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Dispossession in Syria: A Fundamental Piece of the Accountability Puzzle

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Access to justice to address violations of housing, property and land (HLP) rights is key to durable solutions to displacement. The loss of homes and properties compromises displaced persons' security, privacy and livelihoods, as property frequently represents people's most important economic asset. Its loss therefore perpetuates displacement and represents an obstacle to economic recovery, reconstruction and peace-building. This paper shows that the current context in Syria provides very limited access to justice on HLP issues. While realities differ from one area to another, what was already a slow and pluralistic justice system is now fragmented into four different entities where courts and other institutions are administered by different political actors and armed groups, with large variations as to laws and procedures depending on who holds territorial control. The polarization of political positions resulting from the conflict led to a tight control of the judiciary by the executive power, reinforcing the risk of politically biased decisions.



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Executive Summary

Violations of people's housing, land, and property rights have been pervasive in the Syrian conflict, and there is substantial evidence that much of the resulting dispossession stems from state policy. For one, the government has engaged in actual demolition and destruction of property. More subtly but equally destructive, the government has enacted around 35 laws enabling confiscation, expropriation, and seizure of property. Both are mostly targeting properties belonging to displaced persons and perceived members of the opposition. These include laws relating to counterterrorism, urban planning, informal settlements, debt collection, military service, common agricultural lands, and property registers, among others.

Dispossession also resulted from the implementation of pre-conflict laws which deadlines and procedures were not suited to the exceptional circumstances created by conflict, insecurity, and displacement. The difficulty for many displaced people to comply with these procedures has strongly limited their access to justice and capacity to contest occupation, fraudulent sales or other forms of dispossession. Moreover, the pervasive lack of formal documentation proving HLP rights makes it difficult to support HLP claims. Before the conflict, only 50 percent of property ownership was actually registered. Since then, many of those who had documents lost access to them during their flight, and many land registries have been destroyed, therefore compounding the problem.

Non-state actors have also contributed to property dispossession by demolishing, looting, or confiscating properties of perceived opponents, the displaced, and civilians in general. They have also allocated properties of the displaced to their supporters.

Several groups face an increased risk of dispossession, displaced persons, members of certain ethnic and religious groups, detainees, criminal suspects, missing persons and regime opponents and their relatives, who often fall within previous categories. Women are particularly vulnerable because of a discriminatory legal framework and an entrenched patriarchal system that accepts and legitimizes discrimination against them in relation to inheritance rights. Moreover, since most properties are only registered under male relatives, women of missing or dead relatives face difficulties in claiming inheritance or restitution of their property.

Access to justice to address violations of HLP rights is key to durable solutions to displacement. The loss of homes and properties compromises displaced persons'¹ security, privacy and livelihoods, as property frequently represents people's most important economic asset. Its loss therefore perpetuates displacement and represents an obstacle to economic recovery, reconstruction and peace-building. This paper shows that the current context in Syria provides very limited access to justice on HLP issues. While realities differ from one area to another, what was already a slow and pluralistic² justice system is now fragmented into four different entities where courts and other institutions are administered by different political actors and armed groups, with large variations as to laws and procedures depending on who holds territorial control. The polarization of political positions resulting from the conflict led to a tight control of the judiciary by the executive power, reinforcing the risk of politically biased decisions.

¹ When not specified "displaced persons" refers to both internally displaced persons (IDPs) and refugees.

² Pluralistic: Combining elements of statutory and customary justice.

As a result, courts and judges in government-controlled and in non-government controlled areas lack independence and impartiality, in addition to being burdened by significant case backlogs. The massive displacement of the population beyond and within borders has created a range of practical, financial and security obstacles for people, hampering their ability to seek remedy and access courts. The cost and the difficulty to obtain a power of attorney³ and a security clearance⁴ to initiate legal action while in displacement, has either resulted in people renouncing to these procedures, or forced some of them to cross dangerous lines of contact to reach their place of origin and obtain necessary civil or HLP documentation to sell a property, support an HLP claim or contest a court or administrative decision.

While a number of efforts are ongoing to document formal and informal HLP rights, additional steps should be immediately taken to consolidate the protection of people's housing, land, and property rights in Syria. In line with international standards and practice, any future political settlement, peace agreement or new Constitution must include considerations on the restitution and compensation of HLP rights, including provisions addressing the rights of unregistered property holders and those with rights less than full ownership. It should allow for a broad notion of what evidence is admissible in property claims and must recognize that purportedly legal actions often resulted in effectively illegal dispossession. Continued monitoring of HLP issues and documentation of both potential individual violations as well as patterns of violations is essential, and awareness on the intricacies of HLP rights should be cultivated among all Syrians as well as those working toward an eventual peace.

