patterns of displacement took place recently, the simplest approach to restitution may be to cancel the rights of all secondary occupants of claimed properties in affected locations *ex lege*, requiring nothing more of claimants than evidence that they were the lawful residents of claimed homes and lands immediately prior to the outbreak of displacement in order to be eligible for restitution.
- Where secondary occupants claim to have purchased claimed properties, any existing legal requirement of good faith for valid purchase should be interpreted and applied in light of the circumstances. In other words, where displacement was widespread or systematic and recent, it may be presumed that purchasers were aware of the fact that the property they were purchasing might be encumbered with claims.
- Secondary occupants whose rights with regard to claimed properties are invalidated should be provided with alternative accommodation only if they have no access to other housing. In situations where accommodation is in short supply, the burden may be placed on secondary occupants to apply for alternative accommodation and to periodically establish that they have no access to other housing according to prescribed criteria (e.g. cannot move in with family members, still seeking remedy for own pre-displacement housing, insufficient income to rent, etc.)
- Evictions of secondary occupants should take place in accordance with prescribed legal deadlines and procedures and should not be undertaken violently or under inhumane conditions. Secondary occupants are entitled to full information on their legal rights and obligations as soon as a claim has been lodged on the property they are occupying.
- Secondary occupants should not be subject to criminal sanctions simply for having occupied abandoned property. However, criminal prosecution should be initiated if secondary occupants participated directly in criminal acts related to the displacement of the claimants; if they steal moveable property and fixtures, or otherwise damage or destroy the property they occupy; or if they resist the enforcement of lawful eviction orders.
- Temporary occupants should, in principle, be able to seek compensation for improvements made to abandoned property, but only in the event that they were necessary in order to continue habitation of the property. In principle, any authorities that sanctioned or failed to prevent the occupation of abandoned property should bear primary liability for such costs, rather than the claimant.

Constitutional Court of Bosnia, Case No. U-14-00:

34. The Court accepts that there may have been strong reasons in the war period to justify the use of the apartment for providing shelter for [IDPs]. However, the conditions, which then prevailed, have fundamentally changed and can no longer justify an interference with the appellant's rights. It is also true that the apartment is at present occupied by other persons and that their interests must be taken into account when determining whether the interference with the appellant's rights is proportionate. However, when weighing the various interests involved, the Court must pay particular attention to the fact that the return of refugees and displaced persons to their previous homes is a primary objective of the [Peace Agreement] and the Constitution and that the restoration of previously existing rights to houses and apartments should in this perspective be seen as a predominating objective.

Bosnian Law on Property Restitution.¹⁹

Article 1

[All] regulations regulating the issue of abandoned apartments passed between [the date of the outbreak of hostilities] and the entry into force of this Law ... shall cease to be applied on the day of the entry into force of this law.

Following the entry into force of this Law, the authorities ... and other bodies ... shall refrain from undertaking any new actions by which apartments will be declared abandoned or occupancy rights cancelled until after the occupancy right holder has been reinstated in his/her apartment in accordance with this Law.

The competent bodies referred to in [the prior paragraph] shall decide about the rights of occupancy right holders to repossess their apartments which have been declared temporarily or permanently abandoned and the rights of temporary occupants of the abandoned apartment.

Article 2

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law terminating occupancy rights shall be null and void.

Any occupancy right or contract on use made between [the outbreak of hostilities] and [the entry into force of this Law] is cancelled. A person who occupies an apartment on the basis of an occupancy right which is cancelled under this Article shall be considered a temporary user for the purposes of this Law.

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and who is entitled to alternative accommodation pursuant to this Law, shall be provided with accommodation within the same canton by the administrative authority on the territory of which she/he had his/her latest residence. The temporary user shall be obliged to move out of the apartment within the deadline set in ... this Law.

Article 3

Holder of occupancy right in the apartment which is inhabited by a person using the apartment without legal basis or which is vacant as of the date this Law enters into force shall be able, without any restrictions, to repossess the apartment in which he has an occupancy right. Persons using the apartment without legal basis shall, ex officio, be evicted immediately or at the latest within 15 days and the competent authority shall not be obliged to provide alternative accommodation to such persons [NB: such "illegal" secondary occupants were entitled to alternative accommodation in case of humanitarian need under different legislation].

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law ... shall be obliged to move out from the apartment that he/she has been using within 15 days of the date of delivery of the Decision [under this] Law confirming the right of an occupancy right holder to the relevant apartment.

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and who is entitled to alternative accommodation pursuant to this Law, shall be provided with accommodation within the same [region] by the administrative authority on the territory of which she/he had his/her latest residence. The temporary user shall be obliged to move out of the apartment within the deadline set in ... this Law.

The standard of alternative accommodation provided shall be one or more rooms which provide shelter to the user from adverse weather conditions and protects his or her furniture from damage, with a minimum of five square meters per person. Such accommodation may be in the form of business facilities or a co-tenancy.

¹⁹ Federation of Bosnia and Herzegovina, Law on Cessation of the Law on Abandoned Apartments, consolidated text as most recently amended in May 2003. This law provided for restitution of apartments that were held in 'occupancy rights' subject to a condition of continuous use. The rules for restitution of privately-owned property in Bosnia were similar, in that secondary occupants were required to vacate such properties and were entitled to alternative accommodation on the basis of a showing of need.

In case that the administrative authority of the territory of which the temporary user has his/her latest residence is unable to provide alternative accommodation, other competent bodies including other municipal organs, state-owned companies or firms, and [local or regional] authorities shall be obliged to make available facilities which are at their disposal for the purposes of providing alternative accommodation under this Law.

In no event shall the failure of the competent bodies to meet their obligations under this Article operate to delay the ability of an occupancy right holder to enter into possession of the apartment.