



PEACE NEGOTIATIONS  
POST-CONFLICT CONSTITUTIONS  
WAR CRIMES PROSECUTION

**ANNEXES TO COMPARATIVE STATE  
PRACTICE MEMORANDUM: TRANSITION  
FROM MILITARY TO CIVILIAN  
ADMINISTRATION**

**Legal Memorandum**

**Prepared by**

**Public International Law & Policy Group**

**March 2024**

## TABLE OF CONTENTS

<b>Annex I: Elections.....</b>	<b>1</b>
Timing of Elections: Great Britain.....	1
Timing of Elections: Afghanistan.....	1
Campaign Violence: Colombia and Ecuador.....	2
IDP voting: Ukraine and Georgia.....	4
Refugee voting: Afghanistan and Iraq.....	5
Kosovo.....	6
Taiwan.....	7
<b>Annex II: Return of Refugees and IDPs.....</b>	<b>9</b>
Cooperation with UNHCR: Cambodia.....	9
Cooperation with UNHCR: Kenya.....	9
Healthcare: Bosnia and Herzegovina.....	11
<b>Annex III: Return of Children.....</b>	<b>12</b>
Missing Babies: Serbia.....	12
<b>Annex IV: Employment.....</b>	<b>16</b>
State-Issued Certificates and Licenses and Unemployment and State Services: Kosovo.....	16
Employment Rights: Iraq.....	16
<b>Annex V: Education.....</b>	<b>18</b>
Removing Nazi Influence from the Education System: Nazi Germany.....	18
The Baltic States: Re-Education Transitional Programs.....	19
<b>Annex VI: Property.....</b>	<b>21</b>
Recognition Of Occupying Powers' Conduct: Korea.....	21
Recognition Of Occupying Powers' Conduct: Kuwait.....	22
Restitution of Property: Bosnia and Herzegovina.....	23
<b>Annex VII: Corruption.....</b>	<b>29</b>
Prosecution of Corruption: Tunisia.....	29
Prosecution of Corruption: Guatemala.....	29

## **Annex I: Elections**

### **Timing of Elections: Great Britain**

The parallels drawn between Winston Churchill's governance during Britain's wartime and Ukraine's current situation amid the conflict with Russia underscore the formidable barriers to holding elections during periods of national crisis. Churchill's decision to postpone elections in wartime Britain serves as a historical backdrop, reflecting the intricacies and difficulties of conducting democratic processes amidst existential threats. The British government's rationale in 1940, aiming to preserve national resilience by avoiding potentially divisive elections during a war of survival, holds relevance to Ukraine today.<sup>1</sup>

Drawing lessons from Britain's wartime experience, the arguments against holding elections in today's Ukrainian context seem compelling and overwhelming. The endeavor risks disenfranchising millions, presents serious safety and practical challenges, and poses a perilous and dubious attempt at democracy in such precarious circumstances.<sup>2</sup> Furthermore, the risk remains high that conducting elections under such circumstances could undermine the legitimacy of institutions elected during wartime, potentially fostering an environment conducive to democratic regression.<sup>3</sup>

### **Timing of Elections: Afghanistan**

Following the collapse of the Taliban regime in December 2001, major combat continued in Afghanistan for subsequent years.<sup>4</sup> Operation Anaconda in March 2002 marked a significant ground assault against al-Qaeda and Taliban fighters.<sup>5</sup> However, it wasn't until after the transition from combat to reconstruction, declared by US Secretary of Defense Rumsfeld in May 2003, that

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<sup>1</sup> Alan Riley, *Zelenskyy should say a Churchillian “no” to wartime elections in Ukraine*, Atlantic Council (Oct. 19, 2023), available at:

<https://www.atlanticcouncil.org/blogs/ukrainealert/zelenskyy-should-say-a-churchillian-no-to-wartime-elections-in-ukraine/>

<sup>2</sup> Alan Riley, *Zelenskyy should say a Churchillian “no” to wartime elections in Ukraine*, Atlantic Council (Oct. 19, 2023), available at:

<https://www.atlanticcouncil.org/blogs/ukrainealert/zelenskyy-should-say-a-churchillian-no-to-wartime-elections-in-ukraine/>

<sup>3</sup> Oleksandr Vodiannikov, *Wartime Elections as Democratic Backsliding*, Verfassungsblog (Sept. 27, 2023), available at: <https://verfassungsblog.de/wartime-elections-as-democratic-backsliding/>

<sup>4</sup> *The U.S. War in Afghanistan*, Council on Foreign Relations, available at:

<https://www.cfr.org/timeline/us-war-afghanistan>

<sup>5</sup> *The U.S. War in Afghanistan*, Council on Foreign Relations, available at:

<https://www.cfr.org/timeline/us-war-afghanistan>

notable steps towards Afghanistan's democratic processes emerged.<sup>6</sup> Subsequent events, such as the establishment of a transitional government under Karzai's leadership in June 2002, NATO assuming control of international security forces (ISAF) in August 2003, and the adoption of a constitution in January 2004, culminated in historic elections in October 2004, marking the first democratically elected presidency in the nation's recent history.<sup>7</sup> These electoral milestones underline Afghanistan's transition from conflict to democratic governance but notably took place after the cessation of major fighting in the region.

### **Campaign Violence: Colombia and Ecuador**

Candidate security has long been an issue for countries like Colombia and Ecuador. During the 1980s and 1990s, these countries saw the rise of powerful and well-financed drug cartels, which drew domestic and international attention. As a result of the attention and unprecedented violence, many politicians and presidential candidates became fervent opponents of the drug cartels, vowing to eliminate and disband them. As a result, political candidates faced danger of assassination at all times, but particularly when campaigning in public areas. Ukrainian candidates will likely face similar safety threats while campaigning during wartime.

In August 2023, Ecuadorian presidential candidate Fernando Villavicencio was assassinated just ten days before the country's presidential election. The attack on the candidate was widely suspected to be an effort by outsiders (in this case, organized crime) to sabotage the electoral process and intimidate elected officials and candidates.<sup>8</sup> Luis Fernandez, Villavicencio's lawyer, blames the Ecuadorian government for failing to protect Villavicencio and also for jeopardizing a legitimate election. Fernandez notes: "This is a crime of the state.... [Villavicencio] was not given adequate protection even though the police acknowledged there was a high risk, 97%, of an attempt on his life."<sup>9</sup> Fernandez

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<sup>6</sup> *The U.S. War in Afghanistan*, Council on Foreign Relations, available at: <https://www.cfr.org/timeline/us-war-afghanistan>

<sup>7</sup> *The U.S. War in Afghanistan*, Council on Foreign Relations, available at: <https://www.cfr.org/timeline/us-war-afghanistan>

<sup>8</sup> Gabriela Molina and Megan Janetsky, *Slain Ecuador candidate fearlessly took on drug cartels and corruption*, Associated Press (Aug. 10, 2023), available at: <https://apnews.com/article/ecuador-villavicencio-presidential-candidate-killed-a5529c1ace3442f452b692864b53c10c>.

<sup>9</sup> Carolina Mella, *Wave of Terror in Ecuador: 'Wherever Fernando Villavicencio Went There were Bomb Threats'*, El Pais (Aug. 11, 2023), available at: <https://english.elpais.com/international/2023-08-11/wave-of-terror-in-ecuador-wherever-fernando-villavicencio-went-there-were-bomb-threats.html>.

further points out “wherever he went, there were always bomb threats. He had to be removed immediately from the location” and “state officials knew about every one [of them].”<sup>10</sup>

Colombia is accustomed to dealing with violence targeting political candidates. In the 20<sup>th</sup> century, five presidential candidates were assassinated by opponents or drug cartels.<sup>11</sup> While on the campaign trail in 2022, Colombian President Gustavo Petro noted that the specter of death accompanies the Colombian candidates.<sup>12</sup> To address security concerns, Colombian intelligence agencies attempt to get ahead of assassination plots so they can cancel public campaign appearances preemptively. During the final months of the campaign, Petro had a 60-person team serving as bodyguards and received protection from local security as well.

The Ukrainian government should take steps to avoid attacks on candidates by offering state-sponsored personal protection. Although Villavicencio often traveled in an armored vehicle, on the day of his assassination, he lacked police escort and made planned tours in Quito in other vehicles not designed to withstand coordinated attacks.<sup>13</sup> Ukrainian authorities should remain wary of the safety of candidates at all times and encourage candidates to avoid extended time in wide open public areas—an approach taken by the remaining Ecuadorian candidates following Villavicencio’s assassination.<sup>14</sup> Ongoing careful assessments will need to be made throughout the campaign process that will depend on the particular candidate, the location of campaign events and the status of the ongoing conflict. Ukraine is likely to be hesitant to shift public funds away from the war efforts to an election process. However, ensuring adequate funding for candidate protection will be critical to ensure that Ukrainians are able to vote for their desired candidates.

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<sup>10</sup> Carolina Mella, *Wave of Terror in Ecuador: ‘Wherever Fernando Villavicencio Went There were Bomb Threats’*, El Pais (Aug. 11, 2023), available at: <https://english.elpais.com/international/2023-08-11/wave-of-terror-in-ecuador-wherever-fernando-villavicencio-went-there-were-bomb-threats.html>.