Introduction

The decade-long Syrian conflict has resulted in the displacement of more than half of the population; 6.2 million people are displaced internally and 5.3 million are registered as refugees outside of Syria.⁵ The longer and more entrenched their displacement, the more difficult it will be for them to recover the properties they left behind. The issue is not limited to merely monetary damages for the lost physical asset—as property frequently represents families' most important economic asset, and its loss perpetuates displacement by limiting the resources necessary for return or reintegration elsewhere. Dispossession of one's housing, land, and property also affects security, privacy, livelihoods, and social and cultural rights.

Given the vast scale of displacement and dispossession, resolving housing, land, and property issues amounts to a fundamental piece of the accountability puzzle in Syria. Failing to recognize the full continuum of HLP violations and failing to understand what aspects of accountability can be achieved will undermine a peaceful and inclusive solution for Syria and the Syrian people. It is critical to ensure that displacement and loss of family assets and properties do not become permanent.

3 A power of attorney is a procedure according to which one individual gives to another (a lawyer or another trusted person) the power to act on his behalf as a proxy, for instance to sell a property. This procedure is validated by a notary public. It allows refugees to delegate their authorities on certain issues to people who are still in Syria and who can initiate legal and administrative procedures for them.

4 Syrian authorities have imposed security clearance for a range of situations including procedures related to the establishment of a power of attorney and sales. The security clearance consists an authorization to proceed requested through the Ministry of Interior to the Directorate of Finance. It is then processed by the Bureau of National Security and intelligence services. People considered as opponents, draft evaders, or suspected terrorists will usually not obtain the security clearance which will block their possibility to sale or lend their property.

5 "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic," United Nations Human Rights Council, A/HRC/46/54, 21 Jan. 2021, para. 20, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/014/36/PDF/G2101436.pdf?OpenElement>.

According to international human rights law, “Housing, Land, and Property Rights” encompasses a range of elements, including access to “a place that offers shelter, safety, and the ability to secure a livelihood” without fear of being unfairly forced out.⁶ As the notion extends beyond the common idea of “ownership,” HLP rights can be “held by owners, tenants, housing association members, informal sector dwellers, and customary land tenure owners and users.”⁷ When referring to the right to housing specifically, HLP rights include more than mere physical shelter. Housing must be adequate—the elements of which are security of tenure, availability of services, affordability, habitability, accessibility, reasonable location, and cultural adequacy.⁸ HLP rights can exist in formal and statutory systems as well as via customary law.⁹ The right to non-discrimination is an important component of HLP, “which entails special protection for the most vulnerable and marginalized persons.”¹⁰ HLP rights are also set out in international humanitarian law, as well as in national and customary laws.¹¹

This policy brief reviews the various types of HLP dispossession perpetrated by Syrian authorities and non-state actors. It highlights some major impediments to access to justice.

This paper builds on discussions and recommendations from two roundtables organised by ILAC and International Bridges for Justice in March and April 2021 for Syrian lawyers and justice actors. The roundtables focused on “Dispossession of housing, land and property in Syria”, and “Access to justice on HLP issues.”

This information was complemented by a desk review of reports on HLP violations in Syria, and data collected by international and Syrian organizations, including UN entities.

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- 6 UNHCR and Norwegian Refugee Council, “Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective,” Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>. See also Arts. 17, 25, Universal Declaration of Human Rights; Art. 11, Covenant on Economic, Social and Cultural Rights; CESCR General Comment No. 4: The Right to Adequate Housing (1991); CESCR General Comment No. 7: The Right to Adequate Housing – Forced Evictions (1997); Arts. 14, 15, and 16, Convention on the Elimination of all Forms of Discrimination Against Women; Arts. 13, 21, Convention Relating to the Status of Refugees (1951); UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).
- 7 UNHCR and Norwegian Refugee Council, “Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective,” Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>.
- 8 CESCR General Comment No. 4: The Right to Adequate Housing (1991).
- 9 UNHCR and Norwegian Refugee Council, “Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective,” Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>.
- 10 UNHCR and Norwegian Refugee Council, “Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective,” Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>.
- 11 For international humanitarian law standards applicable to HLP rights, see Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 54 (2) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 14) (regarding attacks on civilian objects); Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part), arts. 49, 147 and Protocol II to the Geneva Conventions of 12 August 1949, art. 17 (regarding prohibition of forced transfer or movement); Regulations respecting the Laws and Customs of War on Land, art. 55 (annex to Convention (IV) respecting the Laws and Customs of War on Land) and International Committee of the Red Cross (ICRC), Study on Customary International Humanitarian Law, rule 51 (b) and (c) and Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 53 (relating to the protection of immovable property during times of occupation).

