

FLOOD EMERGENCY RECOVERY PROJECT

**THE PROJECT OF EMERGENCY FLOOD CONSEQUENCES RECOVERY
RESETTLEMENT POLICY FRAMEWORK**

TABLE OF CONTENT

I. INTRODUCTION.....	3
II. LEGAL FRAMEWORK FOR INVOLUNTARILY LAND ACQUISITION AND RESETTLEMENT.....	4
II.1. NATIONAL REQUIREMENTS.....	4
II.1.1 DOMESTIC LEGISLATION	ERROR! BOOKMARK NOT DEFINED.
PROPERTY-LEGAL REGULATIONS IMPORTANT FOR THE PROJECT	5
1. THE EXPROPRIATION LAW OF THE FEDERATION OF BIH	5
2. THE REAL RIGHTS LAW OF FBIH	5
3. THE WATER ACT.....	6
4. THE LAW ON EXTRA-JUDICIAL PROCEEDINGS OF THE FEDERATION BIH.....	6
5. THE LAW ON AGRICULTURAL LAND	7
6. THE LAW ON AGRICULTURE	8
7. THE LAW ON CONSTRUCTION LAND OF F BIH	8
8. THE FORESTS DIRECTIVE OF FEDERATION BIH.....	9
9. REGULATIONS ON LEGALIZATION OF ILLEGALLY CONSTRUCTED BUILDINGS.....	9
10. THE LAW ON THE PROCEDURE OF TRANSFERRING THE OWNERSHIP RIGHTS OVER THE REAL ESTATE OWNED BY THE FEDERATION BIH, CANTONS, CITIES, AND MUNICIPALITIES IN THE AFFECTED AREAS	10
11. THE LAW ON FINANCIAL HELP FOR REMOVING THE CONSEQUENCE OF NATURAL DISASTER AND RECONSTRUCTION OF THE AREA AFFECTED BY THE NATURAL DISASTER	12
12. THE LAW ON ESTABLISHING THE FEDERAL FUND FOR HELPING THE AFFECTED AREAS BY NATURAL DISASTER IN THE TERRITORY OF FEDERATION BIH.....	12
13. THE LAW ON PROHIBITING DISCRIMINATION BIH.....	13
TABLE 1. THE OVERVIEW OF NATIONAL REGULATION RELEVANT FOR THE PROJECT.....	15
III. THE WORLD BANK REQUIREMENTS IN REGARDS TO THE RESETTLEMENT.....	19
III. 1 HELPING VULNERABLE GROUPS OF CITIZENS	20
III.2 COMPARING THE WORLD BANK’S DEMANDS WITH LOCAL REGULATIONS.....	20
IV. RESETTLEMENT POLICY LEGAL FRAMEWORK	21
IV.1 EXPECTED ACTIVITIES RELATED TO THE EXPROPRIATION.....	21
IV.2 THE PRINCIPLES AND GOALS RELATED TO RESETTLEMENT AND LAND ACQUIRING.....	21
14.1. EXPROPRIATION.....	22
14.2. THE ATONEMENT FOR THE EXPROPRIATED PROPERTY	23
14.3. REAL EASEMENT.....	24
14.4. THE ATONEMENT FOR THE ESTABLISHED EASEMENT	25
15. EXPROPRIATION PROCEDURE	26
15.1. ENTERING THE EXPROPRIATED PROPERTIES.....	26
15.2. RENOUNCEMENT OF THE EXPROPRIATION REQUEST AND THE CANCELLING OF THE EXPROPRIATION DECISION VALIDITY (RE-EXPROPRIATION).....	26
15.3. THE COSTS OF EXPROPRIATION PROCEDURE	27
15.4. PROCEDURE FOR DETERMINING THE ATONEMENT FOR EXPROPRIATED PROPERTIES.....	27
15.5. APPEALS PROCEDURE.....	27
15.6. THE RIGHT ON CONSTRUCTION.....	27
16. RESETTLEMENT PROCESS GUIDELINES FOR THE PROJECT	29
TABLE 2 THE PROCESS OF SUBTRACTION - EXPROPRIATION AND RESETTLEMENT	29
TABLE 2A ATONEMENT	31
V. INSTITUTIONAL FRAMEWORK FOR THE PROJECT.....	36

I. Introduction

The project of emergency flood consequences recovery is important from humanitarian, economic, social and legal aspect. Floods can have the consequence of seriously endangering the population in a sense of their existence and economic state which is certainly related to the need of humanitarian and social activity directed towards reconstruction and recovery. The flood consequences can be manifested through the loss of land, accretion of and, moving of land, the loss of agricultural or cattle fond, damage on the buildings, the loss of production, equipment and machinery. The implementation of this project can demand exclusion of real estates from their owners or creation of easement over the property or some other real right over the property affected by the floods. On the other hand the implementation of this project can demand assignation of real estate owned by the state to people from flooded or endangered areas who cannot return to their homes. The exclusion of the real estate, depending on the size, can lead to the impossibility of the continuing the existence in that area which demands actions related to resettlement of the real estate owners in some other areas and emergency recovery of the flooded area. The stipulated exclusion procedures and assignation of real estate are related to many different circumstances of social, legal, socio – economic and cultural characters and they have been regulated by a bigger number of different regulations and rules passed by different agencies and institutions. Catastrophes caused by flood during 2014, indicate that it is essential for authorities to act preventively in order to stop the consequences of the floods. In that sense, it is essential to work on a reconstruction and maintaining of the existing as well as on construction of new objects for protection.

Considering that the right on property represents one of the basic human rights, the right on property is protected by domestic legislation (by constitution and laws) but by international conventions and standards for human rights protection as well. Besides this, for the aim of protecting the ownership rights as best as possible (the owner itself but the user as well), certain rules exist and were determined by special agencies and institutions. The mentioned special and specific rules related to resettlement represent directives, standards and demands of the World Bank as well.

The previously mentioned demands special attention while conducting procedures related to forced resettlement and emergency solution of the housing problem of the people affected by the floods. Also, the procedure related to indemnification of the owners of the real estates being excluded or loaded by certain real rights is also very important. In the mentioned procedures, one must take into account the needs of emergency interventions and helping those affected by the floods and maintaining the achieved life standard **or the conditions regarding the social, economic, cultural** and other important aspects. One of the important aspects is a gender equality according to which both gender have the same social value, equal rights and equal responsibilities as well as the equal access to resources and possibilities enabling them to enjoy the equality. Besides the mentioned, interventions should be based on the principles of cost-effectiveness, efficiency and effectiveness.

Starting from the constitutional structure of the country and fragmented protection system for the successfulness of the Flood Emergency Recovery Project the good coordination of institutions in that area, Federal Ministry of Agriculture, Water Management and Forestry, Agency for Sava River District, Agency for the Water Area of the Adriatic Sea, 10 cantonal ministries for waters, physical planning and environment, affected municipalities and of course the authorities and parliaments is essential.

The screening process that will be carried out for subprojects to be financed will exclude those that would require displacement/resettlement of affected population and repair of privately owned production facilities/ houses.

This document is based on an already prepared and approved document for the project of flood protection on the river Drina.

II. LEGAL FRAMEWORK FOR INVOLUNTARILY LAND ACQUISITION AND RESETTLEMENT

II.1. DOMESTIC LEGISLATION

The rights on property are property by international conventions, constitutions and laws because the protection of citizens' property integrity, besides the right to live and freedom is one of the fundamental postulates of many international conventions following the already mentioned principles protecting, beside others, the right on property¹.

The Constitution of BiH² protects stipulated rights in a way that the Article II/2 specifies that "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

Section II, Article 2 of the Constitution of the Federation of BiH³, specifies that "The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex⁴ of the Constitution" that specified, among others, Universal Human Rights Declaration, European Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols as instruments for the human rights protection that have legal power of the constitutional regulations.

The matter of ownership, ascertaining, protection and transfer of this right as well as the status of public goods and their treatment in Bosnia and Herzegovina are regulated by a set of property-legal relations. The question of the special status of certain (vulnerable) category of people and the help for this category is regulated by another set of regulations of status and social character. After natural disasters and floods that struck Bosnia and Herzegovina this year, numerous activities followed, and among others is passing new set of regulation that have the goal to improve the protection system, remove the damaging consequences that appeared and ensure the adequate ways of help for endangered population.

¹ Article 17 of the Universal Human Rights Declaration from December 10, 1948 specifies the principle that "No one shall be arbitrarily deprived of his property".

- Article 1 of the First protocol of the convention of human rights and fundamental freedoms protection from 1950 specifies that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

- International Covenant on Civil and Political Rights specified by the Article 26: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.", as well as International Covenant on Economic, Social and Cultural Rights from December 16, 1966, proclaimed non-discriminatory approach to fundamental human rights, in which, the Article 4, specifies that: "the State may subject economic, social and cultural rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

² The Constitution of BiH (Annex IV of The General Framework Agreement for Peace in Bosnia and Herzegovina, agreed on November 21, 1995 in Dayton and signed on December 14, 1995. in Paris, when it was taken into an effect).

³The Constitution of the Federation of BiH ("Official Gazette F BiH", number:1/94, 13/97, 16/02, 22/02 and 52/02)

⁴Addendum/Annex to the Constitution of the Federation of BiH ("the Official Gazette F BiH", number: 1/94).

PROPERTY-LEGAL REGULATIONS IMPORTANT FOR THE PROJECT

1. The Expropriation Law of the Federation of BiH

The Expropriation Law⁵ regulates the conditions, ways and the procedures for construction of building of public interest. The expropriation represents exclusion or limitation of the ownership right over the real estate with the atonement according to the market value of the real estate.

2. The Real Rights Law of FBiH

The Real Rights Law of FBiH⁶ governs the questions of acquiring, completion and protection of ownership and other real rights. It is important to emphasize that for this Project this Law, instead of the earlier Usurpation Law of FBiH, enables determining the ownership right under the prescribed conditions in favor of the persons who are holding the land in possession and use it (cultivate it). This provides a possibility for prior procedure conducting in order to determine and signing in the ownership right in public real estate registers and rights on real estate which for the current user provides the position that enables and demands protection in a sense of Operational Rules of the World Bank.

The Real Rights Law of BiH also regulates legal consequences related to the creation of a new island in the middle of the water course which is not common good; it specifies the way of regulating ownership-legal matters in a situation when the island is created on one half of the watercourse; it solves the case of merging of one piece of land to another piece caused by the watercourse and it regulates the legal consequences of water effects in a way that without anyone's influence brings the earth on the shore and in that way makes it bigger (Article 65.)

The regulations of this law that regulated the matter of disposal or transferring the ownership right over the real estate owned by the country, entities, cantons and municipalities are of special importance. For disposal of the mentioned real estates, the law prescribed special procedures; however in the case of floods there is a need of emergency acting and outside the mentioned procedures so that the special regulations that will be analyzed in the following part were passed.

What is especially important and what represents the vital novelty in this domain is the fact that this law does certain kind of systematization of real rights, and when the Real Rights Law was put into effect a big number of other laws regulating the matters of mentioned rights and relation until then was put out of the practice.⁷

⁵ The Expropriation Law of FBiH ("The Official Gazette F BiH ", number: 70/07, 36/10 and 25/12).