<sup>11</sup> *Colombia Elections: The Spectre of Political Assassination*, France 24 (May 14, 2022 3:34 PM), available at: <https://www.france24.com/en/live-news/20220514-colombia-elections-the-spectre-of-political-assassination>.

<sup>12</sup> *Colombia Elections: The Spectre of Political Assassination*, France 24 (May 14, 2022 3:34 PM), available at: <https://www.france24.com/en/live-news/20220514-colombia-elections-the-spectre-of-political-assassination>.

<sup>13</sup> Carolina Mella, *Wave of Terror in Ecuador: ‘Wherever Fernando Villavicencio Went There were Bomb Threats’*, El Pais (Aug. 11, 2023), available at: <https://english.elpais.com/international/2023-08-11/wave-of-terror-in-ecuador-wherever-fernando-villavicencio-went-there-were-bomb-threats.html>.

<sup>14</sup> Carolina Mella, *Wave of Terror in Ecuador: ‘Wherever Fernando Villavicencio Went There were Bomb Threats’*, El Pais (Aug. 11, 2023), available at: <https://english.elpais.com/international/2023-08-11/wave-of-terror-in-ecuador-wherever-fernando-villavicencio-went-there-were-bomb-threats.html>.

## **IDP voting: Ukraine and Georgia**

If the Ukrainian government were to move forward with an election, it would not be the first time it has been confronted with the challenge of IDP voting. An estimated 1.4 million Ukrainians were displaced in 2014 when Russia annexed Crimea.<sup>15</sup> In 2015, the European Court of Human Rights found that Ukraine had discriminated against IDPs from Crimea and Donetsk by not allowing them to vote in Kyiv because it was not their registered place of residence.<sup>16</sup> Although the IDPs could have changed their registered place of residence to Kyiv, doing so would have risked their IDP status and related benefits. In response to this litigation, the Ukrainian government corrected the discriminatory provisions of the law and now allows IDPs to participate in local elections.

Another country that has grappled with the challenges of IDP voting is Georgia. Armed conflicts related to the status of Abkhazia and South Ossetia resulted in the internal displacement of between 257,000 and 277,000 people.<sup>17</sup> Following a trip to Georgia in 2005, the Representative of the Secretary General of the United Nations on the Human Rights of Internally Displaced Persons issued a statement that IDP participation in public life, including elections, is essential to reintegrating IDPs into society and giving them “the strength to return once the time is right.”<sup>18</sup> In 2022, Georgia was still home to almost 300,000 internally displaced persons.<sup>19</sup> While IDPs are permitted to vote in elections, there have been ongoing issues related to the issuance of valid documentation and the general credibility of the election process.<sup>20</sup> Some ethnic Georgians were prevented from participating in elections, or were faced with extensive delays when applying for required documentation such that they missed the opportunity to participate.<sup>21</sup> To avoid similar problems, the Ukrainian government should ensure that any future

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<sup>15</sup> Marta Jaroszewicz, *Years After Crimea's Annexation, Integration of Ukraine's Internally Displaced Population Remains Uneven*, Migration Policy Instit. (Sept. 19, 2019), available at: <https://www.migrationpolicy.org/article/fyears-after-crimea-annexation-integration-ukraine-internally-displaced-population>.

<sup>16</sup> *European Court Rules Ukraine Violated Internally Displaced People's Right to Vote*, European Human Rights Advocacy Centre (Oct. 28, 2021), available at: [http://ehrac.org.uk/en\\_gb/european-court-rules-ukraine-violated-internally-displaced-peoples-right-to-vote/](http://ehrac.org.uk/en_gb/european-court-rules-ukraine-violated-internally-displaced-peoples-right-to-vote/).

<sup>17</sup> Andrew Solomon, *Election-Related Rights and Political Participation of Internally Displaced Persons: Protection During and After Displacement in Georgia* (Nov. 2009), available at: [https://www.brookings.edu/wp-content/uploads/2016/06/11\\_voting\\_rights\\_solomon.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/11_voting_rights_solomon.pdf).

<sup>18</sup> United Nations Press Release, *U.N. Expert Voices Concern for Internally Displaced Persons in Georgia* (Dec. 27, 2005), available at: [http://www.brookings.edu/projects/idp/RSG-Press-Releases/20051227\\_georgiapr.aspx](http://www.brookings.edu/projects/idp/RSG-Press-Releases/20051227_georgiapr.aspx).

<sup>19</sup> U.S. Dep't of State, 2022 Country Reports on Human Rights Practice: Georgia (2022).

<sup>20</sup> U.S. Dep't of State, 2022 Country Reports on Human Rights Practice: Georgia (2022).

<sup>21</sup> U.S. Dep't of State, 2022 Country Reports on Human Rights Practice: Georgia (2022).

election includes all Ukrainians, regardless of their IDP status or their membership in a minority group (which may include ethnic Russians living in Ukraine) and that the process for obtaining required documentation prior to the election is expeditious and unbiased.

### **Refugee voting: Afghanistan and Iraq**

In 2018, approximately 4 million Afghan refugees in Pakistan and Iran were denied the right to vote in Afghanistan's parliamentary elections.<sup>22</sup> Despite the fact that over 2 million Afghan refugees were permitted to vote in the 2004 presidential election, Afghanistan's Independent Election Commission decided for each subsequent election that refugees would not be allowed to participate due to insufficient resources, security challenges and rising political tensions. Frustrated refugees have said that they feel neglected, and that voting would be the only way to get politicians to pay attention to their needs.<sup>23</sup>

External voting was first implemented in Iraq in January of 2005 with international assistance.<sup>24</sup> Although the United Nations initially advised Iraq against implementing external voting, politicians in Iraq strongly supported it and the Iraq Out-Of-Country Voting Program ultimately coordinated polling in 36 cities and 14 countries.<sup>25</sup> While turnout for the election was ultimately high, registration rates in some regions were lower than anticipated due to fears of repatriation or expulsion by refugees residing there illegally.<sup>26</sup> Some refugees abroad were also concerned about the security of the electoral process and the handling of personal information due to the precarious political situation of the Iraqi government. These concerns highlight the need for transparency and effective dissemination of information to voters about the external voting process to foster confidence in the process.

By the end of the January 2005 election process, Iraq's external voting program was the most expensive in history, costing approximately \$92 million.<sup>27</sup> Costs for the Iraqi program were high not only because of security requirements, but also because of the institutional arrangements that were required to be put in

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<sup>22</sup> Riaz Sayed, *Afghan Refugees Face Political Alienation*, DW (Oct. 11, 2018), available at: <https://www.dw.com/en/without-voting-rights-afghan-refugees-face-political-alienation/a-45848084>.

<sup>23</sup> Riaz Sayed, *Afghan Refugees Face Political Alienation*, DW (Oct. 11, 2018), available at: <https://www.dw.com/en/without-voting-rights-afghan-refugees-face-political-alienation/a-45848084>.

<sup>24</sup> Voting from Abroad: The International IDEA Handbook, Int'l Idea (2007).

<sup>25</sup> Voting from Abroad: The International IDEA Handbook, Int'l Idea (2007).

<sup>26</sup> Voting from Abroad: The International IDEA Handbook, Int'l Idea (2007).

<sup>27</sup> Voting from Abroad: The International IDEA Handbook, Int'l Idea (2007).

place over a short period of time. While the Ukrainian government would likely receive some international assistance to expand its external voting program, the reliability of that assistance will continue to fluctuate as the war with Russia continues. Ukraine will be forced to make difficult decisions about the priority of expenses for an election process.

## **Kosovo**

Kosovo is an important illustration of holding elections after the end of hostilities when martial law has been lifted,<sup>28</sup> while international forces remain present on the territory.<sup>29</sup> Substantial autonomy as to the election process was given to Kosovo and maintained through the establishment of an interim administration by the United Nations Secretary-General.<sup>30</sup> North Atlantic Treaty Organization actors were also deployed to establish a safe environment and public safety.<sup>31</sup>

Special mechanisms were introduced for the first post-conflict municipal elections to ensure Kosovars living in different areas (including abroad) could safely participate in voting. Voter registration by mail was available in 32 countries through the assistance of the International Organization for Migration (IOM).<sup>32</sup> The necessary forms could be obtained from centers in Europe and North America and telephone hotline numbers were set up for people seeking more details.

Since the Belgrade authorities would not allow voter registration within Serbia, registration sites were consequently opened on the border between Kosovo and Serbia.<sup>33</sup>

Voter packs were mailed to people who lived outside Kosovo and were registered by the IOM to vote. Each voter pack included a ballot, ballot secrecy

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<sup>28</sup> *Yugoslav parliament lifts state of war*, CNN (June 24, 1999), available at: <http://edition.cnn.com/WORLD/europe/9906/24/yugo.reaction/>.

<sup>29</sup> Security Council Resolution 1244, U.N. Doc. S/RES/1244 (Jun. 10, 1999), point 9, available at: <https://documents.un.org/doc/undoc/gen/n99/172/89/pdf/n9917289.pdf?token=CJbzySdW3PIGbLEAV8&fe=true>.

<sup>30</sup> United Nations Peacekeeping, *UNMIK Fact Sheet: United Nations Interim Administration Mission in Kosovo*, available at: <https://peacekeeping.un.org/en/mission/unmik>.