Dispossession

For the purposes of this policy brief, dispossession occurs when people are deprived of their ability to fully enjoy their HLP rights. Because of the broad interpretation of HLP rights, dispossession in this context ranges from interference with the ability to use one's property for housing or livelihood purposes, to being forcefully driven from one's home. Dispossession can result from purportedly legal actions or mere use of force without any legal ground. Generally, remedies for dispossession are restitution or compensation. Restitution involves the full restoration of all HLP rights.¹² Compensation can be monetary or in-kind and should only be considered an acceptable remedy when restitution is "not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation."¹³ Other remedies can include rehabilitation, satisfaction (including symbolic reparations such as public apologies), and guarantees of non-repetition.¹⁴

Many actors in Syria have been involved in dispossession of property throughout the country, in government as well as in non-governmental controlled areas. Dispossession can occur out of greed, need (when IDPs occupy empty houses), or as a result of a political strategy discriminating against certain individuals or groups because of their presumed political, religious or ethnic affiliation. While all parties to the conflict have been involved in HLP violations one way or another, the Syrian government is by far the main perpetrator and initiator of HLP violations. In addition to targeted destruction of Opposition-held neighbourhoods during the conflict, and demolition in areas regained by the Government, it has put in place policies and laws to facilitate systematic and large-scale dispossession of properties. HLP-related laws contributing to dispossession have been adopted throughout the conflict by a legislative branch closely linked to the executive power and the President of the country. These laws are then implemented and enforced by the courts, police and other administrative bodies who are also under the close control of the executive powers. The lack of power separation not only limits access to justice but facilitates the efficiency of dispossession.

The Syrian government has therefore used its control of institutions as a weapon against holders of HLP rights. It used its power to "locate, target, destroy, confiscate, cleanse and gain revenue" from abandoned or damaged property.¹⁵ Deliberate policies aiming at confiscating, expropriating seizing properties belonging to displaced people or members of the opposition, often criminalized and qualified as terrorists, have contributed to consolidate displacement by making dispossession legally permanent and limiting restitution and return opportunities.¹⁶

12 See generally "UN Principles on housing and property restitution for refugees and displaced persons" (Pinheiro Principles), 28 June 2005, <https://www.unhcr.org/en-us/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>.

13 Principle 21.1, "UN Principles on housing and property restitution for refugees and displaced persons" (Pinheiro Principles), 28 June 2005, <https://www.unhcr.org/en-us/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>.

14 Paras. 21, 22, 23, "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," 16 Dec. 2005, <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

15 Unruh J, *Weaponization of the Land and Property Rights System in the Syrian Civil War: Facilitating Restitution?* Journal of Intervention and Statebuilding, Vol.10-2016, pp. 453-471

16 Unruh J et al, *A Digital Advance for Housing, Land and Property Restitution in War-Affected States: Leveraging Smart Migration*, Stability International Journal of Security and Development, (6)1:15, p.3

One of the factors facilitating dispossession is the difficulty for owners to prove their HLP rights due to the widespread informality of such rights and the disconnect between the reality of ownership and the rights recorded in land registries. This problem pre-dates the conflict. The country had long been faced with a complex property and land administration system rooted in legal pluralism and characterized by widespread informality which struggled to effectively protect HLP rights. For example, land registries only recorded transactions in the formal system, though much of the land tenure was covered by Islamic and customary systems as well.¹⁷ Further, parties often refrained from recording transactions to avoid paying taxes, and many transfers by inheritance were never recorded.¹⁸ By some estimates, only 50 percent of land in Syria was formally registered at the time the conflict began.¹⁹ Moreover, in a context of high population growth and rapid urbanization, informal settlements became widespread. By 2011, over half of Syria's population of almost 21 million lived in urban and peri-urban areas and approximately 1/3 of them in informal settlements.²⁰ The informality of properties situated in such settlement prevents their formal registration into land registries. Moreover, the problem is perpetuating itself since it is impossible to regularize and register formally the sale of such properties. However, Syrians have found ways to formalize transfers to a certain extent in order to provide a certain level of protection. They have used court decisions, irrevocable power of attorney²¹ or registered sales contract through a notary act to document these sales. These documents can provide a good basis to support HLP rights, provided that a restitution mechanisms accepts this form of alternative evidence.

17 UNHCR and Norwegian Refugee Council, "Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective," p. 10, Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>.

18 UNHCR and Norwegian Refugee Council, "Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective," p. 10, Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>.

19 Prettitore, Paul, "Will forcibly displaced Syrians get their land back?" World Bank Blogs, 1 Aug. 2016, <https://blogs.worldbank.org/arabvoices/will-forcibly-displaced-syrians-get-their-land-back>.

20 "Briefing Note: Housing, Land and Property in the Syrian Arab Republic," Norwegian Refugee Council, May 2016, p. 5, <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>.