⁶ The Real Rights Law of FBiH ("The Official Gazette F BiH ", number: 66/13 and 100/13).

⁷ 1) The Law on property over parts of the buildings ("The Official Journal SR BiH", number: 35/77, 38/78 and 22/84),
2) The Law on building extension and turning joined rooms into apartments in publicly owned buildings ("The Official Journal SR BiH", number : 32/87),
3) The Law on ownership relation basics ("The Official Journal of R BiH", number: 37/95)
4) The Law on real estate traffic ("The Official Journal SR BiH", number: 38/78, 29/80, 4/89, 22/91, 21/92 and 13/94),
5) The Law on right on property in business buildings and business premises ("The Official Journal SR BiH", number: 23/79 and 26/86),
6) The Law on recording real estates in public ownership ("The Official Journal SR BiH", number: 28/77),
7) The Law on agrarian reform and colonization ("The Official Journal of PR BiH", number: 2/46, 18/46, 20/47, 37/49, 14/51 and 41/67)
8) The Law on the procedure of eliminating the joined ownership right on former peasants' moving grounds ("The Official Journal of SR BiH", number: 22/73),
9) The Law on prohibition of property disposal, transfer of means and status changes of legal persons in territory of Bosnia and Herzegovina from other countries ("The Official Journal R BiH", number: 4/95 and 37/95),
10) The Law on rights and duties of republic authorities in using the publicly owned means ("The Official Journal SR BiH", number: 33/81 and 29/90),

3. The Water Act

The Water Act of FBiH⁸ regulates the way of water management (usage, protection of waters, protection against damaging effects of waters and adaptation of watercourses and other waters), water good and public water good, water object of public service and institutions in water sector. This Law regulates the jurisdiction of federal inspection for supervising the surface waters and categories and jurisdictions of cantonal inspections for supervising the surface water of II category (Article 177.) According to the Article 92 of this law, Federation, canton, city and municipality ensure in the framework of their jurisdiction the enforcement the measure of active defense against floods and the cantonal minister for waters determines the protection measures by special rules.

In this context, regulations related to limitations of the right of owner and users of the land are important (Article 140 – 144.) The stipulated law regulates the matter of passing over the land in a way that the owner or the user of the land is obliged to allowed the passing over the land for people who are authorized to research, move, record or mark water good or water as well as for people who are doing construction works on a construction, reconstruction or maintaining water objects or facilities (protection objects, objects for drainage, objects for water usage and the objects for protection of water against pollution). In a case where the owner or the user of the land does not allow passing over the land, the municipal authorities in charge for property-legal affairs passes a decision on temporary usage of the land as far as eight days after making a demand where the complaint against this decision does not postpone its execution.

This law also regulates the matter of temporary use of the land for the protection against water so that the owner or the user of the land on endangered area has to allow the temporary use of that land for enforcement of the measures and activities for the protection in order to reduce or prevent the risk for people and material goods from dangerous effects of water as well as for enforcement of the active flood protection measures.

In the mentioned cases, the constructor is obliged to, while enforcing the adequate measures and activities, affect the state of the land as least as it is possible and after the danger from water nuisance has passed he has to eliminate the damage. In a case where the owner or the user of the land does not allow passing over the land, the municipal authorities in charge for property-legal affairs passes a decision on temporary usage of the land as far as eight days after making a demand where the complaint against this decision does not postpone its execution

4. The Law on Extra-Judicial Proceedings of the Federation BiH

If the agreement on the atonement for expropriation of the land is not reached by the authorities in two months from the validity of the expropriation decision, that authority is obliged to forward the decision with all other documents to the proper court of law which decides in extra-judicial proceeding on the amount of atonement according to the regulations of the Law on Extra-Judicial Proceedings⁹.

The court will, ex officio, handle the procedure for determining the atonement for expropriated land and it has to complete it as soon as possible, as late as 30 days from the beginning of the process in the court.

11) The Usurpation Law ("The Official Journal SR BiH", number: 6/78), and

12) The Law on ownership-legal affairs ("The Official Gazette of Federation BiH", number: 6/98 i 29/03).

The Law prescribes the obligation that the regulation about the construction land must be harmonized with the regulations of the Real Right Law in three months from the first day when the Law is applied and in the case of collision with regulations of other law, the regulations of the Real Right Law will be enforced (Article 370 and 371).

⁸ The Water Act of FBiH ("the Official Gazette F BiH ", number: 70/06).

⁹ The Law on Extra-Judicial Proceedings FBiH ("the Official Gazette F BiH", no: 2/98 and 39/04);

Consequently, the court determines the hearing, on which participants are allowed to make a statement about the type and the size of the atonement as well as about evidence of the value of the land.

The user of the expropriation will bear all costs of the procedure for determining the atonement for expropriated land except the costs caused by unjustified action of previous owner.

If participants reach the agreement that the atonement for expropriated building or apartment is giving another building or apartment, the agreement also specifies the deadline for the execution of obligations. If that deadline is not specified, the court will specify the deadline for moving out from expropriated building or apartment as a special part of the building by a decision on atonement according to the Expropriation Law. These regulations are applied when farmer receives other land according to the agreement with the user of the expropriation or on his own demand.

After the procedure is carried out and important facts are determined, the court makes a decision that specifies the type and the size or the amount of atonement for expropriated land. If participants reach the agreement on the type and the size or the amount of the atonement, the court grounds its decision on that agreement if the court ascertains that the agreement is not contradictory with regulations determining property relations.

5. The Law on Agricultural Land

In Federation BiH, according to the Law on Agricultural Law of FBiH¹⁰, agricultural land owned by a state is in legal transactions but it cannot be sold but it can be put in transactions in the form of lease, concession and exchange, but solely for establishment of primary agricultural production. Agricultural land owned by the state, except the one that is returned to previous owners according to special law, or is subject to restitution is available for the Federation according to the general regulation on land availability. Exchange of the country's agricultural land can only be done with a purpose of doing agricultural activity except in the cases regulated by the law so that the agricultural land owned by the state can be sold only in extreme situations when the Parliament of the Federation of BiH specifies the general interest for selling state property (articles 98 – 100). The quoted law specified that the ones holding the right of ownership over the agricultural land cannot be foreign natural persons and legal person except the international contract of the state did not specify different. Foreign citizens cannot gain the ownership over agricultural land by legal transactions but can on hereditary rule. The law also specified the right of privileged purchase so that natural or legal person intending to sell agricultural land from 1 to 4 category of creditworthiness must offer the land to the municipal authority on which the land is located (Article 102) before it is sold to a third party.

By transitional and final regulation of the quoted law is specified that the socio-legal and legal persons who are using the agricultural land on the day when the law was put into an effect continue to do so until they have been transformed in business societies whose owner is familiar. For legal persons who had the right of use over the agricultural land on the day when the law was put into an effect, that right stops existing after the deadline for the use of the land has passed and with the day when the decision on leasing the land was made or when the land was confiscated. The legal persons created by transformation socio-legal persons are obliged to inform the Federal Ministry of Agriculture, Water Management and Forestry about it as far as 30 day since the transformation has been published in order to arrange the relations related to further use of the agricultural land, since otherwise is considered that they are using the agricultural land illegally (Article 146).

¹⁰ The Law on Agricultural Land of FBiH, ("The Official Gazette F BiH ", no. 52/09)

6. The Law on Agriculture

The Law on Agriculture of F BiH¹¹, among others, governs the goals and agricultural policies, users of the rights, agricultural ownership, defines the term 'farmer', institutional support, agricultural information system and registry control, administrative and inspectional supervision, punishment regulation as well as other question important for agriculture. In this context, the most important regulations concerning the very goals of the Law that are related to the enforcement of the regulations in Federations related to the agricultural sector (construction of the irrigation system, land arrangement and enlarging the estates, etc.)

7. The Law on Construction Land of F BiH

The Law on Construction Land of FBiH¹² enables the construction land to be privately owned. Under the conditions prescribed by the law, the municipal assembly determines which land is considered to be the construction land. Privately owned city's construction land is in transaction (Article 7), the owner can build on that land in accordance with physical planning regulation and if he cannot or he does not want to he can put the land in transaction, that is sell it. The Municipality can expropriate this land in the process of expropriation (Article 16, paragraph 4). Regulations of the Article 39, paragraph 1 of the Law on Construction land determines that the owner of the building or special part of the building on a day when the Law is put into an effect gains the right of ownership of the land under the building and on that surface of the land that is determine to serve for regular use of the building by the plan of regulation or partialization. The matter of appointing construction land is regulated by the regulations of the Article 44 – 48 of the Law in a way that the Municipal Assembly that has the authority in a specific procedure appoints the construction land where nothing was built for construction of building with fair atonement based on: open competition which is published in the means of public informing, under the conditions, in a way and in a procedure prescribed by the law and regulation passed on a basis of that law and through immediate bargain in three tax prescribed cases: regarding the construction of military objects and objects for official need of state authorities (without the possibility of appointment for the goal of housing construction), objects for the needs of foreign diplomatic and consulate representations and communal infrastructure objects. The Article 96 of the Law on Construction Law determines that when the law is put into an effect, by the force of the law, the state ownership stops over the construction land that does not match intended and regulation plan, when it was transferred into social/state ownership based on the municipal decision and the end of the social/state ownership and establishing the earlier ownership-legal relation by the decision determines the municipal authority in charge for property – legal relations; the mentioned decision can be disputed by the complaint in the procedure at the Federal Administration for Geodetic and Property – Legal Affairs.

The Law on Real Rights FBiH specifies that the regulations on construction land must be harmonized with regulations of that law in three months since the beginning of its implementation and in the case of collision with the regulations of other law; the regulation of the Law on Real Rights will be implemented (Article 370 and 371).

¹¹ The Law on Agriculture of F BiH, ("the Official Gazette F BiH", no: 88/07, 04/10 i 7/13).

¹² The Law on Construction Land FBiH («The Official Gazette F BiH », no: 25/03, 16/04 and 67/05).

8. The Forests Directive of Federation BiH

Since the forest and forestland represent natural resources of a great importance for the units of self-government as well and because the quoted law limited and affected the rights of these units, The Constitutional Court of the Federation BiH ordered the protection of the right of local self-government, or adjustment of the quoted law with European Charter of Local Self-Government and the Law on local self-governance FBiH¹³ by which that Law cannot be applied any longer. In order to avoid the legal vacuum and to practically maintain the established legal system for forest and forestland, the Government of Federation BiH passed a Forests Directive that in essence contains identical solutions as quoted Law on Forests that cannot be implemented any more as it was mentioned earlier. This Directive¹⁴ defined the preservation and protection of forest and forestland, strengthening their functions, forestry planning and forest and forestland management, economic functions, financing of biological renewal on the territory of Federation BiH, control over the implementation of this Directive, punishment as well as other question important for forests and forestland. Forest economy base, physical planning, water economy base, hunting economy base, records provided by Institute for cultural-historical and natural heritage protection and Federal program for managing mineral resources, and the plans for using certain mineral raw material that must be synchronized.

Protective forests serve as a protection of land on steep terrain and land that is a subject to erosions, floods, landslides, settlement protection, industry and other objects, watercourse, shores of water accumulation. Forests that were constructed as a protection belts and proclaimed the canton government on a suggestion from cantonal ministry and local self-government unit with previously acquired opinion of Federal administration.