<sup>31</sup> North Atlantic Treaty Organization, *NATO's role in Kosovo*, (Nov. 20, 2023), available at: [https://www.nato.int/cps/en/natohq/topics\\_48818.htm](https://www.nato.int/cps/en/natohq/topics_48818.htm).

<sup>32</sup> Organization for Security and Co-operation in Europe, *Process begins for Kosovo civil and voter registration*, (Apr. 14, 2000), available at: <https://www.osce.org/kosovo/52056>.

<sup>33</sup> Organization for Security and Co-operation in Europe, *Registration site opens on the boundary between Kosovo and Serbia*, (May 29, 2000), available at: <https://www.osce.org/kosovo/51984>.



envelope, a list of names of the certified political parties, coalitions, citizens' initiatives and independent candidates, instructions how to complete the ballot, and a return envelope. The return envelopes were to be received and checked by the IOM. Under protection of police guard, the ballots were further forwarded to Pristina for counting.<sup>34</sup>

To ensure security arrangements, it was prohibited to carry or display weapons at political meetings or voting booths, or to use language which incites hatred.<sup>35</sup>

As it was reported, these measures ensured successful elections.<sup>36</sup> The case of Kosovo is of particular relevance for Ukraine with respect to arranging voting for temporarily displaced Ukrainians as well as creating a safe environment to hold elections.

## **Taiwan**

Taiwan's martial law lasted from May 20, 1949, to July 15, 1987, under occupation of the Republic of China Armed Forces and Kuomintang (KMT)-led administration. Under this administration, there were no presidential elections, nor any elections to the National Assembly. Direct local elections, however, persisted throughout the period.<sup>37</sup> Despite being concurrent with the White Terror, which refers to a four-decade crackdown on political dissent imposed by an authoritarian government, some argue that the practice of limited local elections under the extended period of martial law in Taiwan promoted the country's democratization.<sup>38</sup> Many believed that these elections contributed to the continued development of a democratic ethos and legitimized the KMT rule on the island internally and abroad but were plagued with issues surrounding subjective

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<sup>34</sup> Organization for Security and Co-operation in Europe, *Voting program for those living outside Kosovo*, (Sep. 22, 2000), available at: <https://www.osce.org/kosovo/52906>.

<sup>35</sup> Organization for Security and Co-operation in Europe, *Election Code of Conduct approved in Kosovo*, (Apr. 25, 2000), available at: <https://www.osce.org/kosovo/52037>.

<sup>36</sup> Organization for Security and Co-operation in Europe, *Head of Mission reports on successful Kosovo elections*, (Nov. 9, 2000), available at <https://www.osce.org/kosovo/53098>.

<sup>37</sup> Merle Goldman, *China and Democracy: A Contradiction in terms*, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS, 5, (Jun. 2006) available at: [https://www.wilsoncenter.org/sites/default/files/media/documents/publication/FinalASIA\\_1311.pdf](https://www.wilsoncenter.org/sites/default/files/media/documents/publication/FinalASIA_1311.pdf).

<sup>38</sup> Chao L Myers RH. How Elections Promoted Democracy in Taiwan under Martial Law. *The China Quarterly*. 2000;162:387-409. doi:10.1017/S0305741000008183 ("But the new government [operating under martial law] also did something else. It tried to win popular support for its efforts to build a new Taiwan society to show the world that its moral virtues, material prosperity and democratic practices were superior to those of the communist regime on the China mainland...[I]t was the local elections, beginning in 1950-51, that drew the people into a new process for selecting their representatives and leaders to govern their political life.")

legitimacy because of the curtailment of other civil and political rights, as well as the threat of violence.

However, holding the elections during such politically tense times sparked civil outbreaks, such as during the gubernational election when a crowd, unhappy with the KMT's suppression of a dissenting candidate, burned down a police station. This became known as the Zhongli Incident. Similar instances also occurred in other provinces holding local elections.<sup>39</sup>

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<sup>39</sup> Hua-Yuan Hsueh, *The Meilidao Incident: Turning Point in Taiwan's Political Development*, available at: [http://www.whrcf.org/file\\_Download/2020/speaker\\_file/State%20Violence%20and%20Trauma\\_Hua-Yuan%20HSU EH\\_en.pdf](http://www.whrcf.org/file_Download/2020/speaker_file/State%20Violence%20and%20Trauma_Hua-Yuan%20HSU EH_en.pdf)

## **Annex II: Return of Refugees and IDPs**

### **Cooperation with UNHCR: Cambodia**

The Cambodian repatriation process began after thousands of refugees living in Thailand began returning to Northern Cambodia following the peace between the new government coalition and resistance forces.<sup>40</sup> Refugees returned to areas that had limited access to basic services, little infrastructure, countless landmines, and were in border zones known to be vulnerable to conflict.<sup>41</sup> The UNHCR played a key role in protecting those returning and monitoring their progress. Specifically, the UNHCR worked to ensure that those who returned did so voluntarily through an application process and were given protection from those preventing their return with intimidation.<sup>42</sup> This security oversight was provided by the Thai military forces,<sup>43</sup> and upon their return, refugees were supported through UNHCR facilitated programs.<sup>44</sup> To do this, the UNHCR coordinated with field offices in Thailand, providing buses and fuel allowances to convoys coming from refugee camps.<sup>45</sup>

The UNHCR additionally facilitated partnerships with non-governmental organizations to provide much of the internal support upon return, largely in the forms of agricultural support and livestock provisions.<sup>46</sup>

### **Cooperation with UNHCR: Kenya**

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<sup>40</sup> United Nations High Commissioner for Refugees, *Global Report 1999 - Cambodia, Thailand Repatriation and Reintegration Operation*, 2 (1999), available at

<https://www.unhcr.org/media/unhcr-global-report-1999-cambodia-thailand-repatriation-and-reintegration-operation>.

<sup>41</sup> United Nations High Commissioner for Refugees, *Global Report 1999 - Cambodia, Thailand Repatriation and Reintegration Operation*, 2 (1999), available at

<https://www.unhcr.org/media/unhcr-global-report-1999-cambodia-thailand-repatriation-and-reintegration-operation>.

<sup>42</sup> United Nations High Commissioner for Refugees, *UNHCR Global Appeal 1999 - Cambodia and Thailand*, (Dec. 1 1998), available at <https://www.unhcr.org/publications/unhcr-global-appeal-1999-cambodia-and-thailand>.

<sup>43</sup> United Nations High Commissioner for Refugees, *UNHCR Global Appeal 1999 - Cambodia and Thailand*, (Dec. 1 1998), available at <https://www.unhcr.org/publications/unhcr-global-appeal-1999-cambodia-and-thailand>.

<sup>44</sup> United Nations High Commissioner for Refugees, *Global Report 1999 - Cambodia, Thailand Repatriation and Reintegration Operation*, 2 (1999), available at

<https://www.unhcr.org/media/unhcr-global-report-1999-cambodia-thailand-repatriation-and-reintegration-operation>.

<sup>45</sup> United Nations High Commissioner for Refugees, *Global Report 1999 - Cambodia, Thailand Repatriation and Reintegration Operation*, 4 (1999), available at

<https://www.unhcr.org/media/unhcr-global-report-1999-cambodia-thailand-repatriation-and-reintegration-operation>.

<sup>46</sup> United Nations High Commissioner for Refugees, *Global Report 1999 - Cambodia, Thailand Repatriation and Reintegration Operation*, 3 (1999), available at

<https://www.unhcr.org/media/unhcr-global-report-1999-cambodia-thailand-repatriation-and-reintegration-operation>.

The repatriation of Somali refugees in Kenya began following a tripartite repatriation agreement between the Governments of Kenya, Somalia, and the UNHCR.<sup>47</sup> This agreement set up a pilot project where the UNHCR would be the main body responsible for monitoring the return of Somalian refugees from Kenya and ensuring that those who are returning are doing so voluntarily.<sup>48</sup> To verify this, the UNHCR set up “Return HelpDesks” in Kenya that required those returning to undergo a counseling process and sign a “Voluntary Return Form” to certify that those returning are making an informed choice and are doing so on their own volition.<sup>49</sup> Upon verification of voluntariness, the UNHCR provided cash-grants and relief items to returnees for both the journey to and arrival in Somalia.<sup>50</sup> These grants provided \$120 U.S. dollars per individual traveling by road, and \$150 U.S. dollars for individuals with special needs traveling by road. For those traveling by air, the amounts were \$60 and \$70 U.S. dollars, respectively.<sup>51</sup>

The tripartite agreement also ensured that those returning to Somalia would do so through a designated UNHCR border crossing point where returnees received assistance packages for their initial arrival.<sup>52</sup> Upon resettlement, the UNHCR provided additional support depending on the level of need for an additional 12-18 months to help returnees reestablish their livelihoods and benefit from longer intervention plans.<sup>53</sup> The tripartite agreement demonstrates the importance of setting up systems that ensure those seeking to return are properly educated on the current situation in their place of origin and are provided

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<sup>47</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 6 (July 29, 2015), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

<sup>48</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 13 (July 29, 2015), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

<sup>49</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 13 (July 29, 2015), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

<sup>50</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 13, 20 (July 29, 2015), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

<sup>51</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 13 (July 29, 2015) (noting that the grants were later increased after reflection that the initial amount was not sufficient to meet the full needs of those returning), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

<sup>52</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 20 (July 29, 2015), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

<sup>53</sup> United Nations High Commissioner for Refugees, *Voluntary Repatriation of Somali Refugees from Kenya: Operations Strategy 2015-2019*, 20 (July 29, 2015), available at

<https://www.unhcr.org/media/voluntary-repatriation-somali-refugees-kenya-operations-strategy-2015-2019>.

assistance to safely make the journey back and creating designated border entry points to facilitate the delivery of settlement packages upon their arrival.