21 Syrian law grants the notary irrevocable power of attorney the status of a real estate title deed, as per article 681 of the civil code. The irrevocable power of attorney includes an explicit statement of the owner authorizing the buyer to dispose of the property as he/she sees fit without authorization of the owner who signed the irrevocable of attorney. See The Syria report, Explained: The role of the power of attorney in transferring real estate ownership, 01/09/2021

Typology of HLP dispossession

Confiscation: Confiscation is a legal form of seizure by a government or public authority as a punishment for a crime or offence or in enforcement of the law. It does not involve any compensation. Confiscations require a judicial decision.

Expropriation: The action by the state or an authority of taking property from its owner for public use or benefit. According to Article 15 of the 2012 Constitution, the State can only limit the right to property according to the law, in the public interest and against fair compensation. In Syria, expropriations are carried out by administrative bodies.

Forfeiture: The loss of any property as a result of defaulting on contractual obligations, or as a penalty for illegal conduct. The process of forfeiture often involves proceedings in a civil or criminal court. Forfeiture can be done to benefit authorities or to compensate/reimburse individuals or entities who have been wronged by the owner.

Occupation: The act of knowingly occupying a property belonging to another person.

Usurpation: taking over a property illegally with or without the use of force and/or exercise authority or possession wrongfully

Seizure (provisional/precautionary seizure and executive seizure): A *provisional* or *precautionary* seizure consists in a temporary freezing of assets. It serves to secure compulsory enforcement, usually against the debtor's movable or immovable property, for a monetary claim. During the period of the provisional seizure, the main debtor and third-party debtors lose their rights of disposal over the seized assets until the court decision.²² If the court decision confirms the seizure, an *executive* seizure is pronounced, resulting in the forfeiture of property ownership.

Looting or pillage: Stealing, including by using force, in a context of war or crisis

Forced eviction: Forced evictions can be defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.²³

Destruction and demolition: Destruction refers to damages incidental to the conflict, while demolition refers to intentional destruction taking place after the conflict. The purpose of post-conflict demolition is normally to put down buildings that cannot be rehabilitated. When it affects buildings that are only lightly damaged, it can reflect a policy to prevent the return of displaced persons.

²² European Judicial Network

²³ UN Committee on ESCR General Comment no 7 on right to adequate housing and forced evictions

Using HLP legislation to support dispossession

Many of the 35 property laws enacted since 2011 enable dispossession through complex judicial or administrative procedures and on various grounds including alleged terrorist activities, alleged criminal offences, the failure to pay fines for not performing compulsory military service, or urban planning.²⁴

The 2012 Counterterrorism Law

Syrian law defines “confiscation” as the forceful removal of property from its owner and subsequent transfer of ownership to the state pursuant to a judicial decision in a criminal proceeding.²⁵ Confiscation operates as a form of punishment for an offence or a crime and thus is not accompanied by any compensation, as would be the case in an expropriation. As per the Syrian Penal Code, confiscation is a complementary penalty: a criminal court may order the confiscation of a person’s property as part of a sentence if that property was acquired because of the criminal act or used in the commission of a crime.

The 2012 Counterterrorism Law broadened the use of confiscation, arguably in contravention of the Syrian Constitution and international law. Although the law specifies that the confiscation of assets should be conditioned to its use to commit a crime²⁶, the court confiscates property systematically without seeking to establish the relation between the property and the crime. Additionally, in its 2021 assessment on Syria, the International Legal Assistance Consortium found that, in October 2020, at least 3,970 properties were reportedly confiscated, including property owned by spouses and children of terrorism suspects, which amounts to collective punishment.²⁷ Further, inclusion on the government’s list of suspected terrorists is a basis for provisional seizure, but those named on the lists are not notified of their inclusion and the law does not allow for any appeal of a listing.²⁸ However, they have a right to appeal the decision, including if they were trialed in absentia and handed themselves to the court. This lack of due process also contravenes Article 51 of the Syrian constitution which states that punishment shall be personal and based on a fair trial, as well as international law provisions on due process.²⁹

Included in the litany of concerns about the 2012 Counterterrorism Law is its overbroad definition of “terrorism.”³⁰ Acts that can be legally classified as terrorism include participating in peaceful protests, providing humanitarian aid, reporting on human rights violations, and

24 “Uncertain Futures: Legal and Civil Documentation, Housing Land and Property (HLP), and Challenges to Return for Syrian Refugees,” UNHCR and Norwegian Refugee Council, 2019. “Legal Identity and Housing, Land, and Property Rights of Syrian Refugees from a Durable Solutions Perspective,” UNHCR and Norwegian Refugee Council, Dec. 2021, <https://www.nrc.no/resources/reports/legal-identity-hlp-rights-syrian-refugees-from-durable-solutions-perspective/>, citing World Bank, “The Mobility of Displaced Syrians: An Economic and Social Analysis,” p. 12, 2019, and UNHCR, “A Longing to Go Home, in Safety and Dignity – Intentions and Perceptions of Syrian Refugees in Lebanon About Their Future,” p. 17, 2018, <https://data2.unhcr.org/en/documents/details/63310>.