The mentioned Directive is actually a result of avoiding the right and abuse of constitutional and legal authorizations for making directives that beyond any doubt in its content, size and subject of regulation cannot be identified with the law nor that is the purpose of their existence, and that is the reason why Constitutional Court of FBiH put the quoted Directive out of practice. Considering all of this, currently on the level of FBiH there is no existing law or any other regulation determining the matters of forests and forest land.

9. Regulations on legalization of illegally constructed buildings

The mentioned regulations determine the procedure, conditions and way of legalization illegal buildings and illegal construction works and solving the legal status of the building of temporary character. According to the regulation of the Law on physical planning for legal construction it is necessary to secure the urban permit, approval for construction and Certificate of Occupancy so that the signing of certain building in cadaster can be done after that in accordance with the Law on Physical Planning. Only after acquiring approval or permits the registration of certain building in the land-registry can be done in accordance with The Law on Land Survey and Real Property Cadastre and registration in land-registry the Law on Land Registry. However, in the area of physical planning, arrangement and construction, that should provide the use of space as rational as possible, building according to the physical-planning documents and fulfilment and adjustment individual need of the citizens on one side and wider needs of the social community on the other side, and we come across in BiH specific and

¹³ The verdict of the Constitutional Court of FBiH number: U-26/08 from April, 14, 2009 specifies that the Law on Forests ("the Official Gazette F BiH ", number 20/02, 29/03 i 37/04) violated the right of municipalities on local self-government, that is, the Parliament of the Federation of BiH was given the opportunity to adjust the Law with European Charter of Local Self-Government and the Law on local self-governance FBiH, as a temporary solution, in six month from the date when the verdict was published in "the Official Gazette F BiH ", until when that Law may be applied.

¹⁴ The Forest Directive of Federation BiH ("The Official Gazette of F BiH", number: 83/09, 26/10, 38/10 and 62/11)

widespread problems in urban areas, areas that should be urbanized and those are not planned for construction at all.

Some of the reasons of illegal constructions are: non-functionality of legal system, difficult economic situation of great number of citizens (they often construct building with adequate urban-technical and construction documentation, required approvals and permits due to the high fees for paying different atonements in the process of obtaining these permits)¹⁵, as well as construction of many settlements during and after the war without required documentation

Passing the regulations on legalization of illegally constructed buildings for citizens and temporary buildings, in Federation BiH is under the jurisdiction of the cantons. Some Cantons make special Decisions on legalization¹⁶ and in some cantons the matter of legalization is regulated by the Law on Physical Planning and Construction¹⁷, Regulation on urban-technical conditions, physical standards and normative for disposal and prevention of emergence of new architectural and urban obstacles for movement of invalids using technical and orthopaedic aids¹⁸, and Directive on procedures and conditions for legalization of buildings constructed without legal permit¹⁹.

The legalization implies passing a decision of subsequent urban permit, approval for construction and Certificate of Occupancy in accordance with the regulations of the Law on Physical Planning, but in case that that the construction happened on a construction land owned by the state. The concerned regulations are mostly passed periodically and are obliging for one year from the day they were passed, with already established practice of extending the period of validity for those regulations or passing the new ones.

In relation to these regulations, it can be said that their importance for the Flood protection project since they enable the establishment of the owners' rights on building under prescribed conditions in favour of persons who are owners and users, and registration in cadastre and land-registry, which also offers the possibility of securing demanded protection in the sense of World Bank Operational Policies.

10. The Law on the procedure of transferring the ownership rights over the real estate owned by the Federation BiH, cantons, cities, and municipalities in the affected areas

The Law on the procedure of transferring the ownership rights over the real estate owned by the Federation BiH, cantons, cities, and municipalities in the affected areas²⁰ regulates the disposal of the real estate or the procedure of transferring the ownership rights over the real estate owned by FBiH, cantons, cities and municipalities in the affected areas in favor of persons affected by the natural disaster. The transfer of the ownership right over the mentioned real estates is done without the atonement prescribed by the regulations of the Real Rights Law of FBiH.

¹⁵ Certain assessments show that 1/3 or 1/2 of the entire construction prize is required for these kinds of tolls.

¹⁶ Directive on procedures and conditions for legalization of buildings constructed without legal permit ("The Official Gazette of Canton Sarajevo", number: 6/06

¹⁷ The Law on Physical Planning and Construction ("the Official Gazette F BiH", number: 7/13)

¹⁸ Directive on urban-technical conditions physical standards and normative for disposal and prevention of emergence of architectural and urban obstacles for movement of invalids using technical and orthopedic aids ("the Official Gazette of BPK" number: 14/01)

¹⁹ Directive on procedures and conditions for legalization of buildings constructed without legal permit ("the Official Gazette of BPK", number: 11/05 and 3/08)

²⁰ The Law on the procedure of transferring the ownership rights over the real estate owned by the Federation BiH, cantons, cities, and municipalities in the affected areas ("The Official Gazette FBiH", number: 59/14)

In the sense of this law, the affected areas are areas where natural disasters occurred that are determined by the Decision on announcing the state of natural disaster in the area of Federation BiH caused by the heavy rain²¹ that caused floods in the area of Federation BiH.

A person affected by the natural disaster, in the sense of the law, is natural or legal person to whom during the natural disaster in permanently prevented from using the real estate for living or performing business activity on the affected area.

The Decision on transferring the ownership rights over the real estate owned by the Federation is made by the Government of the Federation BiH; the decision on transferring the ownership rights over the real estate owned by the canton is made by the cantonal government and by the cities and municipalities the city or municipal assembly after the suggestion of the city's or municipal major.

Before making the mentioned decision the official authority or municipal service is obliged to make a list of real estate for which it is possible to transfer the ownership right as well as to change the regulation plan, divide land into parts and other preparatory actions in order to enforce the law.

The real estate in the list must have the status of construction land, that their use is not really necessary for the functioning of Federation, cantons cities and municipalities and they must fulfill the geological, infrastructural and other conditions for construction of housing and business objects.

For gaining the ownership rights, it is necessary for physical persons or legal person to fulfill the following conditions:

- The use of the housing objects or business objects is permanently prevented by the natural disaster,
- It is not possible to make a recovery of the housing object or the business object or it is related to disproportionate costs or security risks
- That there is no other ownership over any real estate of the same purpose.

The transfer of ownership rights over the mentioned real estate is done through public open competition on transferring the ownership rights whose conditions and procedure it is prescribing and is under the jurisdiction of Government of the Federation BiH, cantonal government, city's and municipal assembly on the suggestion of municipal or city's major.

Persons fulfilling the conditions prescribed by the regulation of this law and conditions from the open competition are free from paying atonement for the land (convenience of the location, land arrangement, etc.), making urban, approval of construction and Certificate of Occupancy, the costs of technical admission as well as other costs necessary for registering the ownership rights over the real estate. The mentioned costs are becoming a burden of budget means of the real estate owner (Federation BiH, canton or municipality), and the owner of the subjected real estate has the right on regression of 75 per cent of the paid costs from other holder of the title on equal parts.

This law has a time limitation and it is valid for three years from the day of the implementation.

²¹ The Decision on announcing the state of natural disaster in the area of Federation BiH caused by the heavy rain ("The Official Gazette of Federation BiH", number 37/14)

11. The Law on financial help for removing the consequence of natural disaster and reconstruction of the area affected by the natural disaster

The Law on financial help for removing the consequence of natural disaster and reconstruction of the area affected by the natural disaster²² determines the sources of means for removing the consequence of natural disaster and reconstruction of the area affected by the natural disaster determined by the Decision of announcing the state of natural disaster in the area of Federation BiH caused by the heavy rain that caused floods in the area of FBiH as well as the way of use of these means. The means defined by the quoted law are recorded on special accounts of the budget of Federation BiH, cantonal budgets and the budgets of the unit of local self-government and are used only for the purposes determined by the law.

The mentioned means will be given to physical and legal persons for the following purposes:

- 1) recovery, reconstruction and construction of infrastructural and business objects;
- 2) reconstruction of torn down and damaged schools and other objects of the educational importance, objects intended for health protection as well as other public objects;
- 3) reconstruction of housing objects;
- 4) recovery of agricultural land and cattle font endangered by the floods;
- 5) help in construction material, recovery of damaged and construction of destroyed objects for housing and objects for animal accommodation in agricultural ownerships;
- 6) help for paying the costs of living for people who were relocated from their homes midst the floods;
- 7) help with acquiring destroyed agricultural machines and purchasing seeds for planting on land where it is possible;
- 8) financing the programs and projects that are functioning as a support to removing the consequences caused by natural disaster and which for the limited means cannot be financed from the means of public business or other funds in accordance with their circle of business;
- 9) financing the construction of temporary objects for proving housing for the affected people (temporary house, containers, etc.)

The Government of Federation BiH has the obligation to pass a regulation on the suggestion of federal minister of justice which will determine the criteria for appointing the mentioned means, done through a publicly open competition and the regulation on the procedure of public competition is passed by federal minister of justice.

12. The Law on establishing the federal fund for helping the affected areas by natural disaster in the territory of Federation BiH

The Law on establishing the federal fund for helping the affected areas by natural disaster in the territory of Federation BiH²³ established the Federal fund for helping the affected areas by natural disaster in the territory of Federation BiH; it determines its organization, activity, resources, purpose and way of using the resource from the Fund and other question related to the implementation of the Fund's activity. In implementation of its activities, the Fund ensured the collecting and managing the means intended for the help for affected areas in a way that the uniting of means and coordinated directing of the means is secured.

The activities of the Fund are comprised of business related to financing the needs intended for removing and mitigation the consequences of the natural disaster and proving help for physical and legal persons:

²²The Law on financial help for removing the consequence of natural disaster and reconstruction of the area affected by the natural disaster ("The Official Gazette FBiH", number: 59/14)

²³ The Law on establishing the federal fund for helping the affected areas by natural disaster in the territory of Federation BiH ("The Official Gazette FBiH", number: 59/14)

- 1) recovery, reconstruction and construction of infrastructural and business objects;
- 2) reconstruction of the torn down and damaged schools and other objects with educational importance;
- 3) reconstruction of housing objects;
- 4) fixing up and cleaning the watercourse;
- 5) emergency or permanent recovery of the land endangered by the landslides;
- 6) recovery of agricultural land and cattle fund endangered by the floods;
- 7) help in construction material, recovery of damaged and construction of destroyed objects for housing and objects for animal accommodation in agricultural ownerships;
- 8) help for paying the costs of living for people who were relocated from their homes midst the floods;
- 9) help with acquiring destroyed agricultural machines and purchasing seeds for planting on land where it is possible;
- 10) coordination of program implementation and projects carried out by more participants;
- 11) financing other program and projects whose function is support to removing consequences caused by natural disaster.

Besides mentioned activities, the activities of the Fund include expert and other work related to providing, managing and using the mean of the Fund, keeping a data base of the programs, projects and similar activities in endangered areas and required and available financial means for their implementation, encouraging, establishing and creating cooperation with international and domestic financial institutions and other legal and physical persons for financial help and doing some other business related to financing the help endangered areas.