### **Healthcare: Bosnia and Herzegovina**

Bosnia and Herzegovina's Health Sector Reconstruction Project improved its healthcare system through infrastructure revitalization, procurement of cutting-edge medical equipment, and comprehensive capacity building for healthcare professionals.<sup>54</sup> International healthcare professionals came in to reform and reconstruct Bosnia and Herzegovina's healthcare system, initiating diverse healthcare projects and providing medical knowledge and training developed in the US, Canada, United Kingdom, Spain, France, and Greece.<sup>55</sup> For example, Canada's Queen's University Family Medicine Development Program played an influential role in rebuilding Bosnia and Herzegovina's primary care system through educational initiatives at the undergraduate, residency, Masters, PhD, and continuing professional development levels.<sup>56</sup>

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<sup>54</sup> Favour Tope Adebusoye, Joecelyn Kirani Tan, Wireko Andrew Awuah, Hareesha Rishab Bharadwaj, Wara Naeem, Tomas Ferreira, Sakshi Roy, Toufik Abdul-Rahman, and Volodymyr Lychko, *From adversity to advancement: leveraging war-tested approaches for the post-conflict reformation of the Ukrainian healthcare landscape*, 99 POSTGRADUATE MEDICAL JOURNAL 1217, 1217 (2023), available at <https://doi.org/10.1093/postmj/qgad075>.

<sup>55</sup> Vladimir J Šimunović, *Health care in Bosnia and Herzegovina before, during, and after 1992–1995 war: a personal testimony*, 1 CONFLICT AND HEALTH 1, 5 (2007), available at <https://conflictandhealth.biomedcentral.com/articles/10.1186/1752-1505-1-7>.

<sup>56</sup> Geoffrey Hodgetts, Glenn Brown, Olivera Batić-Mujanović, Larisa Gavran, Zaim Jatić, Maja Račić, Gordana Tešanović, Amra Zahilić, Mary Martin, and Richard Birtwhistle, *Twenty-five years on: revisiting Bosnia and Herzegovina after implementation of a family medicine development program*, 21 BMC FAMILY PRACTICE 1, 1 (2020), available at <https://bmcprimcare.biomedcentral.com/articles/10.1186/s12875-020-1079-4>.

## Annex III: Return of Children

### Missing Babies: Serbia

While there are not many earlier precedents of kidnapping of children at the scale that Ukraine is experiencing, there are some examples where children have gone missing in large numbers. One such example is the experience of Serbia.

Over the course of the 20<sup>th</sup> century, thousands of newborn babies were taken from their mothers in maternity wards in Serbia on the pretense that they had died shortly after birth, but were instead put up for adoption.<sup>57</sup> For decades, there was no acknowledgement or accountability for what became known as the “missing babies.”<sup>58</sup> However, in 2013, the European Court of Human Rights in *Zorica Jovanović v. Serbia* found the Serbian government liable for the “continuing violation of the right to respect for [the applicant’s] family life on account of [Serbia’s] continuing failure to provide [the applicant] with credible information as to the fate of her son.”<sup>59</sup>

It was not until February 2020 that Serbia enacted such a *lex specialis*, pursuant to the European Court of Human Rights judgment in *Jovanović*, which sought to establish and regulate procedures for establishing the truth regarding the disappearances of the missing babies.

That law, the “Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia,”<sup>60</sup> (the Serbian *Lex Specialis*) among other things:

- Designated courts with jurisdiction to hear disputes regarding cases of disappeared babies in a fast-track, non-contentious proceeding for which free legal aid is available to applicants who so request;

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<sup>57</sup> Global Initiative, *Allegations of missing babies still haunt Serbia* (May 2022), available at: <https://riskbulletins.globalinitiative.net/see-obs-012/05-allegations-missing-babies-still-haunt-serbia.html>.

<sup>58</sup> Council of Europe, *Roundtable in Serbia takes stock of progress in the execution of the ECHR judgment concerning “missing babies”* (May 9, 2023), available at: <https://www.coe.int/bg/web/execution/-/roundtable-in-serbia-takes-stock-of-progress-in-the-execution-of-the-echr-judgment-concerning-missing-babies->

<sup>59</sup> *Zorica Jovanović v. Serbia*, App. No. 21794/08, ECHR ¶ 74 (2013), available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-118276%22%7D>

<sup>60</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia* (March 3 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

- Required that judges hearing such disputes and police officers in charge of taking investigatory steps receive specialized training in application of the law;
- Established principles and procedures by which cases brought under the law must be conducted, such as urgency and confidentiality, and guaranteed the right of complainants to share their views and experiences publicly in court if they so wish;
- Set the procedure by which non-pecuniary compensation may be awarded to victims in amounts up to EUR 10,000;
- Empowered courts to order DNA analyses, if necessary and with written consent of the complainant, to identify individuals suspected of having been taken from a maternity ward; and
- Directed the government of Serbia to establish, within 30 days, a fact-finding commission empowered to collect and process data from relevant Serbian authorities and institutions (the Commission).

Article 29 of the Serbian Lex Specialis sets out the main task of the Commission, namely “to collect and process facts and data in its possession,” and designates the authorities and institutions from which the Commission is empowered to such collect facts and data.<sup>61</sup> Those authorities and institutions include: judicial and other internal affairs authorities hearing or having heard cases concerning suspected missing babies,<sup>62</sup> relevant medical institutions,<sup>63</sup> government registry offices handling birth and death certificates,<sup>64</sup> public utility companies tasked with burying the remains of children who allegedly died shortly after

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<sup>61</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>62</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (1) and 29 (2) (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>63</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (3) (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>64</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (4) (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

childbirth,<sup>65</sup> centers for social work,<sup>66</sup> and any other public or governmental departments who may have information relevant to the Commission's task.<sup>67</sup>

Article 29 of the Serbian Lex Specialis further provides for the composition and basic procedures of the Commission. It stipulates that the Commission shall have 15 members, “of which six members are appointed by the Government from among the representatives of the ministries responsible for the affairs of: justice, internal affairs, health, family care, state administration, as well as the Security and Information Agency,” with the remaining nine members appointed “from among the representatives of registered associations of parents who deal with the issues of missing newborn children, at the agreed proposal of those associations.”<sup>68</sup>

The latest communication from Serbia to the Council of Europe on the status of its implementation of the European Court of Human Right's judgment in *Zorica Jovanović v. Serbia* was released on February 28, 2024.<sup>69</sup> In it, Serbia reported positively on its implementation of the *Jovanović* judgment, and in particular on the success of the court proceedings and of the Commission, despite challenges posed by the onset of the COVID-19 pandemic shortly after the implementation of the Serbian Lex Specialis.<sup>70</sup>

In its communication, Serbia reported that 826 cases have been brought under the procedures provided for in the Serbian Lex Specialis by parents or other family aimed at establishing the fate of missing babies.<sup>71</sup> Of those, 722 cases have been resolved, with most decisions “indicat[ing] that the status of [the] missing

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<sup>65</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (5) (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>66</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (6) (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>67</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (7) (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>68</sup> *Law on Determining the Facts Concerning the Status of Newborns Suspected to Have Disappeared from Maternity Wards in the Republic of Serbia*, Article 29 (March 3, 2020), available in original Serbian at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6>.

<sup>69</sup> SECRETARIAT OF THE COMMITTEE OF MINISTERS, COUNCIL OF EUROPE, (DH-DD(2024)237), *Communication from Serbia concerning the case of Zorica Jovanović v. Serbia* (Application No. 21794/08), (Feb. 28, 2024), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680aeb059](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb059).

<sup>70</sup> See generally SECRETARIAT OF THE COMMITTEE OF MINISTERS, COUNCIL OF EUROPE, (DH-DD(2024)237), *Communication from Serbia concerning the case of Zorica Jovanović v. Serbia* (Application No. 21794/08), (Feb. 28, 2024), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680aeb059](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb059).

<sup>71</sup> SECRETARIAT OF THE COMMITTEE OF MINISTERS, COUNCIL OF EUROPE, (DH-DD(2024)237), *Communication from Serbia concerning the case of Zorica Jovanović v. Serbia* (Application No. 21794/08), (Feb. 28, 2024), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680aeb059](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb059).



child cannot be established.”<sup>72</sup> 104 cases remain pending. Serbia noted that the inability to establish the fate of the missing babies is largely attributable to deficiencies in medical, national, and funeral records, as well as to the actions of certain authorities in the Serbian government.<sup>73</sup> Even so, Serbia considered its implementation of the *lex specialis* a success as only 13.2% of cases filed have been appealed.<sup>74</sup>

While there are obvious differences between the experiences of the missing babies in Serbia with those of children forcibly deported from Ukraine, in particular with regard to the number of children affected and the circumstances of their removal, some of the same processes and procedures set forth in the Serbian *Lex Specialis* could likely be employed to assist repatriating Ukrainian children, while combatting some of the obstacles to repatriation described above.