25 Art. 15(1)(b) of the 2012 Constitution provides that “confiscation of private property shall not be imposed without a final court ruling.”

26 Article 12, Law on Counterterrorism No. 19/2012, “In all acts, defined as crimes by this law, the court, on account of conviction, shall order the confiscation of the movable and immovable assets, their revenues, objects used or prepared to be used to commit the crime,” as quoted in Malas, Saleh and Masri, Zeynep Masri, “Legal weapon for collective punishment: Syrian laws violate disappeared persons’ property rights,” Enab Baladi, 6 Feb. 2021, <https://english.enabbaladi.net/archives/2021/02/legal-weapon-for-collective-punishment-syrian-laws-violate-disappeared-persons-property-rights/>.

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Ekman, Mikael and William D. Meyer, “ILAC Rule of Law Assessment Report: Syria 2021,” International Legal Assistance Consortium, p. 21, <http://ilacnet.org/wp-content/uploads/2021/11/ILAC-Rule-of-Law-Assessment-Report-Syria-2021.pdf>; Human Rights Watch, Syria: “Syria: Suspects’ Families Assets Seized,” Human Rights Watch, 16 July 2019, <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized>.

28 “Syria: Suspects’ Families Assets Seized,” Human Rights Watch, 16 July 2019, <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized>.

29 Art. 14, International Covenant on Civil and Political Rights. See also “Syria: Suspects’ Families Assets Seized,” Human Rights Watch, 16 July 2019, <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized>.

30 “Syria: Counterterrorism Court Used to Stifle Dissent,” Human Rights Watch, 25 June 2013, <https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>.

criticizing the government on social media.³¹ Law 22/2012 positioned the Counterterrorism Court as an exceptional court operating outside the regular judicial and legal framework³² which limits the fair trial rights of those appearing before it.³³ Ultimately, the effect of the counterterrorism legal framework is to dispossess individuals of their property without due process and often on spurious allegations of terrorism.

Table 1: Syrian constitutional and legal principles v. new laws

Syrian Constitution and Legal Principles	Current Situation
<p>Judicial Process</p> <ul style="list-style-type: none"> • Confiscation: complementary penalty as punishment of crime if property is used to commit a crime or if acquired with criminal funds. <ul style="list-style-type: none"> • Requires a judicial decision • Individual penalty limited to the perpetrator 	<p>Counter-terrorism Court</p> <ul style="list-style-type: none"> • Convictions for terrorism on very weak grounds • No link established between crime and property • Mark in land registries done at request of secret services • Freezing of assets extends to relatives of accused
<p>Administrative Process</p> <ul style="list-style-type: none"> • Provisional seizure: to guarantee payment of debt. <ul style="list-style-type: none"> • Placement of a notification/mark in land registry to guarantee payment or prevent sale before possible executive seizure. • Provisional seizure can either be lifted after debt payment or dropping of charges, or can be transformed into executive seizure. • Executive seizure: can only be pronounced after a provisional seizure. • Expropriation <ul style="list-style-type: none"> • In public interest • Against fair compensation • According to law 	<p>Military Service Law</p> <ul style="list-style-type: none"> • Exemption fees: 8000 USD if no military service by 42 years old • Executive seizure without prior provisional seizure and affect relatives • Properties sold on auction <p>Expropriation Laws/Urban Development</p> <ul style="list-style-type: none"> • Inadequate laws push people into illegality to then facilitate expropriation • Inadequate compensation, problematic valuation, shares • Public interest when property transferred to private entities? • Free quarter (Amiri land transformed into urban land) • Law 10/2018 <p>Amiri Law</p> <ul style="list-style-type: none"> • Reactivating unused provision cancelling right if 5 years without use
<p>No Process</p> <p>Usurpation (public or private actors); occupation; forgery of document/sales; sale under duress; destruction</p>	

Provisional and executive seizure

A provisional seizure is a temporary administrative measure that freezes the assets of a debtor to ensure the payment of the debt or to guarantee the enforcement of a future court decision. If a guilty verdict is issued, the provisional seizure becomes an executive seizure that may result into confiscation or forfeiture of the property. A provisional seizure places the assets of the debtor or suspected criminal in the hands of the court and, when it involves immovable property, results in a lien on the property's record in the cadastre that remains until the debt is paid or a court decision is issued. In Syria, all courts can rule on provisional seizure, and all public institutions can request the Ministry of Finance to order a provisional seizure. Many Syrians are at risk of provisional seizure and eventual executive seizure of their assets for non-payment of debts as the conflict has rendered them unable to pay utility bills, mortgage instalments, or loans due to displacement or the dire economic situation.