The source of financing of the Fund are:

- 1) the means from multilateral and bilateral program of help;
- 2) the budget means from every level of government in Federation BiH;
- 3) grant means from international organizations;
- 4) grant means from other countries;
- 5) donations from domestic and foreign business societies;
- 6) donation of the citizens;
- 7) means from loans on a basic of signed project agreements;
- 8) Other means secured by the Government in accordance with special law and
- 9) other means in accordance with law and other regulations

The bodies of the Fund are Board of Director and Fund director. In the aim of coordination of directing the means and fair distribution the Council of the Fund is founded. Decisions about directing means of the Fund are made by the Board of Directors. The work of the Fund is public. Administrative supervision of the Fund is conducted by the Federal Ministry of Justice.

13. The Law on prohibiting discrimination BiH

The Law on prohibiting discrimination BiH²⁴, as it is prescribed, establishes the framework for achievement of equal rights and possibilities to all people in Bosnia and Herzegovina and it regulates the system of protection against discrimination. Discrimination, in the sense of the law, is every different treatment including every excluding, limiting or giving advantages founded on real or assumed basics towards any persons or groups of people based on their race, skin color, language, religion, ethnical belonging, national or social origin, connection with national minority, political or any other belief, property status, union membership or any other association, education, social position and gender, sexual expression or orientation as well as every other circumstances whose purpose or consequences is to

²⁴ The Law on prohibiting discrimination BiH (“The Official Journal BiH, number: 59/09)

disable or endanger any persons' recognition, enjoyment or achievement on equal level, rights and freedoms in all domain of public life.

The prohibition of discrimination (indirect and direct) is applied on all public authorities as well as on all physical and legal persons in public and private sector in all domains and especially in: employment, membership in professional organizations, education, training, housing, health social protection, goods and services intended for public and public places and performing business activities and public services. The central institution that has the jurisdiction for protection against discrimination is Ombudsman for human rights in Bosnia and Herzegovina, who is accepting complaints related to the cases of discrimination and acts accordingly and in relation to that gives recommendation, controls the regulations and suggests adequate measures. The important jurisdiction in this part belongs to the Ministry for human rights and refugees of Bosnia and Herzegovina which has the responsibility to establish the central data base for committed acts of discrimination and it controls the enforcement of the laws.

Every person or group of people who thinks that it is discriminated can seek protection of their rights through existing judicial and administrative procedures in which it is determined the abuse of the rights, ordered the prohibition of discrimination activities and depending on the nature of the case ordered atonement of material and nonmaterial damage that is caused by the abuse of the right protected by this law. The burden of proving falls on the back of the one who discriminated and he or she is obliged to prove that he or she did not broke the principle of equal acting or prohibition of discrimination in the subject of the discussion.

Other relevant regulations:

- The Law on administrative procedure FBiH²⁵
- The Law on Land-registry FBiH²⁶
- The Law on Land Survey and Real Property FBiH²⁷
- The Law on Land Registry FBiH²⁸
- The Law on social security basics, civil war victims protection and protection of family with children BiH²⁹

²⁵ The Law on administrative procedure ("the Official Gazette F BiH"), no.: 2/98 and 48/99)

²⁶ The Law on Land-registry (the Official Gazette F BiH, no.: 19/03 and 54/04)

²⁷ The Law on Land Survey and Real Property Cadaster FBiH ("the Official Journal of SR BiH" no. 22/84, 12/87, 26/90 and 36/90), and ("the Official Journal of RBiH" no. 4/93 and 13/94), which are applied as Federal regulation based on the Article IX.5.(1) of the Constitution of the Federation of Bosnia and Herzegovina

²⁸ The Law on Land Registry FBiH ("the Official Journal of SR BiH", no: 14/78, 12/87 and 26/90)

²⁹ The Law on social security basics, civil war victims protection and protection of family with children ("the Official Gazette F BiH ", no. 36/99, 54/04 and 39/06)

Table 1. The overview of national regulation relevant for the Project

No:	Regulation of FBiH	The essential content
1.	The Law on expropriation of the FBiH ("Official Gazette FBiH", No: 70/07, 36/10 and 25/12)	<p>By this law are prescribed conditions and procedure on expropriation of real estate for the purpose construction of public interest. Expropriation is exclusion or restriction regarding rights on property with compensation according to the market value of the real estate. Real estates can be expropriated completely or partially for constructing traffic infrastructure, business, communal, health, educational and cultural objects, then the objects for defense and other contents of public interest when it is determined that the usage of the real estate for which the expropriation will be suggested will bring bigger benefits than it was the case with the earlier usage of the real estate or when it is necessary for conducting other works of public interest.</p> <p>The land cannot be expropriated for the purpose of agriculture. As the subject of expropriation real estate owned by the physical and legal persons are determined. The assumption for expropriation is the existence of earlier determined public interest, and the construction of objects and conducting works must be in accordance with the documents of physical planning. User of expropriation will become owner of real estate and the servitude or rent of land or real estate could also be established by expropriation. User of expropriation gains the right to use of real estate only for the purpose of expropriation. Ex owner has right on compensation in form of the other real estate, but if it is impossible for the user to secure other real estate, compensation will be defined in money.</p> <p>In cases of expropriation in the area affected by the natural disaster of a bigger intensity (earthquake, floods, fires, etc.) due to the construction of objects and conducting works to remove the consequences caused by these disaster, the special regulation of the law are applied and the area and the time of application is determined by the Government. In this case determining public interest is done by municipal assembly by a decision for which a complaint cannot be submitted. The user of the expropriation gains the right on owning the expropriated real estate when the decision on expropriation becomes final and rarely the municipal assembly can on the demand of the expropriation user make a decision to give the real estate to the user if it is determined that it is necessary due to the emergency of the case.</p> <p>If the residential building or an apartment as a separate part of the building before the expropriated building, the user of the expropriation is obliged to temporary secure the necessary accommodation to earlier owner (certain number of rooms, electrical wiring, water, etc.). In this case, temporary accommodation can last at least 18 month counting the day of moving from the building or an apartment.</p> <p>The land can temporary be taken and when it is necessary and appropriate for placing and constructing temporary objects (business objects, objects for housing of population, property, etc.). The decision on the need and appropriateness of temporary taking the land is made by municipal assemble and on the suggestion of the expropriation user the municipal administrative service makes a decision about temporary taking over of the land. The complaint against that decision does not postpone it execution and the decision is terminated immediately when there is no need any more. (Article 39 – 44).</p>
2.	The Law on Real Rights FBiH ("The Official Gazette FBiH, number: 66/13 I 100/13)	<p>This law governs the acquisition, use, disposal, protection and termination of property rights and other proprietary rights and possessions. In accordance to the Law on Real Rights the ownership right and other real rights can be taken away or limited against the will of the owner only for public interest and under the conditions prescribed by the law in accordance with the principle of international law. It is determined that the Law, in public interest, and especially for the protection of natural wealth, environment, people's health, cultural-historical heritage and etc. can limit or specially regulate the way of use and disposal of certain things. It is also regulated that general and public goods are managed by certain subject of public law (Federation, canton, city or municipality) which is also responsible for them which is determined by a special law. The owner who was faced with limitations for protection of interest and security of Federation BiH, cantons or units of local self-government, human environment or people's health, has the right on compensation.</p> <p>According to the Law on Real Rights, land can be loaded by establishing a real right in favor of some person that makes it possible to build a building on land and becomes its owner, article 298. This right can be extremely suitable instrument for solving property-legal relations or housing.</p> <p>In case of merging a piece of land to another piece of land caused by watercourse, the legislator prescribes the possibility for the owner to demand the return of the detached part (Article 65, paragraph 4). Water activity in a way that without anyone's influence bring earth to the shore and makes it bigger in that way, has the consequence of the land becoming accession of the shore and owned by the owner of the shore land, (Article 65, paragraph 5).</p> <p>The Article 78 of this law regulates the prohibition of changing the natural watercourse of the surface and subterranean waters.</p>

3.	The Law on waters of the F BH ("Official Gazette F BH", No: 70/06)	This law regulates water management: water protection, water use, protection from the harmful effects of water and the regulation of watercourses and other waters. It also regulates water good and public water, water facilities, legal persons and other institutions responsible for specific water management issues and other issues related to water in the Federation. Water management aims, among other things, to ensure protection from the harmful effects of water that arises from the need to protect people and their property, taking into account the effects of natural processes. Quality management involves reducing the risk of flooding and other adverse impacts of water. Management policy is determined by the Water Management Strategy that the proposal of the Government of the Federation adopted by the Parliament of the Federation of Bosnia and Herzegovina that is Parliamentary Assembly of Bosnia and Herzegovina for the period up to 12 years (Water Management Strategy of the Federation of Bosnia and Herzegovina was adopted for the period since 2010 - 2022 year).
4.	The Law on extra-judicial procedure of the F BH ("Official Gazette F BH", No: 2/98 and 39/04)	By this law the rules by which the courts act and make decisions on personal, family, property and other rights and legal interests in extra-judicial procedure are established. In accordance with this Law, the court in extra-judicial procedure determines the compensation for expropriated property after determining the relevant facts and issues by decision which determines the shape and volume, or the amount of compensation. According to this law, participants can conclude an agreement on the form and extent, and the amount of compensation. The court's decision will be based on mentioned agreement if it is not contrary to the rules of The Law on property.
5.	The Law on administrative procedure of the F BH ("Official Gazette F BH", No: 2/98 and 48/99)	This law prescribes the manner of the government administrative bodies when they are deciding in administrative procedures regarding the rights and duties of citizens. Decisions of administrative bodies shall be made after carrying out the procedure prescribed by this law. Against a decision passed in the first instance procedure parties have the right on appeal. Only by the law can be provided that in certain administrative matters appeal is not afford, but in that case protection of rights and legality have to be provided in the other way.
6.	The Law on agricultural land of the F BH ("Official Gazette F BH", No: 52/09)	This law establishes: definitions, basic principles and management, protection, use, regulation, disposal, records and supervise the implementation of this Law. Basic purposes of the law are preservation, the proper utilization, increase production capacity and improvement of agricultural land as limited and non-renewable natural resources, regardless of owners. Also, its purpose is to coordinate the interests of all actors in agricultural land use in commercial and economic development of country. On the provisions of the law in Federation agricultural land owned by the state is in legal commerce, but cannot sell, but can be used in the form of lease, concession and replacement, but only for establishment of primary agricultural production.
7.	The Law on agriculture of the F BH ("Official Gazette F BH", No: 88/07, 04/10 and 7/13)	This Law regulates the objectives and measures of agricultural policy, the beneficiaries, agricultural holdings, definition of farmers, institutional support, informing in agriculture and keeping of registers, and inspection, administrative control, penalties and other issues of importance to agriculture. In this context, the most important provisions related to the objectives of the law connected to the implementation of all measures in the Federation relating to the development of the agricultural sector (construction of irrigation systems, land management and consolidation of holdings, etc.).
8.	The Law on construction land of the F BH ("Official Gazette F BH", No: 25/03, 16/04 and 67/05)	Law on Construction Land of the Federation of Bosnia and Herzegovina contains provisions by which is in favour of illegal builders provided establishing of property rights on land, the conditions for keeping or legalization of this facility when are existing. Decision on establishing property rights in this case is passing the Municipal Council.
9.	Directive on forests of the F BH ("The Official Gazette F BH", No: 83/09, 26/10, 38/10 and 62/11)	This directive regulates the conservation and protection of forests and forest lands, strengthening their functions, planning in forestry and forest management and forest land, economic functions, funding biological forest regeneration in the territory of the Federation of Bosnia and Herzegovina, supervision of the implementation of this directive, as well as penalties and other issues of importance to forests and forest lands. Economic base of the forest, urban plan, ground water management, hunting management plan, registries from the Institute for Protection of Cultural, Historical and Natural Heritage and federal program management of mineral resources and plans for the use of certain minerals must be harmonized. Protective forests are used to protect soils on steep slopes and land subject to erosion and torrents, etc., protection of settlements, industrial and other buildings, springs, streams, banks of water reservoirs and forests established as protective belts are proclaiming the cantonal government, on the proposal of the cantonal ministries and local governments with the prior opinion of the Federal Administration. Mentioned proposal is based on expertise and expert analysis of Commission of cantonal ministries.