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<sup>72</sup> SECRETARIAT OF THE COMMITTEE OF MINISTERS, COUNCIL OF EUROPE, (DH-DD(2024)237), *Communication from Serbia concerning the case of Zorica Jovanović v. Serbia* (Application No. 21794/08), (Feb. 28, 2024), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680aeb059](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb059).

<sup>73</sup> SECRETARIAT OF THE COMMITTEE OF MINISTERS, COUNCIL OF EUROPE, (DH-DD(2024)237), *Communication from Serbia concerning the case of Zorica Jovanović v. Serbia* (Application No. 21794/08), (Feb. 28, 2024), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680aeb059](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb059).

<sup>74</sup> SECRETARIAT OF THE COMMITTEE OF MINISTERS, COUNCIL OF EUROPE, (DH-DD(2024)237), *Communication from Serbia concerning the case of Zorica Jovanović v. Serbia* (Application No. 21794/08), (Feb. 28, 2024), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680aeb059](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb059).

## **Annex IV: Employment**

### **State-Issued Certificates and Licenses and Unemployment and State Services: Kosovo**

Between 1990 and 1992, prior to the war in Kosovo, most Kosovar Albanians were dismissed from management and senior positions in all public services.<sup>75</sup> This created systemic divides in access to public services in Kosovo for Albanian and Serbian individuals. For example, “parallel system[s] of medical education” and healthcare clinics were created to cater exclusively to Albanian or Serbian populations in the area.

In 1999, after the war, the World Health Organization recommended an education program to “improve the knowledge and skills of general practitioners” in Kosovo, as well as reintegrate the Serbian and Albanian populations living in the region.<sup>76</sup> However, these goals have not been realized. Only two Serbian doctors attended these medicine courses, and “both left after two weeks because of pressure from other Serbians.”<sup>77</sup> To this day, most Serbian doctors work in Serbian enclaves, with some doctors being directly compensated by the Serbian government.<sup>78</sup> These individuals typically receive much greater salaries than Albanian doctors, increasing ethnic and professional tensions. The average salary for an Albanian doctor is \$252 a month, forcing many of these individuals to work at least two jobs.<sup>79</sup>

### **Employment Rights: Iraq**

After the invasion in 2003, the Iraq Coalition Provisional Authority initiated a de-Ba’athification policy. Modelled after de-Nazification policies in the 20th century, its primary design was to strip members of Saddam Hussein’s Ba’ath Party of their roles in the Iraqi government and prevent future public sector employment. This approach significantly curtailed the employment rights of a vast number of Iraqis. Saddam Hussein’s Ba’ath Party had deeply embedded its members across all echelons of the Iraqi government, military, and public services. While the policy intended to diminish Saddam loyalists’ power, it also adopted a

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<sup>75</sup> Robert Hedley & Bajram Maxhuni, *Development of Family Medicine in Kosovo*, 331(7510) BMJ 201-03 (2005).

<sup>76</sup> Robert Hedley & Bajram Maxhuni, *Development of Family Medicine in Kosovo*, 331(7510) BMJ 201-03 (2005).

<sup>77</sup> Robert Hedley & Bajram Maxhuni, *Development of Family Medicine in Kosovo*, 331(7510) BMJ 201-03 (2005).

<sup>78</sup> Robert Hedley & Bajram Maxhuni, *Development of Family Medicine in Kosovo*, 331(7510) BMJ 201-03 (2005).

<sup>79</sup> Robert Hedley & Bajram Maxhuni, *Development of Family Medicine in Kosovo*, 331(7510) BMJ 201-03 (2005).

“presumption of guilt” approach and restricted the right to work for thousands, regardless of individual complicity in the regime’s actions.<sup>80</sup>

The blanket approach of de-Ba’athification was being critiqued for its broad curtailing of employment rights. In a bid to restore employment rights, the Iraqi Parliament introduced the “Accountability and Justice Law” in January 2008. This law aimed to reintegrate a large portion of the ousted Ba’athists back into their government roles, excluding only the top-tier members or those involved in heinous acts.<sup>81</sup> The overarching effects of de-Ba’athification were profound, not just politically but also in infringing upon the basic employment rights of thousands of Iraqis. Many believe this policy inadvertently intensified sectarian divisions and posed considerable challenges to Iraq’s rehabilitation.

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<sup>80</sup> Shamiran Mako, “Institutionalizing Exclusion: De-Ba’athification in post-2003 Iraq”, 2019.

<sup>81</sup> Pavel, Ryan, “The De-Baathification of Iraq: The development and implementation of an ostensibly necessary vetting policy that turned into a tool of sectarianism”, 2012, pp.62-65.

## Annex V: Education

### Removing Nazi Influence from the Education System: Nazi Germany

After the fall of Nazi Germany in 1945, allied powers sought to effectuate a “de-Nazification” of the German education system. One issue that became prevalent throughout the de-Nazification of the education system was the rapid transition from the Nazi regime to the post-war Ally-controlled governments. Because the Allied powers wanted to remove any influence of Nazi power after the war, “denazification processes reduced the sheer number of professional practitioners [and educated individuals] even below the decimated level already caused by Nazi policies and war losses.”<sup>82</sup>

In the education context, the “initial wave of dismissals and purges of Nazi party members produced severe shortages of trained personnel... [in] higher educational institutions that [could]... train the next generation. This was one of the many ‘crisis phenomena’ that reduced the chances for fundamental structural reform in the first few years of the occupation.”<sup>83</sup> “[T]he initial and rather hasty, ill-thought-out ‘denazification’ prevented all extremes of party members... from teaching or exercising most other learned professions.”<sup>84</sup>

Allied forces also took a “pyramid” approach towards educational reform, focusing primarily on the lowest levels of education to impact the youngest students, and spending the least amount of time on higher education. In addition, personnel deficits in higher education were dealt with by rehiring personnel from the Weimar Republic days; however, many of these individuals were old and had not taught in over a decade, resulting in significant educational gaps at the university level.<sup>85</sup>

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<sup>82</sup> Charles E. McClelland, *American Reform Efforts: German Professional Education after World War II*, published in Jurgen Heideking, Mark Depaepe and Jurgen Herbst (eds.), *Mutual Influence on Education: Germany and the United States in the Twentieth Century*, Paedagogica Historica, New Series, 33 (1997), 265-75.

<sup>83</sup> Charles E. McClelland, *American Reform Efforts: German Professional Education after World War II*, published in Jurgen Heideking, Mark Depaepe and Jurgen Herbst (eds.), *Mutual Influence on Education: Germany and the United States in the Twentieth Century*, Paedagogica Historica, New Series, 33 (1997), 265-75.

<sup>84</sup> Charles E. McClelland, *American Reform Efforts: German Professional Education after World War II*, published in Jurgen Heideking, Mark Depaepe and Jurgen Herbst (eds.), *Mutual Influence on Education: Germany and the United States in the Twentieth Century*, Paedagogica Historica, New Series, 33 (1997), 265-75.

<sup>85</sup> Charles E. McClelland, *American Reform Efforts: German Professional Education after World War II*, published in Jurgen Heideking, Mark Depaepe and Jurgen Herbst (eds.), *Mutual Influence on Education: Germany and the United States in the Twentieth Century*, Paedagogica Historica, New Series, 33 (1997), 265-75.

In many cases, this “de-Nazification” plan worked counterintuitively. A “significant number” of Germans reacted negatively to the narrative presented by the Allied powers.<sup>86</sup> Rather than “feeling enlightened and ‘reeducated,’” Germany’s new education system created a new “extreme rightist fringe” that “looked upon themselves as the victims of intemperate Allied occupation schemes.”<sup>87</sup>

### **The Baltic States: Re-Education Transitional Programs**

The Baltic states – Estonia, Latvia, and Lithuania – gained their independence from the Soviet Union in a wave of nationalist movements during the late 1980s and early 1990s. Under Soviet rule, their national identities, languages, and cultures were suppressed in favor of Russification. Regaining their independence meant not just political autonomy, but also a profound transformation, encompassing everything from personal freedoms and cultural expression to governance and education.

Towards the end of the Soviet rule and after the redeclaration of independence, the Baltic states actively removed the ideologically-biased subjects in the school curriculum and heavily relied on the nationals in exile to facilitate a democratic substance of the education system.<sup>88</sup> A lot of emphasis was placed on introducing Western models of educational methodologies and curriculum.<sup>89</sup> During the transition period, Estonia for example experienced tumultuous periods with frequent changes in curriculum and high teacher turnover, which led to non-governmental counter-movements. A major issue was the recognition of Soviet-era education diplomas, which forced teachers to write and defend master's theses between 1990 and 1998 due to fear of their Soviet diplomas not qualifying. Further, Latvia implemented a Master’s program in Pedagogy that allowed teachers

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<sup>86</sup> Michael H. Kater, *Problems of Political Reeducation in West Germany, 1945-1960*, MUSEUM OF TOLERANCE, available at: <https://www.museumoftolerance.com/education/archives-and-reference-library/online-resources/simon-wiesenthal-center-annual-volume-4/annual-4-chapter-3.html>.