31 "Syria: Counterterrorism Court Used to Stifle Dissent," Human Rights Watch, 25 June 2013, <https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>. "Syria: Suspects' families assets seized," Human Rights Watch, 16 July 2019, <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized>. "The State of Justice in Syria, 2020," Syria Justice and Accountability Centre, March 2021.

32 Art. 7, Law 19/2012: The court does not adhere to the trial procedures stipulated by the investigation department, prosecution or trial procedures.

33 See e.g. "Syria: Suspects' Families Assets Seized," Human Rights Watch, 16 July 2019, <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized>.

A provisional seizure can also be taken in the context of a crime such as terrorism or corruption. In such cases a guilty verdict would result in executive seizure and confiscation of the property. Cases of provisional seizures have been reported without notification to the alleged debtor.³⁴ As of September 2019, the Ministry of Finance reported issuing provisional seizure orders against the movable and immovable properties of 10,315 persons.³⁵ Such provisional seizure usually concerned people suspected of being “involved in terrorism-related offences”.³⁶ If the individual is convicted pursuant to a final court judgment, the provisional seizure becomes permanent (known as executive seizure or forfeiture) and ownership of the property reverts to the state. The property can then be sold at public auction.³⁷

Decree 63/2012 expanded the possibility of seizure on a mere suspicion of criminal offence in the context of terrorism and threats to state security.³⁸ Specifically, it authorizes the security branches (judicial police and intelligence forces), the general prosecutor and magistrates to request the Ministry of Finance to provisionally seize property of those included on terrorist lists.³⁹

Military service law

Evading military service has recently become a new basis for property dispossession.⁴⁰ A 2014 amendment to the Conscription Law set out a US\$8,000 exemption fee for not having fulfilled compulsory military service by age 42—a sum extremely difficult for most people to pay.⁴¹ There is a three-month grace period to pay the fee; “failure to do so may lead to imprisonment of one year, as well as an obligation to pay an additional US\$200 for every year exceeding the deadline up to a total amount of US\$ 2,000.”⁴² In November 2017, Law 35/2017 was passed allowing provisional seizure of movable and immovable property until the exemption fee and late fees are fully paid.⁴³ On 1 December 2019, another amendment (Law No. 39/2019) enables the Ministry of Finance to pronounce an executive seizure without having to order first a provisional seizure and without advance notice when the person reaches age 43.⁴⁴

34 “Syria: Suspects’ Families Assets Seized,” Human Rights Watch, 16 July 2019, <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized>; Malas, Saleh and Masri,

Zeynep, “Legal weapon for collective punishment: Syrian laws violate disappeared persons’ property rights,” Enab Baladi, 6 Feb. 2021, <https://english.enabbaladi.net/archives/2021/02/legal-weapon-for-collective-punishment-syrian-laws-violate-disappeared-persons-property-rights/>.

35 Malas, Saleh and Masri, Zeynep, “Legal weapon for collective punishment: Syrian laws violate disappeared persons’ property rights,” Enab Baladi, 6 Feb. 2021, <https://english.enabbaladi.net/archives/2021/02/legal-weapon-for-collective-punishment-syrian-laws-violate-disappeared-persons-property-rights/>.

36 Ibid. p.12

37 Malas, Saleh and Masri, Zeynep, “Legal weapon for collective punishment: Syrian laws violate disappeared persons’ property rights,” Enab Baladi, 6 Feb. 2021, <https://english.enabbaladi.net/archives/2021/02/legal-weapon-for-collective-punishment-syrian-laws-violate-disappeared-persons-property-rights/>.

38 Malas, Saleh and Masri, Zeynep Masri, “Legal weapon for collective punishment: Syrian laws violate disappeared persons’ property rights,” Enab Baladi, 6 Feb. 2021, <https://english.enabbaladi.net/archives/2021/02/legal-weapon-for-collective-punishment-syrian-laws-violate-disappeared-persons-property-rights/>.

39 Malas, Saleh and Masri, Zeynep Masri, “Legal weapon for collective punishment: Syrian laws violate disappeared persons’ property rights,” Enab Baladi, 6 Feb. 2021, <https://english.enabbaladi.net/archives/2021/02/legal-weapon-for-collective-punishment-syrian-laws-violate-disappeared-persons-property-rights/>.