10.	The Law on the procedure of transferring the ownership rights over the real estate owned by the Federation BiH, cantons, cities, and municipalities in the affected areas ("The Official Gazette FBiH", number: 59/14)	<p>This Law regulates the disposal of the real estate or the procedure of transferring the ownership rights over the real estate owned by FBiH, cantons, cities and municipalities in the affected areas in favor of persons affected by the natural disaster. The transfer of the ownership right over the mentioned real estates is done without the atonement prescribed by the regulations of the Real Rights Law of FBiH.</p> <p>The transfer of ownership rights over the mentioned real estate is done through public open competition on transferring the ownership rights whose conditions and procedure it is prescribing and is under the jurisdiction of Government of the Federation BiH, cantonal government, city's and municipal assembly on the suggestion of municipal or city's major.</p> <p>This law has a time limitation and it is valid for three years from the day of the implementation.</p>
11.	The Law on financial help for removing the consequence of natural disaster and reconstruction of the area affected by the natural disaster ("The Official Gazette FBiH", number: 59/14)	<p>This law determines the sources of means for removing the consequence of natural disaster and reconstruction of the area affected by the natural disaster determined by the Decision of announcing the state of natural disaster in the area of Federation BiH caused by the heavy rain that caused floods in the area of FBiH as well as the way of use of these means. The means defined by the quoted law are recorded on special accounts of the budget of Federation BiH, cantonal budgets and the budgets of the unit of local self-government and are used only for the purposes determined by the law</p> <p>The mentioned means will be given to physical and legal persons for the following purposes:</p> <ol style="list-style-type: none"> 1) recovery, reconstruction and construction of infrastructural and business objects; 2) reconstruction of torn down and damaged schools and other objects of the educational importance, objects intended for health protection as well as other public objects; 3) reconstruction of housing objects; 4) recovery of agricultural land and cattle font endangered by the floods; 5) help in construction material, recovery of damaged and construction of destroyed objects for housing and objects for animal accommodation in agricultural ownerships; 6) help for paying the costs of living for people who were relocated from their homes midst the floods; 7) help with acquiring destroyed agricultural machines and purchasing seeds for planting on land where it is possible; 8) financing the programs and projects that are functioning as a support to removing the consequences caused by natural disaster and which for the limited means cannot be financed from the means of public business or other funds in accordance with their circle of business; 9) financing the construction of temporary objects for proving housing for the affected people (temporary house, containers, etc.) <p>The Government of Federation BiH has the obligation to pass a regulation on the suggestion of federal minister of justice which will determine the criteria for appointing the mentioned means, done through a publicly open competition and the regulation on the procedure of public competition is passed by federal minister of justice.</p>
12.	The Law on establishing the federal fund for helping the affected areas by natural disaster in the territory of Federation BiH ("The Official Gazette FBiH", number: 59/14)	<p>This law established the Federal fund for helping the affected areas by natural disaster in the territory of Federation BiH; it determines its organization, activity, resources, purpose and way of using the resource from the Fund and other question related to the implementation of the Fund's activity. In implementation of its activities, the Fund ensured the collecting and managing the means intended for the help for affected areas in a way that the uniting of means and coordinated directing of the means is secured. .</p> <p>The bodies of the Fund are Board of Director and Fund director. In the aim of coordination of directing the means and fair distribution the Council of the Fund is founded. Decisions about directing means of the Fund are made by the Board of Directors. The work of the Fund is public. Administrative supervision of the Fund is conducted by the Federal Ministry of Justice</p>

13.	The Law on prohibiting discrimination BiH, ("The Official Journal BiH, number.: 59/09)	This law establishes the framework for achievement of equal rights and possibilities to all people in Bosnia and Herzegovina and it regulates the system of protection against discrimination. Discrimination, in the sense of the law, is every different treatment including every excluding, limiting or giving advantages founded on real or assumed basics towards any persons or groups of people based on their race, skin color, language, religion, ethnical belonging, national or social origin, connection with national minority, political or any other belief, property status, union membership or any other association, education, social position and gender, sexual expression or orientation as well as every other circumstances whose purpose or consequences is to disable or endanger any persons' recognition, enjoyment or achievement on equal level, rights and freedoms in all domain of public life.
14.	The law on basics of Social Protection, Protection of Civilian Victims of the War and Protection of Families with Children ("The Official Gazette F BH", No: 36/99, 54/04 and 39/06)	This Law regulates the basics of social protection of citizens and their families, the basic rights of social protection and beneficiaries of social protection, the establishment and operation of institutions for protection and disability associations, the basic rights of civilian victims of the war and their families, of protection for families with children, funding and other issues of importance for the realization of the basic rights of social protection, protection of civilian victims of war and protection of families with children in the Federation of Bosnia and Herzegovina.
15.	The Law on land registries of the F BH ("The Official Gazette F BH", No: 19/03 and 54/04)	This law regulates the management, maintenance and establishment of land registries, as well as the registration of property and rights to property in the Land Registry in the Federation of Bosnia and Herzegovina. Ownership and other real property rights arise only with registration in the land register. Decision on expropriation is the legal basis for registration. Also, the process of expropriation can be recorded in the form of annotations.
16.	The law on geodetic survey and cadaster of real estate of FBiH ("Official Gazette of SR BiH" No: 22/84, 12/87, 26/90 and 36/90), and ("Official Gazette of RBiH" No: 4/93 i 13/94), which is applying as federal law on the base of Article IX.5.(1) Constitution of Federation of Bosnia and Herzegovina, The law on geodetic survey and cadaster of land ("Official Gazette of SR BiH" No: 14/78, 12/87 and 26/90)	These laws regulate the survey of land, buildings and other accommodation facilities, production and maintenance of cadastral land, buildings and other facilities, records and property registration. The cadaster records are leading details of owners of real estate. Measurement as geodetic work in terms of this law is carried out for the purpose of the expropriation. The new law is in procedure of passing.

III. The World Bank Requirements in regards to the resettlement

The specific demands of the World Bank in regards to the resettlement are included in Operational Policies in regard to the involuntary resettlement, while the Operational Annexes (OP Annexes) contain detail descriptions of the Resettlement Plans and Resettlement Policy Frames. Stipulated Operational Policies have the purpose of ensuring the following:

- Resettlement should be avoided in all possible cases. If the resettlement is unavoidable, it should be reduced to minimal required amount.
- When the resettlement is unavoidable, then it should be treated as development program which will enable the efficient source for new investment for the person being resettled.
- People who are affected by the resettlement must be completely informed and they must have the possibility of participating in procedures all for the purpose of protection and fulfillment of the rights that they have.
- It is an obligation to help the resettled people in their efforts to increase their income and living standard or at least to renew them and keep at previous level.
- It is an obligation to help the resettled people and offer required protection exists disregarding the way of gaining the property and land or its validity (so, in case when they have no legal basis but they are rather illegal user).
- The costs of the resettlement are provided in full amount for the people being resettled and the atonement for excluded property in an amount allowing compensation, or replacing the excluded property by new one.

The help during the process of compensation and resettlement includes:

- The help during the census (listing)
- Individual meeting organization with the aim of simplifying the right for atonement and other rights,
- The help during the process of payment of atonement (providing the simplicity of the documents concerning the atonement and that vulnerable people will be able to charge their checks etc.), and
- Securing the money after atonement (for example, putting it on a bank account) in order to prevent theft and unintentional use of the money.

The help during the resettlement includes:

- The help with the resettlement of personal belongings,
- Preservation, transport and/or selling the material from previous building,
- Transport of the household members with medical aid if necessary, and
- The help upon receiving new property

The stipulated rules contain obligations of support and help if necessary even after the process of resettlement has been finished. This support and help should be provided by preparing the land, providing a possibility for a credit, suitable trainings, and by employing.

- Beside this, this help also includes:
- Advising about the family, health, money management and the reestablishment of the income source
- Checking the existence of some solidarity and protection networks on which vulnerable people counted on and if they have been reestablished and if they are not, the application of regulations in order for them to be reestablished because of the help in food, medical examinations, etc., and
- If necessary, health and medical care in critical periods or introducing the vulnerable people into the network of health insurance.

III. 1 Helping vulnerable groups of citizens

The obligation of help during resettlement due to the exclusion of the property is especially emphasized previously quoted Operational Policies of the World Bank. In regards to this, the special attention is given to vulnerable groups of citizens. In terms of these rules, vulnerable citizens represent groups of people under the influence of the project, who whether on their sex, ethnicity, age, physical or mental handicap, economic state or social status can be exposed to danger by resettlement conditioned by the Project more than other groups of people or the access and possibility of receiving help during the resettlement is limited.

Vulnerable groups of people, among others, include:

- Socially vulnerable people,
- People without the land,
- Older people,
- Women and children,
- Indigenous people,
- Member of the ethnical minorities
- Handicap people,
- Refugees, displaced people, and
- Other displaced people whose right for atonement is not provided or protected by national administration.

Helping vulnerable groups of citizens, depending on the analysis of the individual cases, with the aid of authorities in charge and institutions include adequate atonement (whether it is another property or the money), securing the possibilities for employment or self-employment, and resettling in a place of almost identical standards concerning the infrastructure, educational possibilities, health care, social security and cultural events

III.2 Comparing the World Bank's demands with local regulations

Operational Policies of the World Bank OP 4.12, as well as internationally accepted standards include at the same time certain elements that follow real rights (property ownership – for example; protection; atonement, etc.) as well as some other or more precisely additional economic-social rights of the vulnerable categories of citizens. Accordingly, on the size of the protection subject, Operational Policies of the World Bank with regard to the elements of social, and cultural character, considerably exceed what represents the content of real rights protection in the case of property exclusion. Domestic administration for solving already stipulated problems sets of conditions of determining the ownership right of the people being resettled. This implies that the person proved his right either by a document from land-registry, court decision or authorities' decision from the process of legalization or from the process of solving the land usurpation owned by the state etc. These procedures for legalization and solving the usurpation are regulated by the current regulations and they can result in determining the owner's (users) rights when the required conditions are fulfilled. So, with these procedures the property ownership itself does not enables demanded rights protection as it is demanded in early-quoted Operational Principles of the World Bank.