<sup>87</sup> Michael H. Kater, *Problems of Political Reeducation in West Germany, 1945-1960*, MUSEUM OF TOLERANCE, available at: <https://www.museumoftolerance.com/education/archives-and-reference-library/online-resources/simon-wiesenthal-center-annual-volume-4/annual-4-chapter-3.html>.

<sup>88</sup> *Pedagogy and Educational Sciences in the Post-Soviet Baltic States: 1990 - 2004, Changes and Challenges*, Latvian University, 17 (2020), available at: [https://www.apgads.lu.lv/fileadmin/user\\_upload/lu\\_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004\\_Book.pdf](https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004_Book.pdf).

<sup>89</sup> *Pedagogy and Educational Sciences in the Post-Soviet Baltic States: 1990 - 2004, Changes and Challenges*, Latvian University, 18 (2020), available at: [https://www.apgads.lu.lv/fileadmin/user\\_upload/lu\\_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004\\_Book.pdf](https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004_Book.pdf).

to improve their knowledge of pedagogy and adjust their teaching methodology and substance to the revised education system and curriculum.<sup>90</sup>

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<sup>90</sup> *Pedagogy and Educational Sciences in the Post-Soviet Baltic States: 1990 - 2004, Changes and Challenges*, Latvian University, 20 (2020), available at: [https://www.apgads.lu.lv/fileadmin/user\\_upload/lu\\_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004\\_Book.pdf](https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004_Book.pdf).

## Annex VI: Property

### Recognition Of Occupying Powers' Conduct: Korea

The Empire of Japan annexed Korea in 1910. Nearly 100,000 Japanese families settled in Korea on land given to them by the Empire.<sup>91</sup> Japan effectively controlled Korea's resources including land until 1945.

Shortly after the end of World War II (WWII), the Treaty of Peace with Japan was signed September 8, 1951, to “settle questions still outstanding as a result of the existence of a state of war” including recognizing the independence of Korea and related property rights.<sup>92</sup> Articles 4 and 15 are the most noteworthy for the purposes of this analysis.

Article 4 of the Peace Treaty asserts that “Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military Government.” But Japan's recognition of the validity of the dispositions of Japanese property made by the United States Military Government did not mean that Japan renounced all title claims to their disposed property.<sup>93</sup> Japan and Japanese individuals still retained the title to their property unless the property in question had been sold. Moreover, per the Peace Treaty they could not ask Korea for restoration of such property, but are entitled to any fruits that might have accrued from such property.<sup>94</sup>

Article 15(a) of the Treaty also asserts that upon an application made within nine months of the Treaty coming into force, Japan would return the property, tangible and intangible, and all rights or interests to each Allied Power and its citizens if the property was within Japan's control at any time between 7 December 1941, and September 2, 1945— unless the owner has freely disposed thereof without duress or fraud. Moreover, in cases where such property was within

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<sup>91</sup> Alexis Dudden, *JAPAN'S COLONIZATION OF KOREA: DISCOURSE AND POWER* pp. 7-26, 60 (2006). (Between 1904 and 1910 a variety of diplomatic agreements and policies with Korea “gradually erased the existence of the country”; Japan wholly gutted Korea's sovereignty prior to its formal annexation in 1910.”). Erin Blakemore, *How Japan Took Control of Korea*, HISTORY, (Feb. 28, 2018), available at: <https://www.history.com/news/japan-colonization-korea>.

<sup>92</sup> Online Archive of California, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan* (1951); Department of State, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings*(1951).

<sup>93</sup> Yasuo Yamashita, *Title Claim to Japanese Property in Korea*, 2 THE JAPANESE ANNUAL OF INTERNATIONAL LAW 38, 42 (1958).

<sup>94</sup> Online Archive of California, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan* (1951); Department of State, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings*(1951).

Japan's control but cannot be returned, compensation would be provided per the Allied Powers Property Compensation Law.<sup>95</sup>

Although WWII impacted Korea-Japan relations and Korea's real property rights, Korea was not at war with Japan at the time. Thus, the Treaty of Peace was more effective in repairing relations between WWII belligerents and redressing reparation claims for war damages than redress or compensating Korean citizens' title to property.

The disposition of property in Korea persists as an issue post-WWII since substantial part of postcolonial Korean law is grounded in colonial customary law.<sup>96</sup> Before the imposition of modern Korean Civil Code, Japanese rules applied "colonial precedents of distinguishing the property belonging to a lineage association from the property belonging to an individual were consistently upheld by the postcolonial courts as binding customary law, to govern property relations that occurred before the promulgation of the Civil Code of 1958."<sup>97</sup> Korean real estate law remains altered by Japan's imposed law to date.

### **Recognition Of Occupying Powers' Conduct: Kuwait**

Iraq invaded Kuwait in August 1990.<sup>98</sup> Iraq's seven-month occupation of Kuwait came to an end after a military intervention by a United Nations-authorized coalition. During the occupation Iraqi forces looted Kuwaiti private property and households and expropriated property.<sup>99</sup>

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<sup>95</sup> Online Archive of California, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan* (1951); Department of State, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings* (1951).

<sup>96</sup> Marie Seong-Hak Kim, *Colonial courts and custom: comparative reflections on customary law and colonial modernity in Korea* (2008), available at IIAS\_NL47\_17.pdf. ("The heavy influence of Japanese law is understandable because the first generation of judges and lawyers in independent Korea, including the drafters of the first Civil Code of 1958").

<sup>97</sup> Marie Seong-Hak Kim, *Rites and Rights: Lineage Property and Law in Korea*, OPEN EDITION JOURNALS (2020), available at: <https://journals.openedition.org/acrh/11667>.

<sup>98</sup> Daniel Chardell, *The Origins of the Iraqi Invasion of Kuwait Reconsidered*, 6 TEXAS NATIONAL SECURITY REVIEW (2023), available at: [https://tnsr.org/2023/06/the-origins-of-the-iraqi-invasion-of-kuwait-reconsidered/#\\_ftn164](https://tnsr.org/2023/06/the-origins-of-the-iraqi-invasion-of-kuwait-reconsidered/#_ftn164); Frederic L. Kirgis, *The Legal Background on the Use of Force to Inudec Iraq to Comply with Security Council Resolutions*, 2 AMERICAN SOCIETY OF INTERNATIONAL LAW (1997), available at: <https://www.asil.org/insights/volume/2/issue/1/legal-background-use-force-inudec-iraq-comply-security-council-resolutions>.

<sup>99</sup> Human Rights Watch, *Iraq and Occupied Kuwait*, (1992), available at: <https://www.hrw.org/reports/1992/WR92/MEW1-02.htm>.



Kuwait's Decree/Law No. 3/A/1990, issued during occupation, specified that any property to Kuwaiti nationals or domiciles will be held in trust by the state of Kuwait.<sup>100</sup> It also specified that a state "shall exercise such responsibilities in cases where such property has been lost or has been damaged in any way by the occupation authorities . . . or where it has been transferred or appropriated by a third party without the consent of its owners."<sup>101</sup> This law does not explicitly invalidate any titles transfer or property acts issued under occupation, but empowers the Kuwaiti Government to take action as required to restore pre-occupation property rights.

Security Council (UNSC) Resolution 687 the United Nations Compensation Commission (UNCC) processed compensation claims by individuals and organizations for loss and damage suffered due to Iraq's invasion and occupation of Kuwait.<sup>102</sup> Payments were made by the Government of Iraq. The UNCC is an exemplary mechanism and accomplishment because it represents the first successful instance of recourse for individuals to seek compensation from an aggressor state.<sup>103</sup>

### **Restitution of Property: Bosnia and Herzegovina**

Between 1992 and 1995, a conflict in Bosnia took place against the backdrop of the dissolution of the Socialist Federal Republic of Yugoslavia. In March 1992, more than 60% of Bosnian citizens voted for independence in a referendum, a move opposed by Bosnian Serbs. With the support of Serbia and the Yugoslav People's Army, Bosnian Serbs responded with a rebellion. They quickly asserted control over 60% of Bosnia and, following the rebellion of Bosnian Croats (backed by Croatia), the conflict "turned into a bloody three-sided fight for territories, with civilians of all ethnicities becoming victims of horrendous crimes."<sup>104</sup>

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<sup>100</sup> U. N. Digital Library, *Letter dated 18 October 1990 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General*, at art. 1 (1990), available at: <https://digitallibrary.un.org/record/100851?ln=ru>.

<sup>101</sup> U. N. Digital Library, *Letter dated 18 October 1990 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General*, (1990), available at: <https://digitallibrary.un.org/record/100851?ln=ru>.

<sup>102</sup> See Security Council Resolution 687, paras. 16, 18, U.N. Doc. S/RES/687 (Apr. 8, 1991), , available at: <https://www.un.org/depts/unmovic/documents/687.pdf>; Security Council Resolution 692, (May 20, 1991), available at <http://unscr.com/en/resolutions/692>.