40 Kayyali, Sara, “Syrian ‘Military Evaders’ Face Unlawful Seizure of Property, Assets,” Human Rights Watch, 9 Feb. 2021, <https://www.hrw.org/news/2021/02/09/syrian-military-evaders-face-unlawful-seizure-property-assets>.

41 Article 97 of the Conscription Law, amended by Legislative Decree 33/2014, as cited in Footnote 575, “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI,” UNHCR, March 2021, <https://www.refworld.org/pdfid/606427d97.pdf>, citing <https://bit.ly/32lzsxp>.

42 Footnote 575, “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI,” UNHCR, March 2021, <https://www.refworld.org/pdfid/606427d97.pdf>, citing <https://bit.ly/32lzsxp>.

43 Footnote 575, “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI,” UNHCR, March 2021, <https://www.refworld.org/pdfid/606427d97.pdf>, citing <https://bit.ly/32lzsxp>.

44 Footnote 575, “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI,” UNHCR, March 2021, <https://www.refworld.org/pdfid/606427d97.pdf>, citing <https://bit.ly/32lzsxp>.

45 Footnote 575, “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI,” UNHCR, March 2021, <https://www.refworld.org/pdfid/606427d97.pdf>, citing <https://bit.ly/32lzsxp>.

This contravenes Syrian law which permits confiscation only pursuant to a judicial decision. Additionally, the Head of the commission in charge of recovering penalty fees or clearing the obligation to do military service, Brigadier General Elias Bitar, mentioned that there would also be a provisional seizure of property belonging to spouses and children until it can be established that the source of the seized property was not the alleged military service evader.⁴⁵

Urban “renewal” and informal settlements: expropriation, eviction, and dispossession

Before and after 2011, urban planning laws have targeted informal settlements under the guise of “urban renewal projects,” which typically result in their demolition and reconstruction as high-end neighbourhoods, effectively pricing out the displaced.⁴⁶

This presents a particular dispossession problem in the Syria context where cumbersome regulations and inadequate urban housing policies resulted in a chronic shortage of affordable housing, pushing people into informal settlements long before the conflict began. Even before 2011, an estimated 40 percent of housing in Syria was located in informal settlements.⁴⁷ By appearance Syrian informal settlements are often indistinguishable from “formal” settlements.⁴⁸ Construction is often concrete breezeblock, and many areas are served by public utilities and infrastructure—the garbage might be collected and streets may be paved, though many face overcrowded schools and a dearth of park space.⁴⁹ In many cases, occupants of informal settlements own the property but have constructed buildings without permits.⁵⁰ In other cases, inhabitants occupy unpermitted structures on property they do not own—often public lands.⁵¹ Regardless of their characteristics, informal settlements are often considered to be associated with the opposition, hence their targeting by the Syrian government.⁵²

45 Footnote 575, “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI,” UNHCR, March 2021, <https://www.refworld.org/pdfid/606427d97.pdf>, citing [ملعاع الی دعت روى ب عيشلا س لجم](https://www.refworld.org/pdfid/606427d97.pdf), Syrian Parliament (in Arabic), Dev. 2019, <https://bit.ly/32lzsxp>.

46 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 44, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon. Yazigi, Jihad, “Destruct to Reconstruct: How the Syrian Regime Capitalizes on Property Destruction and Land Legislation,” p. 2, 6, July 2017, <https://library.fes.de/pdf-files/iez/13562.pdf>. See also “We Leave or We Die: Forced Displacement under Syria’s Reconciliation Agreements,” Amnesty International, 2017, p. 8, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

47 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 35, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon. Yazigi, Jihad, “Destruct to Reconstruct: How the Syrian Regime Capitalizes on Property Destruction and Land Legislation,” p. 3, July 2017, <https://library.fes.de/pdf-files/iez/13562.pdf>. See also “We Leave or We Die: Forced Displacement under Syria’s Reconciliation Agreements,” Amnesty International, 2017, p. 8, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>. Aita, Samir, “Urban recovery framework for post-conflict housing in Syria: A first physical, social and economic approach,” July 2019.