In the specific case, solving the matter of atonement, resettlement and help in the framework of this Project, in the expropriation processes, in accordance to previously stipulated regulations, rights and standards it would be necessary to provide and unite the components of property-legal, status and social character. For the implementation of the already mentioned unification the precise statistical indicators are necessary and possibly adjustment of current regulation (with possible changes and annexes) and/or

making special decisions (especially concerning the resettlement and the anticipated social component, since this segment is not sufficiently or at all regulated by property regulations). For the purpose of realization of earlier stipulated activities it is necessary to secure the involvement of more segments of authorities related to social status, social service and protection (responsible ministry from entities and cantons, municipal services, as well as centers for social services) and transfer certain obligations and responsibilities on these authorities.

In regards to earlier emphasized circumstances, one must have in mind the facts that beside the regulations that organize property-legal relations as well as procedures in that regard, there is a possibility of agreeably solving the matter of expropriation and suitable atonements as well as making special decisions that would regulated specific matter, respectively, secure some additional right. The obligation of solving the important questions in this manner and it can be determined by special Protocol and Contract with governments of the entities, and recently emphasized question should be anticipated and included in the Resettlement Plans of Action, along with mentioning the special decisions and institutions/authorities that would be in charge of making them (entities' or cantonal government, entities' or cantonal ministries in charge, etc.

IV. Resettlement Policy Legal Framework

IV.1 Expected activities related to the expropriation

The insight into the list of lots affected by the floods determined that a big number of lots are used by natural persons or cooperatives whose legal status is yet to be determined. In accordance with this, the very fact of owning a property does not imply solving the property-legal relations or social or economic issues. The lots that are treated as public good have a special status, and they are recorded in a special register in land-registry office of the court, the so called Register. After property-legal relations and the status of the owner of the lots are settled the process of expropriation can be started.

IV.2 The principles and goals related to resettlement and land acquiring

During the planning and implementing the project activities it is necessary to minimize the involuntary land acquisition. This implies the size of land that is expropriated but also the decrease in number of the resettled people. Acquiring land, resettlement as well as compensation for people that are affected by the project will be done according to the current laws. Depending on the status of people affected by the project, whether they are owners, proprietors or users of the land that is part of the project, the question of atonement or the type of the atonement is determined by the project as well. The property right is proven by documentation from land-registry while the factual state of the property is registered in cadaster. Considering that there can be difference between these two records due to the lack of the land-registry update or some other reason, it is necessary to synchronize these data. If the ownership happened outside the books, it has to be proven and submit to Land Court relevant documentation in order to correct the differences. The owner of the property will be compensated according to the Expropriation Law; he will get the alternative property or full atonement. Person who legalizes the building that is excluded is treated in the same way. Illegally constructed buildings, fulfilling the criteria for legalization will firstly be legalized and then as expropriation objects they will be compensated in accordance with the Expropriation Law. The illegal constructor on one part of Corridor 5C has the right to atonement for

excluded property while other illegal constructor in Federation BiH does not have the right for atonement. They only have the right to move the construction material.

14. Land acquisition and resettlement process

The land exclusion is mostly done in the process of expropriation according to the Expropriation Law. In the process of incomplete expropriation it can be established easement and besides that easement can be established willingly or by the court order, in accordance to the regulations of the Law on property-legal relations and the Law on Real Rights FBiH³⁰.

For the essence of the resettlement policy the most important issues are the one that are related to the security and providing the atonement for the excluded property and the help for persons from whom the property is excluded and who are resettled by the project during and after the process of exclusion. Related to this, the special place and attention are given to the vulnerable groups of citizens.

14.1. Expropriation

The current Expropriation Law of FBiH³¹ specifies that expropriation represents the exclusion or limitations of the property right with the atonement (Article 1.). The expropriation is defined by this as complete (property exclusion) and incomplete (limitation of the property right – establishing easement, for example). The atonement for the expropriation is determined by the law exclusively according to the market value of the property.

The Law specifies that the property can be expropriated when that is necessary for construction of industrial, residential, communal, medical, educational and cultural buildings, buildings for public defense and other buildings of public interest, with explicit listing of certain cases (Article 2.).

As the subject of the expropriation, certain properties are owned by natural persons and legal persons (Article 4.) which represents an important novelty in regards to earlier decisions when only the property owned by the citizens or by private-legal persons (citizens associations, religion communities, religion institutions and endowments).

The existence of earlier determined public interest is the assumption of expropriation, while the construction of buildings and construction work execution has to be in accordance with physical planning documentation (Article 5.). Expropriation can be done for the need of Federation, cantons, cities, municipalities, and public companies and institutions (Article 6.).

The user of expropriation becomes the owner of the expropriated properties and the land and buildings easement can be established for the same person as well as tenure for the land and the possibility of preparation work on the property for expropriation is also specified (Articles 7-9.).

³⁰ The Law on ownership-legal relations of the Federation BiH (“The Official Gazette of Federation BiH”, number: 6/98 and 29/03).

³¹ The Law on Expropriation of Federation BiH (“The Official Gazette F BiH, number: 70/07, 36/10 and 25/12);

The user of expropriation gains the right to use the property exclusively for the purpose of the expropriation (Article 10.).

The expropriation of the remaining part of the property can be done on owner's demand when it is determined that the owner has no economic interest for the use of that part, respectively, if the existence is impossible or worsened or the normal use of that part is disabled on that part of the property (Article 11.).

The owner is has the right on other property as atonement for the expropriated property and if the user of the expropriation cannot secure other property, the atonement (suitable, according the market values) will be determined in money. If the owner lives in expropriated building or apartment as a separate part of the building, the user has the obligation to provide the use of other matching apartment before building devastation. The same rules are applied in the case of expropriation of the office building where owner had his private business (Article 12.).

14.2. The atonement for the expropriated property

It is specified that, in regards to atonement for expropriated property,³² upon determining the atonement for agricultural and construction land, the benefits of the regular exploitation of the land, benefits that previous owner had from the land, especially taking into an account the market value are appreciated. Issues of atonement for expropriated orchard, fruit trees and grape vine, forestland, the amount of wood, seedling, older trees, infertile land and karst terrain as well as construction objects are also determined. Personal and family opportunities of previous owner are also taken into account as corrective of the increase of atonement amount if they are important for his existence.³³ Laws also specify the rules about atonement when expropriation of residential building or apartment as a separated part of the building is being expropriated. The amount of the atonement is determined during the official procedure according to the circumstances in the time of making the atonement agreement and in court procedure in time of conclusion of the first instance agreement on atonement. The atonement is provided by substituting completely or partially other suitable properties and if this cannot be provided, then in full amount of money, while both parties have the possibility of agreement to have the atonement in some other kind.

The regulation of this law specified that illegally constructed objects does not required the atonement for the owner, having in mind that he can devastate the building and move the construction material. However, the law amendments from 2012, specifically determined that the owners of illegally constructed buildings on the Corridor 5C, and on highways Tuzla – Brčko – Orašje and Tuzla – Žepče that are built before December 31, 2010 has the right on atonement in the amount of constructional value of that building. The right on atonement has only the constructor who lived on December 31, 2010 in the illegally constructed building, which can be proven by document from the responsible authorities.

³² It can be noticed that right atonement, determined by the law of RS, unlike the atonement based only on the market value from federal law, leaves a possibility of determining the full atonement. This represents the atonement as the value expressed in money that can be reached for certain real estate on the market but the possibility that the market values in justified cases can be increased in relation to special value – for example: “the affection value” that the certain real estate has for the owner.

³³ The Law of the Federation specifies, as well, personal and family opportunities as corrective of the atonement increase and it mentions other criteria related to determining the atonement. However, these regulations irrelevant when having in mind that the atonement is exclusively determined on the market value of the expropriated real estate.

It is also determined that the previous owner has the right on atonement due to the lost benefits. While creating the lease, the atonement is determined by the market value of the lease on a one-time basis amount or occasional giving from the day when the land is acquired and the atonement for the temporary lease of the land is determined in the same way. In the case of establishing easement, the amount of the atonement is the amount that is used for reducing the property market values during the establishment of the easement as well as for the damage on that property (Articles 45 – 59 of the law).

It is especially important for the Project of flooded area protection that the special regulations are being applied in the case of expropriation in the area struck by the natural disaster of a bigger scale (earthquake, floods, fire, etc.) because of the object construction and conducting works to remove the consequences caused by these disasters. The area as well as the time of the application of the regulation is determined by the Government. In this case, determining public interest is done by municipal assembly by a decision that is not a subject to a complaint.

The user of expropriation gains the right on owning the expropriated real estate when the decision on expropriation is final, and rarely, the municipal assembly can on demand of the expropriation user make a decision to give the real estate into the possession of the expropriation user before it has ended if it is determined that it is necessary due to the emergency and situation.

If residential building is being expropriated or an apartment as a separate part of the building, before the devastation of the expropriated building, the expropriation user is obliged to find an accommodation for earlier owner of that building or the apartment (certain number of rooms, electrical wiring, water, etc.)). In this case, temporary accommodation can last at least 18 month counting the day of moving from the building or an apartment. The land can temporary be taken and when it is necessary and appropriate for placing and constructing temporary objects (business objects, objects for housing of population, property, etc.). The decision on the need and appropriateness of temporary taking the land is made by municipal assembly and on the suggestion of the expropriation user the municipal administrative service makes a decision about temporary taking over of the land. The complaint against that decision does not postpone it execution and the decision is terminated immediately when there is no need any more. (Article 39 – 44).

14.3. Real easement

Issues related to the real easement as real rights are determined by the regulations of the Article 226. – 240 of the Law on Real Rights FBiH.

In terms of law regulations, real easement represents right of a property (dominant tenement) owner to perform certain works, for the need of that property, on the property of some other owner (servient tenement) or to demand from the servient tenement owner not to perform certain works that he has the right to do on his property. Normally, the real easement can be determined on certain period of time or for some period of year. These regulations recognize and specify usucaption so that the real easement is acquired by usucaption when the owner of the dominant tenement actually achieved the easement for 20 years and the owner of servient tenement did not object to that. The fact that real easement cannot be acquired by usucaption if it is done by abusing the owner's trust or proprietor of servient tenement, by force, by cheating or if the easement is ceded until the cancellation. Normally, the usucaption is the way of gaining the right by force of the law (ex lege), considering that is necessary for this right to be determined by court decision which in this case has no constitutional force but is rather of declaratory character (the factual existence of certain right also has declaratory character).

The law specified that real easement ceases to exist: if the servient tenement owner is against it and the dominant tenement owner has not execute his right for 3 consecutive year, if the easement is not

conducted for the time required for acquiring usucaption, if the same person becomes the owner of the dominant and servient tenement and if the dominant or servient tenement collapse. If the dominant tenement is divided the real easement remains in favor of all its parts.

The real easement can be constituted in the procedure of incomplete expropriation that the authorities or municipal service for property-legal relations are conducting according to the regulation of the Expropriation Law.

Protection of this real right that is in accordance with the Law on property-legal relations is provided by suits («Actio confessoria») so that the owner of dominant tenement has the right to demand by law suit that the existence of real easement is determined for the owner of the servient tenement and if a third party illegally distracts or prevents the owner of the dominant tenement from doing real easement, the owner of the dominant tenement has the right demand by suing that that distraction or prevention ceases to exist.