<sup>103</sup> *Final report of the Governing Council of the United Nations Compensation Commission to the Security Council on the work of the Commission*, p. 8, U.N. Doc. S/2022/104 (Feb. 14, 2022), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/412/97/PDF/N2141297.pdf?OpenElement>.

<sup>104</sup> Institute for Jewish Policy Research, *Overview of Immovable Property Restitution/Compensation Regime – Greece*, (Mar. 8, 2017), available at: <https://archive.jpr.org.uk/download?id=3268>.

More than 100,000 people were killed and more than half of the four million population had to flee their homes.<sup>105</sup> The 1995 General Framework Agreement on Peace in Bosnia and Herzegovina (Dayton Agreement) ended the war and created Bosnia and Herzegovina, where only 42% of the population remained in pre-war residences and over half of the housing stock had been abandoned by forced eviction.<sup>106</sup>

To address the property restitution issue, Bosnia created a quasi-international commission under the Dayton Agreement, the Commission for Real Property Claims of Displaced Persons and Refugees (CRCP).<sup>107</sup> When CRCP faced issues with local implementation of its decisions, Bosnia adopted laws providing for more detailed enforcement procedures. Through this administrative process, Bosnia largely completed the restitution by 2003, restoring more than 150,000 persons to their pre-war properties.<sup>108</sup>

The Dayton Accords set forth “the right to have restored [to refugees and internally displaced persons] property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.”<sup>109</sup> To implement this mandate, the agreement established the CRCP to “receive and decide any claims for real property in Bosnia and Herzegovina.”<sup>110</sup>

The CRCP was to be made up of nine members, appointed by the Federation of Bosnia and Herzegovina, Republika Srpska and the President of the European Court of Human Rights.<sup>111</sup> The only required qualification for appointment was to be a person “of recognized high moral standing.”<sup>112</sup>

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<sup>105</sup> United Nations International Criminal Tribunal for the former Yugoslavia, *The Conflicts*, available at: <https://www.icty.org/en/about/what-former-yugoslavia/conflicts>.

<sup>106</sup> Megan J. Ballard, *Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations*, 28 BERKELEY JOURNAL OF INTERNATIONAL LAW 462 (2010); United Nations International Criminal Tribunal for the former Yugoslavia, *The Conflicts*, available at: <https://www.icty.org/en/about/what-former-yugoslavia/conflicts>.

<sup>107</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7 (1995), available at: <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>.

<sup>108</sup> Office of the High Representative, *Statistics: Implementation of the Property Laws in Bosnia and Herzegovina*, (Dec. 31, 2002), available at: [https://www.ohr.int/plip/pdf/plip\\_12.02.PDF](https://www.ohr.int/plip/pdf/plip_12.02.PDF).

<sup>109</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. I (1995), available at: <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>.

<sup>110</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. XI (1995), available at <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>.

<sup>111</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. IX(2) (1995), available at <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>.

<sup>112</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. IX(3) (1995), available at: <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>.

Annex 7 provided that “the Commission shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing.”<sup>113</sup> Any wartime sale or transfer was presumed to have been made under duress.<sup>114</sup> CRCP based its decisions on the former Yugoslav property law, as long as prior law did not conflict with the anti-discriminatory mandate of the Dayton Agreement.<sup>115</sup> As described by one expert, “the CRPC worked as an administrative rather than judicial mechanism: it was a single-party procedure, highly automated, and – apart from an intake interview – completely written.”<sup>116</sup>

In theory, the CRCP offered the following remedies: (i) retake possession or “accept a satisfactory lease arrangement”;<sup>117</sup> (ii) seek compensation for lost property based on “fixed rates” of real property value determined by CRCP;<sup>118</sup> (iii) obtain confirmation of property rights.<sup>119</sup> Yet in practice, there was no funding allocated for the financial restitution mechanism,<sup>120</sup> thus, nearly half of claimants chose to retake possession.<sup>121</sup>

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<sup>113</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. XII(3) (1995), available at: <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>.

<sup>114</sup> Hans van Houtte, *Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina*, 48 *THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 3, 634 (1999).

<sup>115</sup> Hans van Houtte, *Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina*, 48 *THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 3, 636 (1999).

<sup>116</sup> A.C. Buyse, *POST-CONFLICT HOUSING RESTITUTION: THE EUROPEAN HUMAN RIGHTS PERSPECTIVE, WITH A CASE STUDY ON BOSNIA AND HERZEGOVINA* 279 - (2008).

<sup>117</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. XII(3) (1995), available at: <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>. (“Any person who is awarded return of property may accept a satisfactory lease arrangement rather than retake possession.”).

<sup>118</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7, art. XII(4) (1995), available at: <https://www.ohr.int/dayton-peace-agreement/annex-7-2/>. (“The Commission shall establish fixed rates that may be applied to determine the value of all real property in Bosnia and Herzegovina that is the subject of a claim before the Commission. The rates shall be based on an assessment or survey of properties in the territory of Bosnia and Herzegovina undertaken prior to April 1, 1992, if available, or may be based on other reasonable criteria as determined by the Commission.”).

<sup>119</sup> Hans van Houtte, *Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina*, 48 *THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 3, 625-638, 626-27 (1999).

<sup>120</sup> Hans van Houtte, *Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina*, 48 *THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 3, 637 (1999); Leopold von Carlowitz, *Resolution of Property Disputes in Bosnia and Kosovo: The Contribution to Peacebuilding*, 12 *INTERNATIONAL PEACEKEEPING*, 550 (2005).

<sup>121</sup> Hans van Houtte, *Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina*, 48 *THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 3, 632 (1999); Paul Prettitore, *The Right to Housing and Property Restitution in Bosnia and Herzegovina: A Case Study*, Working Paper, 14 (Apr. 2003), available at: [https://www.badil.org/phocadownloadpap/Badil\\_docs/Working\\_Papers/WP-E-01.pdf](https://www.badil.org/phocadownloadpap/Badil_docs/Working_Papers/WP-E-01.pdf).

Though Annex 7 provided that the CRCP's decisions were final and to be respected by domestic law, in practice, local authorities refused to implement CRCP decisions.<sup>122</sup> This led to disputes pertaining to occupancy rights, as those who moved into remaining properties during the war refused to vacate them.<sup>123</sup> A new set of laws was implemented to ensure local enforcement.<sup>124</sup>

The Law on Taking Over the Law on Housing Relations deemed anyone who left their apartment after 30 April 1991 to be a displaced person, eligible to claim repossession under Dayton Agreement, unless the reason for their departure was not connected with the conflict.<sup>125</sup> Further, the Law clarified that the property rights could not be cancelled automatically for failure to use the property since 1991, if the property holder is a potential claimant under the Dayton Agreement.<sup>126</sup>

A Law on the Cessation of The Application of The Law On Abandoned Apartments established the mechanism to assert repossession claims in Bosnian domestic courts and ensured supremacy of the property interests of the prewar occupants.<sup>127</sup> The Law voided laws and regulations that were enacted during the

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<sup>122</sup> A.C. Buyse, POST-CONFLICT HOUSING RESTITUTION: THE EUROPEAN HUMAN RIGHTS PERSPECTIVE, WITH A CASE STUDY ON BOSNIA AND HERZEGOVINA 279 - (2008); Organization for Security and Co-operation in Europe, *Principals in Bosnia and Herzegovina condemn violation of property laws* (Apr. 23, 2002), available at: <https://www.osce.org/bih/54299>.

<sup>123</sup> A.C. Buyse, POST-CONFLICT HOUSING RESTITUTION: THE EUROPEAN HUMAN RIGHTS PERSPECTIVE, WITH A CASE STUDY ON BOSNIA AND HERZEGOVINA 279 - (2008).

<sup>124</sup> *Law on Cessation of Application of the Law on Abandoned Apartments Property*, (Bosnia and Herzegovina, 1999), available at [https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/); *Law on Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens*, (Bosnia and Herzegovina, 2001), available at <https://www.refworld.org/docid/3de7b6f52.html>; *Law on Taking Over the Law on Housing Relations*, § 78 (Bosnia and Herzegovina, 1998). See also *Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees*, (Bosnia and Herzegovina, 1999), available at:

<https://www.ohr.int/decision-on-the-recognition-and-implementation-of-crpc-decisions-in-the-federation/> (outlining the administrative process of enforcement of the CRCP's decisions, persons entitled to file a request for enforcement, administrative organ's enforcement actions, time limits for enforcement requests, etc.).

<sup>125</sup> Office of the High Representative, *Information Sheet on the New Federation Property and Housing Laws* (Apr. 9, 1998), available at:

[https://www.ohr.int/ohr\\_archive/information-sheet-no-1-information-sheet-on-the-new-federation-property-and-housing-laws/?print=pdf](https://www.ohr.int/ohr_archive/information-sheet-no-1-information-sheet-on-the-new-federation-property-and-housing-laws/?print=pdf).

<sup>126</sup> Office of the High Representative, *Information Sheet on the New Federation Property and Housing Laws* (Apr. 9, 1998), available at:

[https://www.ohr.int/ohr\\_archive/information-sheet-no-1-information-sheet-on-the-new-federation-property-and-housing-laws/?print=pdf](https://www.ohr.int/ohr_archive/information-sheet-no-1-information-sheet-on-the-new-federation-property-and-housing-laws/?print=pdf).