The owner of the servient tenement has the right to demand the seizure of the real easement when it becomes unnecessary for using the dominant tenement, as well as when the reason for its establishment disappears. The real easement is canceled if the owner of servient tenement is against it and the owner of the dominant tenement has not executed his right for 3 consecutive years, if the easement is not conducted for the time required for acquiring usucaption, if the same person becomes the owner of the dominant and servient tenement and if the dominant or servient tenement collapse. If the dominant tenement is divided the real easement remains in favor of all its parts. The owner of the servient property has the right to demand that real easement of the owner of one part of the divided dominant tenement to be cancelled if it is not used for the needs of that part and if the servient tenement is divided the real easement remains only on the part where it already existed.

As it is earlier mentioned, the real easement can be established by a court decision, legal work between the parties and by the decision of the authorities in regards to the construction land. The mentioned decision or legal work agreed on in prescribed form between the owners of the dominant tenement represents the documentation adequate for registering the right of easement in land registry in accordance with the regulation of the Law on land registry.

14.4. The atonement for the established easement

According to the regulations of the stipulated laws, the real easement is established by legal procedures, by the decision of the authorities and by usucaption. While establishing the real easement by legal procedures, the parties – owners of the dominant and servient tenement should willingly determine the issues concerning the easement that is established in this way, and the question of atonement, among others. The other two ways of establishing easement, the will of the parties is not crucial for it since the easement is established by the decision from authorities after it has determined the fulfillment of all conditions prescribed by law or based on the force of the law itself after the deadline of 20 years in which the easement was established and the owner servient tenement did not oppose it, determined by the law has expired. In any case, on the demand of the servient tenement owner, the authorities, in accordance with the law are obliged to determine the atonement that the owner of the dominant tenement owes the owner of the servient tenement. In the same way, the owner of the servient tenement cannot deny the establishment of easement if the conditions determined by the law are fulfilled and in regards to the establishment of easement, the owner of the servient tenement has the right on atonement.

15. Expropriation procedure

The Expropriation Law specifies the procedure for determining public interest, authorities in charge³⁴, and legal assumption that in the case of the existence of regulation plan, urban plan or urban plan with lot separation, the determined public interest exists as well, and the procedure concerning preparation works for expropriation (Articles 14 – 20 of the Federation law).

The procedure is conducted by the property-legal relations service on expropriation user suggestion in which the user, real estate and its owner must be specified, as well as the object, reasons for the expropriation, decision on construction of investing object, suitable documents as evidence that the expropriation user has secured and singled out financial means for paying the atonement on separate account in a bank and the evidence of determined public interest. Especially important is the condition that the expropriation proposer has to provide evidence that he tried to reach an agreement with the property owner outside the court the matter of the ownership rights over that property. In the case of discrepancies in land-registry and factual conditions of the property, the first instance authority has the authority to dispute the ownership right as preceding question, which also represent important possibility for the Project, respectively the possibility of establishing the protection standards in terms of the Operational Policies of the World Bank. The expropriation decision is made according to the law on administrative procedure,³⁵ and the complaint can be submitted to the Geodesic and Property – Legal relations (Articles 21. – 30. of the law).

15.1. Entering the expropriated properties

The right of ownership of expropriated property is acquired by the date of validity of expropriation decision with a new condition provided by laws – that the owner has paid the atonement to the previous owner or transfer the ownership of other appropriate property. Otherwise, this right is acquired on a day when the atonement is paid, or the ownership over some other property is transferred. On special occasion, upon the expropriation user suggestion, the Government can decide that the property is to be transferred even before the validity or finality of the decision when that is necessary due to the urgency or to eliminate greater damage. This possibility is excluded when the issue of residential or business building is in focus for which the expropriation user did not provide other appropriate property. Federal law explicitly excludes the possibility of starting the administrative procedure against this decision while the law in RS leaves a possibility for starting the administrative procedure. If the expropriation user has entered the property before the validity of the decision and the demand for expropriation is denied, he is obliged refund the damage caused to the user (Articles 31 and 32 of the law).

15.2. Renouncement of the expropriation request and the cancelling of the expropriation decision validity (re-expropriation)

The expropriation user can completely or partially cancel his request for expropriation before the validity of the expropriation decision under the condition that it does not violate the owner's rights.

The validating decision should be annulled or changed even in the case when the expropriation user and previous owner are requesting together, and on the request of the previous owner in the case when the

³⁴ The Government of Federation of BiH, cantonal government or municipal assembly.

³⁵ The Law on Administrative Procedures FBiH (the Official Gazette FBiH", number: 2/98 and 48/99).

user, in three years since the decision has been validated, did not perform any considerable works on the real estate (in this case, the complete and partial re-expropriation is possible).

In the case when expropriated properties were co-owned a request from the co-owner of the larger part is required for their re-expropriation, and the request can be made after three years have passed since the validity of the decision until the expropriation user did not perform any considerable works. The authority deciding the request for expropriation, decides on this matter as well and in the case of dispute over property relations between expropriation user and previous user the court will decide.

15.3. The costs of expropriation procedure

The user pays the costs of expropriation procedure. The procedure is marked as urgent and the Federation law additionally emphasized that the expropriation procedure for the purpose of traffic infrastructure construction has the priority over other expropriation procedures (probably having in mind plans and need for the construction of highway but other roads as well) (Articles 37 and 38 of the law).

15.4. Procedure for determining the atonement for expropriated properties

The procedure for determining the atonement is conducted by the property-legal relations service after the validity of the expropriation decision with the aim of reaching an agreement between the user and the previous owner. The agreement is concluded when both parties sign the agreement and as such it has the power of executive decision which is, in regards to non-paying obligations, carried out by stipulated authority responsible for property-legal relations. If the agreement is not reached in two months from the expropriation decisions validity date, the property-legal relations service is obliged to deliver all documents of the subject to the court³⁶ which ex officio in extra-judicial proceedings determines the amount of the atonement. The expropriation user should pay the costs of the procedures, agreed by mutual consent, which is determined by the law as urgent while the costs of court procedures are paid depending on the success of the parties. (Articles 60 – 66 of the law)

15.5. Appeals procedure

Protection of the owner's right or the user of the expropriated property is secured by the two instance administrative and judicial procedure with the guaranteed right on appeal. In that case, all procedures have the priority and the submitted complaints are solved immediately.

15.6. The right on construction

Since the right on construction allows the use of the property that is owned by another person and that it can be important for the Flood Protection Program, the following paragraphs look into the issue of this real right.

The land can be treated in a way that the one in whose favor the treatment is done has the right to have a building on or under the property and that right can be alienated or inherited. The person in whose favor the treatment is done gains certain rights over the building as well as over land.

The one who has this right can on or under the surface of somebody else's property build permanent and physically connected building over which he has the ownership right. The owner of the building is the one who has the right on construction, and he can treat it and deal with it just like any other owner in accordance with the regulations and possibilities from the construction contract.

³⁶ For solving the matter of real estate, the court in the area where the real estate is located has the jurisdiction under the principle "exclusively local jurisdiction"

Since the subject of the treatment can only be the entire lot and not a part of the lot, for material validity of the contract that aims at achieving the treatment, the right on construction is necessary in order to precisely determine the subject of the agreement so that it can be registered in the land registry. The mentioned person has the rights and obligations of land enjoyer while it gains the right of ownership over the building. The right on construction can be established even in the already existing building. This right is made by reaching the adequate agreement that must be edited in notary and by registration in land registry.

When we have in mind the appointment of the land owned by the state, entity, cantons or local self-government, it is necessary to mention that given the reform of the real right and the fact that the right of easement for construction is no longer existing as a category of the real right, the right on construction represents great possibility for disposal of the land owned by the state without losing the ownership right.

16. Resettlement Process Guidelines for the Project

Table 2 The process of subtraction - expropriation and resettlement

Phase of procedure	Legal framework	Activities	Remark
Before initiating the expropriation procedure	The Law on expropriation	Establishing of public interest	Condition for the process of expropriation
Before initiating the expropriation procedure		Informing and public discussions	Requests in sense of Operational Policies of The World Bank 4.12
Before initiating the official expropriation procedure	The Law on expropriation	Resolving the transfer of ownership rights by agreement	A suitable method for solving some of the controversial or problematic cases (for example the case of building the facility without provision of approvals and permits)
Initiating the expropriation procedure	The Law on expropriation The Law on Land registry	Submitting of the proposal	The proposal must specify: the user, the property and its owner. The proposal must be accompanied by: the decision to build the facility investment, proof that beneficiary has provided and set aside in a special bank account funds for the compensation, proof of established public interest, as well as proof that the proposer has previously, before the petition for expropriation through public advert summoned the real estate in order to resolve the transfer of ownership rights over that real estate by agreement. At the request of the beneficiary expropriation can be recorded in the land register
Expropriation procedure started	The Law on expropriation The Law on administrative procedures	Determining the ownership right	In the case that land registry is not updated, Municipal Service for property - legal affairs will solve the right of ownership as a preliminary issue in accordance with the provisions of Article 27 Paragraph 3 of The Law on expropriation. This stipulated possibility is extremely important because it gives the author to the mentioned services that previously solves, and establishes the right of ownership, which is far more efficient way than specific procedures that are conducted at some other authorities.
The procedure of deciding on expropriation	The Law on expropriation	Expropriation of the remaining part of the real estate	At the request of the owner can be expropriated of the remaining part of real estate when it is determined that the owner has no economic interest to use that part, disabled or seriously deteriorated previous livelihood or prevented normal if, or disabled use of the remaining part of real estate.
The procedure of deciding on expropriation	The Law on expropriation	Gaining the possession of the expropriated real estate	Rule: possession is entered after the final decision on expropriation. Exception: on the user requests Government may decide that the real property should be given into possession before decision become valid or definitive when this is necessary because of urgency or elimination of the serious damage. This possibility is excluded when in question is residential or business building, for which the expropriation beneficiary did not provide other appropriate property.
The procedure of deciding on expropriation	The Law on expropriation The Law on administrative procedures	Withdrawal of the proposal for expropriation	Termination of the proceedings
The second instance administrative appeal proceedings	The Law on expropriation The Law on administrative procedures	Resolving appeals on the decision on expropriation	Grounds for appeal (violation of the provisions of the proceedings, wrongly established facts and misapplication of substantive law) An appeal postpones the execution of the decision. The appeal resolves Federal Administration for Geodetic and Property Legal Affairs
Administrative	The Law on	Deciding on the law suit	Grounds are the same as well as for the appeal.

procedure by Cantonal Court	expropriation The Law on administrative procedures The Law on administrative disputes	against the decision on expropriation	Decision is made by Cantonal Court in FBiH.
Expropriation procedure is finalized	The Law on expropriation The Law on Land registries	Registration of ownership and other property rights	Registration of ownership and other real rights as well as ownership over the real estate that was given to previous owner of expropriated real estate as atonement is conducted on the basis of first instance decision on expropriation and a proof of paid atonement, that is, the proof of gaining the ownership right of the previous owner over some other adequate real estate.
Expropriation procedure is finalized	The Law on expropriation The Law on administrative procedures	Having settled on a final decision on expropriation the, determination of the amount of compensation in administrative proceedings follows	In administrative proceedings the atonement is determined only by agreement in Municipal Service for property - legal affairs.
The Court Extra-Judicial procedure	The Law on expropriation The Law on Extra-Judicial Procedures	If the agreement in the municipal services for property - legal affairs was not reached, the decision on the compensation will be determined in court extra-judicial proceedings	The decision of the Municipal court on the amount of the atonement.
Expropriation procedure is finalized	The Law on expropriation The Law on administrative procedures	Request for re-expropriation of the real estate	Annulling of final and binding decision on expropriation because of the expropriated property is not brought to the purpose or not used for the purposes defined by decision on expropriation.

Table 2a Atonement

Type of right or property under the influence of the Project	Legal framework	Rights on atonement	The process and specific procedures
Registered plot parcel with the registered housing object	<p>The Law on expropriation</p> <p>The Law on construction land</p>	<p>OPTION 1: MOVING TO SUBSTITUTE REAL ESTATE</p> <p>Replacement property including residential plot similar size and characteristics, and residential building similar size and characteristics</p> <p>ILI</p> <p>OR</p> <p>OPTION 2: MONEY COMPENSATION</p> <p>- Cash compensation for plot and building according to the market value and</p> <p>- The atonement for the costs of moving</p>	<p>Transfer of ownership by agreement or in the expropriation procedure</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>
Registered non-housing object, on the registered land	<p>The Law on expropriation</p> <p>The Law on construction land</p>	<p>Money atonement for the owner of object according to the market value or full value and</p> <p>Money atonement for plot parcel on market value</p>	<p>Transfer of ownership by agreement or in the expropriation procedure</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>
Registered agricultural plot parcel	<p>The Law on expropriation</p> <p>The Law on ownership-legal relations</p> <p>The Law on agricultural land</p> <p>The Law on Land registries</p>	<p>- Providing the replacement of agricultural plot parcel similar size and characteristics</p> <p>or</p> <p>- Money atonement on replacement value</p>	<p>Transfer of ownership by agreement or in expropriation procedure</p> <p>If one part of the subjected plot is under the influence of the Project is insignificant part of its total surface, the option of replacement plot will not be available but only money atonement remain available. If the rest of the plot, after the expropriation of its part is no longer usable the owner has the right for expropriation of the remaining part of the plot.</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>

<p>Annuals crop plants (income)</p>	<p>The Law on expropriation The Law on agricultural land</p>	<p>Money atonement according to the market value for owner of crop plants if the owner has the proof for lease with owner of land Money atonement according to the market value for owner of land</p>	<p>Cash compensation for crop plants that will be on dispose only if crop plants cannot be picked up inside of available period of time Conditions from Operational Policies of The World Bank 4.12</p>
<p>Perennial crop plants</p>	<p>The Law on expropriation The Law on agricultural land</p>	<p>Money atonement according to the market value for owner of crop plants if the owner has the proof for lease with owner of land Money atonement according to the market value for owner of land</p>	<p>Conditions from Operational Policies of The World Bank 4.12</p>
<p>Business activity</p>	<p>The Law on expropriation</p>	<p>Former owner of expropriated premises where he performed business activity expropriation user shall, before removing of business premises provide other appropriate premises in ownership.</p>	<p>Conditions from Operational Policies of The World Bank 4.12</p>
<p>Forest land in private ownership</p>	<p>The Law on expropriation The Law on forests</p>	<p>Money atonement according to the market value for owner of the lot and Money atonement according to the market value of the lost wood for owner of wood</p>	<p>Transfer of ownership by agreement or in expropriation procedure Conditions from Operational Policies of The World Bank 4.12</p>
<p>Illegally constructed housing objects on the route of the Corridor 5c and the motorway routes Tuzla - Brčko - Orašje and Tuzla - Žepče</p>	<p>Amendments of The Law on expropriation from 2012</p>	<p>Exceptionally, for illegally constructed housing objects on the route of the Corridor 5c and the motorway routes Tuzla - Brčko - Orašje and Tuzla – Žepče that have been built until December 31, 2010, the constructor has right on atonement in the amount of the construction value of the objects. . The right on atonement in this case has only the constructor who registered his permanent or temporary residence in illegally constructed housing objects by December 31, 2010. This must be proven by written statements from the competent authority.</p>	<p>Passing of decision on expropriation and providing suitable atonement in the case of illegally constructed housing objects Conditions from Operational Policies of The World Bank 4.12</p>

CASES FOR WHICH ATONEMENT IS NOT PROVIDED BY LAW OR ATONEMENT IS QUESTIONABLE			
<p>Agricultural plot parcel registered in the name other person (not in the name of user)</p>	<p>The Law on expropriation</p> <p>The Law on ownership-legal relations</p> <p>The Law on usurpation</p> <p>The Law on agricultural land</p> <p>The Law on Land registries</p>	<p>Money atonement according to the replacement value of the land for owner of the land or his successors</p> <p>and</p> <p>Money atonement in the name of any development activities for owner of those development activities (applicable to irrigation or drainage, plantations of perennial crops, buildings, etc.)</p>	<p>Establishing the right for the user, (for example: in the procedure of solving the usurpation), and transfer of ownership by agreement or in the procedure of total expropriation</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>
<p>Registered plot parcel with housing unit without contracting permit, built by owner of the parcel.</p>	<p>The Law on expropriation</p> <p>Regulation on legalization</p>	<p>If procedure of legalization is successfully completed:</p> <p>OPTION 1: MOVING WITH SUBSTITUTE PROPERTY</p> <p>Substitute property including plot parcel with housing unit similar size and characteristics (replacement property) and parcel that is placed next to the property and help with moving</p> <p>OR</p> <p>OPTION 2: MONEY ATONEMENT</p> <p>Money atonement for plot parcel and for the housing unit according to the market or full value and help with moving</p>	<p>After successfully completed procedure of legalization until the decision on expropriation has been passed, the expropriation could be done and provide suitable atonement.</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>

<p>Housing unit illegally constructed on the land that is property of some other person</p>	<p>The Law on expropriation Regulation on legalization</p> <p>The Law on ownership-legal relations</p>	<p>If the procedure of legalization is successfully completed:</p> <p>Money atonement according to the market value for the owner of object</p> <p>and</p> <p>help with moving for the owner of the object</p> <p>and</p> <p>Money atonement according to the market value for the plot parcel for owner and/or his successors</p>	<p>After successfully completed procedure of legalization until the decision on expropriation has been passed, the expropriation could be done.</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>
<p>Housing unit illegally constructed on the land that is public property</p>	<p>The Law on expropriation Regulation on legalization</p> <p>The Law on construction land</p>	<p>If procedure of legalization is successfully completed:</p> <p>Money atonement according to the market value for the owner of object</p> <p>and</p> <p>help with moving for the owner of object</p>	<p>After successfully completed procedure of determining the ownership right of construction on someone else's property and the process of legalization until the decision on expropriation has been passed, the expropriation could be done.</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>
<p>Illegally constructed non housing objects on registered plot parcel</p>	<p>The Law on expropriation Regulation on legalization</p> <p>The Law on construction land</p> <p>The Law on ownership-legal relations</p>	<p>If procedure of legalization is successfully completed:</p> <p>Money atonement according to the market value for owner of the object</p> <p>and</p> <p>money atonement according to the market value for plot parcel</p>	<p>After successfully completed procedure of legalization until the decision on expropriation has been passed, the expropriation could be done.</p> <p>Conditions from Operational Policies of The World Bank 4.12</p>

<p>Illegally constructed non housing objects on plot parcel that is property of some other person</p>	<p>The Law on expropriation Regulation on legalization The Law on construction land The Law on ownership-legal relations</p>	<p>If the procedure of legalization is successfully completed: Money atonement according to the market value for the owner of object and Money atonement according to the market value for plot parcel for owner of the parcel and/or his successors</p>	<p>After successfully completed procedure of determining the ownership right of construction on someone else's property and the process of legalization until the decision on expropriation has been passed, the expropriation could be done. Conditions from Operational Policies of The World Bank 4.12</p>
<p>Illegally constructed non housing objects on plot parcel that is public property</p>	<p>The Law on expropriation Regulation on legalization The Law on construction land</p>	<p>If the procedure of legalization is successfully completed: Money atonement according to the market value for the object and associated land to the owner</p>	<p>After successfully completed procedure of legalization until the decision on expropriation has been passed, the expropriation could be done. Conditions from Operational Policies of The World Bank 4.12</p>

V. Institutional Framework for the Project

Institutional framework represents the system of state's institutions, authorities and organizations which according with the law and other regulations have certain jurisdiction or responsibilities for doing certain procedures and conducting certain activities and specific procedures that decide on issues relevant for this Project. Since we are dealing with recovery of not only individual objects but institutions and communicational devices as well, in the implementation of this Project a great number of country's institution is included in the Project. Firstly, important role in this part belongs to the Government of Federation BiH, cantonal governments, entity's and cantonal ministries for agriculture, forestry and water management as well as the Federal Fund for the helping people in the areas affected by the natural disaster on the territory of Federation BiH.

Besides mentioned authorities, the recovery of the damages created by the floods demands active participation of the Presidency of BiH, Council of Ministers, Ministry of Security BiH, federal ministry for physical planning as well as cantonal ministries holding the jurisdiction over the physical planning and other. The Presidency of BiH has passed a decision on its 51st regular meeting that indicated that the Council of Ministers should support the principle of transparent, responsible and effective implementation of the financial means that were collected on donor conference for the recovery and reconstruction of the area affected by the natural disaster in Bosnia and Herzegovina. On its 106th meeting, the Council of Minister of BiH passed the Decision on disposition of financial means secured from the Budget of the institutions of BiH for 2014 and means collected by dedicated accounts within the Single account of the treasury for helping people in the area affected by the floods in May 2014 and in a way that 49 per cent is distributed to Federation BiH and Republic of Srpska and 2 per cent for Brčko District.

The jurisdiction over expropriation conduction and regulating the atonements for expropriated properties belongs to the municipal services for property-legal relations. Service for Geodetic and Property-Legal Relation of Federation BiH is second instance authorities that decides over the appeals made on the decision from the municipal services for property-legal relations. Legality evaluation of the decisions of this, second instance authorities can be done in administrative dispute, after making an appeal, and the jurisdiction for conducting this procedure have the cantonal courts in Federation. The issue of atonement for expropriated properties can be solved by parties on the municipal service for property-legal relations and if the agreement was not reached, the municipal court should decide on the amount of atonement. The appeals on the decisions from this court can be made to cantonal courts in Federation BiH.

Besides these, entities' and cantonal institutions, considering specific requests included in the Operational Policies of the World Bank OP 4.12 for solving these issues, the entities' and cantonal ministry of social help have the jurisdiction as well as municipal services and Social Welfare Centers.

The Federal Fund for helping areas affected by natural disaster on the territory of Federation BiH had the jurisdiction over the matters of recovery, reconstruction and construction of infrastructural, industrial, educational objects, recovery of old housing objects, management and cleaning of watercourses, emergency or permanent recovery of the land endangered by the landslides, recovery of the agricultural land and cattle fund endangered by the fold, helping with construction material, coordination of implementations of the help program and projects and etc.

The jurisdiction for making a decision on legalization of illegally constructed buildings has the municipal service of physical planning.

The earlier mentioned institutional framework with earlier mentioned administrations, institutions and authorities and their jurisdictions determined by law offer the possibility of conduction the procedures and taking adequate actions required for the recovery of the flood damages and with that the implementation of the goals postulated by this Project.