<sup>127</sup> Paul Prettitore, *The Right to Housing and Property Restitution in Bosnia and Herzegovina: A Case Study*, Working Paper, 13 (Apr. 2003), available at:

[https://www.badil.org/phocadownloadpap/Badil\\_docs/Working\\_Papers/WP-E-01.pdf](https://www.badil.org/phocadownloadpap/Badil_docs/Working_Papers/WP-E-01.pdf).

conflict and pertained to apartments,<sup>128</sup> cancelled any occupancy right or contract on use made between 1992 to 1998,<sup>129</sup> nullified any administrative or judicial decisions that were based on these regulations that terminated occupancy rights.<sup>130</sup> At the same time, any decisions that created temporary occupancy rights were effective until canceled by the decision of a competent authority.<sup>131</sup>

Persons occupying an apartment based on a canceled occupancy right were considered a temporary user and were required to vacate the apartment after a decision by the local property authority.<sup>132</sup> If the temporary users did not have alternative accommodations available, the administration had to provide such accommodation “on the territory of which [they] had [their] latest domicile or residence.”<sup>133</sup> Additionally, temporary users could obtain a new contract for the use of the apartment if they did not have other accommodation available and the former occupant did not file a claim for repossession within the appropriate time limit or was not successful in his claim.<sup>134</sup>

In addition to the CRCP and the local laws, the Dayton Agreement established the Human Rights Chamber to adjudicate violations of human rights, including property rights.<sup>135</sup> In several decisions, the Chamber found that failure to restore homes to their pre-war occupants constituted continuing violations of their

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<sup>128</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* art. 1 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>129</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* art. 2 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>130</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* art. 2 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>131</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* art. 2 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>132</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* arts. 2, 3 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>133</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* art. 3 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>134</sup> *Law On The Cessation Of The Application Of The Law On Abandoned Apartments* art. 2 (Bosnia and Herzegovina, 1999), available at:

[https://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/](https://www.ohr.int/ohr_archive/law-on-the-cessation-of-the-application-of-the-law-on-abandoned-apartments/).

<sup>135</sup> *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 6 available at: <https://www.ohr.int/dayton-peace-agreement/annex-6/>.

rights to the home and property under the ECHR, warranting restitution and/or compensation.<sup>136</sup>

Another mechanism that was implemented in Bosnia to assist with the execution of the property restitution scheme, is the adoption of the Property Law Implementation Plan.<sup>137</sup> The Plan was launched by several international organizations, such as the Organization for Security and Co-operation in Europe, Office of the High Representative, United Nations Refugee Agency, United Nations Mission in Bosnia Herzegovina, and CRPC.<sup>138</sup> The Plan's objective was to recharacterize property repossession in terms of the rule of law.<sup>139</sup> One of the main ways the Plan aimed to achieve that was to assign members from each of the organizations to monitor implementation of the property law in their designated municipalities, report the progress monthly, and exert influence on the local officials.<sup>140</sup>

Bosnia's experience shows that involvement of international stakeholders may be a valuable instrument for facilitating property restitution, adopting international standards, and monitoring their implementation by the local authorities. Still, apart from that, on a state level, the restitution legislation may provide for a clear and effective enforcement mechanism, including independent review procedures.

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<sup>136</sup> Rhodri C. Williams, *Post-Conflict Property Restitution in Bosnia: Balancing Reparations and Durable Solutions in the Aftermath of Displacement*, BROOKINGS INSTITUTION (Dec. 5, 2006), available at:

[https://www.brookings.edu/wp-content/uploads/2016/06/200612\\_rcw\\_TESEVpresentation.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/200612_rcw_TESEVpresentation.pdf), citing Walpurga Engelbrecht, *Property Rights in Bosnia and Herzegovina: The Contributions of the Human Rights Ombudsman and the Human Rights Chamber Towards their Protection in RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS 83*, (Scott Leckie, ed, 2003).

<sup>137</sup> Office of the High Representative, *PLIP Inter-Agency Framework Document*, (Oct. 15, 2000), available at:

[https://www.ohr.int/ohr\\_archive/plip-inter-agency-framework-document/](https://www.ohr.int/ohr_archive/plip-inter-agency-framework-document/).

<sup>138</sup> Office of the High Representative, *PLIP Inter-Agency Framework Document*, (Oct. 15, 2000), available at:

[https://www.ohr.int/ohr\\_archive/plip-inter-agency-framework-document/](https://www.ohr.int/ohr_archive/plip-inter-agency-framework-document/).

<sup>139</sup> Office of the High Representative, *PLIP Inter-Agency Framework Document*, (Oct. 15, 2000), available at:

[https://www.ohr.int/ohr\\_archive/plip-inter-agency-framework-document/](https://www.ohr.int/ohr_archive/plip-inter-agency-framework-document/).

<sup>140</sup> Office of the High Representative, *PLIP Inter-Agency Framework Document*, (Oct. 15, 2000), available at:

[https://www.ohr.int/ohr\\_archive/plip-inter-agency-framework-document/](https://www.ohr.int/ohr_archive/plip-inter-agency-framework-document/).

## **Annex VII: Corruption**

### **Prosecution of Corruption: Tunisia**

Tunisia has reportedly struggled with the tension between prosecuting and providing immunity for corrupt actors. Following the expulsion of former President Ben Ali in 2011, criminal prosecutions for corruption, economic crimes, torture and murder were popular and prosecutions of high-level officials, including Ben Ali and his allies, took place in military tribunals. Due to the high-level of criminal liability, Ben Ali along with several of his ministers fled to Saudi Arabia in January 2011. Calls for his extradition back to Tunisia fell on deaf ears and, consequently, his trials were conducted in absentia leading to convictions for corruption among other human rights violations.<sup>141</sup> In 2017, Tunisia passed a controversial law that granted immunity to civil servants who returned their ill-gotten gains to the government. The measure was notionally intended to promote economic growth but has been highly criticized by citizens for promoting economics over justice.<sup>142</sup> However, the law imposes penalties for “illicit enrichment” which includes fines and up to five years’ imprisonment.<sup>143</sup>

### **Prosecution of Corruption: Guatemala**

Another example is Guatemala which has leveraged international resources to investigate corruption in the past two administrations. The International Commission Against Impunity in Guatemala (CICIG) is a partnership created in 2006 between the United Nations and the Guatemalan government that couples international investigators with local prosecutors to investigate illegal security groups and clandestine organizations.<sup>144</sup> In 2015, the CICIG prosecuted former Guatemalan president Otto Perez Molina and vice-president Roxana Baldetti following the revelation of a comprehensive multi-million tax-fraud scheme.<sup>145</sup> In 2018, President Jimmy Morales announced that he would not renew the CICIG’s mandate and decided to expel the CICIG after the organization investigated his

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<sup>141</sup> Noha Aboueldahab, *Taking Stock: Tunisia’s Transitional Justice*, 6 INT’L J. TRAN. JUST. 318 (2012).

<sup>142</sup> Amna Guellali, *The Law That Could be the Final Blow to Tunisia’s Transition*, HUMAN RIGHTS WATCH, (May 23, 2017), available at: <https://www.hrw.org/news/2017/05/23/law-could-be-final-blow-tunisia-transition>.

<sup>143</sup> Tarek Amara, *Tunisia approves illegal enrichment law to strengthen anti-corruption fight*, REUTERS (17 July 2018) <https://www.reuters.com/article/us-tunisia-corruption-law/tunisia-approves-illegal-enrichment-law-to-strengthen-anti-corruption-fight-idUSKBN1K72QJ>.

<sup>144</sup> See POLITICAL AND PEACEBUILDING AFFAIRS, available at: <https://dppa.un.org/en/mission/cicig>.

<sup>145</sup> Nina Lakhani, *Guatemalan president’s downfall marks success for corruption investigators*, THE GUARDIAN (Sept. 9, 2015), available at: <https://www.theguardian.com/world/2015/sep/09/guatemala-president-otto-perez-molina-cicig-corruption-investigation>.

administration and recommended that the Guatemalan congress remove Morales' immunity from prosecution.<sup>146</sup> Before closing operations on September 3, 2019, the CICIG issued a final report noting that its "prosecutors targeted more than 1,500 individuals, of which 660 were successfully prosecuted for high-level crimes."<sup>147</sup> As a result, the CICIG has inspired an anti-corruption body in Honduras and calls for a similar institution in Panama.<sup>148</sup>

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<sup>146</sup> Rachel Lopez, *How a TV Star Triggered a Slow Motion Constitutional Crisis*, AMERICAS QUARTERLY (Feb. 21 2019), available at:

<https://www.americasquarterly.org/content/how-tv-star-triggered-slow-motion-constitutional-crisis>.

<sup>147</sup> Hector Silva Avalos and Parker Asmann, *5 Takeaways from CICIG, Guatemala's Anti-Corruption Experiment*, INSIGHT CRIME, available at: <https://www.cfr.org/report/lessons-guatemalas-commission-against-impunity>.

<sup>148</sup> Matthew M. Taylor, *Lessons From Guatemala's Commission Against Impunity*, COUNCIL ON FOREIGN RELATIONS, available at: <https://www.cfr.org/report/lessons-guatemalas-commission-against-impunity>.