48 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 35, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

49 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 35, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

50 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 36, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

51 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 36, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

52 Clerc, Valérie, “Informal Settlements in the Syrian Context: Urban Planning as a Weapon,” March 2014, p. 41, 44, 46–47, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon. Yazigi, Jihad, “Destruct to Reconstruct: How the Syrian Regime Capitalizes on Property Destruction and Land Legislation,” p. 5, 6, 12, July 2017, <https://library.fes.de/pdf-files/iez/13562.pdf>. “We Leave or We Die: Forced Displacement under Syria’s Reconciliation Agreements,” Amnesty International, 2017, p. 8, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

Several laws have been passed to regularize informal settlements or include them in new urban plans, but in effect they facilitate the dispossession of informal settlements' residents since very few of them can produce a regular registered ownership contract.⁵³ Expropriation is a common procedure that results in the dispossession of residents of informal settlements targeted for "renewal." Under the 2012 Constitution, the state may only expropriate property in the public interest and with compensation to the owner equivalent to the real value of the property. However, several inconsistencies have been identified in the expropriation process. For one, it is questionable whether the public interest requirement is fulfilled when expropriated properties are allocated to private entities charged with re-developing the area into high-end high-rises and shopping malls.⁵⁴

Additionally, even when people can prove their ownership rights, compensation for expropriation is often unfair.⁵⁵ For example, owners of properties expropriated under law 10/2018 receive compensation in the form of ownership shares in new buildings to be constructed on the expropriated land.⁵⁶ However, as the value of these shares corresponds with the value of the property before the date of the new urban plan, the shares are often insufficient to cover the cost of accommodation in the new, more-expensive building.⁵⁷ As a result, most former residents are relocated and unable to return.⁵⁸ This problem is compounded by the fact that any sale of the shares must take place within one year.⁵⁹

Further, Law 10/2018 sets forth a deadline of one year for owners of unregistered property to prove their HLP rights in areas identified for urban redevelopment.⁶⁰ Given the mass population displacement, many HLP rights holders are not aware that their neighbourhood and property are targeted for "renewal."⁶¹ If they manage to find out, there remains the often insurmountable hurdle of engaging in a government process without sufficient documentation and when freedom of movement is limited if it exists at all.⁶²

53 See e.g. Law 33/2008, Law 23/2015, Decree 66/2001, Decree 66/2012, Law 10/2018.

54 See e.g. Najm Aldeen, Sarah, "In Homs, Assad Accused of Using Military for Urban Planning Scheme," *The New Humanitarian*, 2 Jan. 2018, <https://deeply.thenewhumanitarian.org/syria/articles/2018/01/02/in-homs-assad-accused-of-using-military-for-urban-planning-scheme>; Galli, Jacopo and Pareglio, Stefano, "Evolving Ownership Structures in Syrian Ongoing Conflict and Future Policies for a Sustainable Reconstruction," *Fondacio Eni Enrico Mattei*, Aug. 2019, <https://www.citiesunderpressure.eu/wp-content/uploads/2021/03/08-2019-galli-ownership-structures.pdf>. Wind, Barend and Ibrahim, Batoul, "The war-time urban development of Damascus: How the geography- and political economy of warfare affects housing patterns," *Habitat International*, Feb. 2020, <https://www.sciencedirect.com/science/article/pii/S0197397519309464>; "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

55 Yazigi, Jihad, "Destruct to Reconstruct: How the Syrian Regime Capitalizes on Property Destruction and Land Legislation," p. 5, July 2017, <https://library.fes.de/pdf-files/iez/13562.pdf>. Clerc, Valérie, "Informal Settlements in the Syrian Context: Urban Planning as a Weapon," March 2014, p. 46, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

56 "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

57 "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

58 "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

59 "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

60 For owners of registered property, declaration of ownership is not necessary. See also "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

61 "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

62 "Property Law No. 10 and its Implications on Syrian Cities" (video), *Syrbanism*, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawno10>.

Residents of informal settlements targeted for “renewal” who do not own the underlying property or who cannot establish such rights are essentially evicted⁶³ In some cases, they are entitled to permanent alternative accommodation or rental compensation for a period of one or two years, though these entitlements often remain unfulfilled.⁶⁴ People not entitled to alternative housing will receive the equivalent of a one year of annual rent while people entitled to alternative housing will receive the equivalent of a lease until they receive alternative housing.⁶⁵ It is unclear whether those entitled to alternative housing will be relocated in the same area and how long it will take for the housing to be allocated to their beneficiaries.

“Renewal” of informal settlements represents a strong risk of dispossession for their inhabitants. Even if laws were applied fairly, with a true public interest and fair compensation, absent HLP rights-holders may not be aware that their properties are targeted for one of these projects. They may not know the procedures, and they are likely unable to access property documents. This leaves them out of any restitution or compensation scheme. They become dispossessed.

Amiri lands

Amiri lands are state-owned lands that can be distributed to individuals for agricultural use, with full ownership rights reflected in land registry. The only condition is that the land is not left unused for more than 5 consecutive years.⁶⁶ Amiri landholders may use the land, sell their right, lease it, or lend it. Concerns have been raised over the government’s plans to reactivate the 5 year clause.⁶⁷ In a context of massive displacement, this could represent a significant risk of dispossession. There is, however, an exception to this rule—it “shall not apply to the rights of those who are not eligible, those who are absent, or those who have been charged with a felony if they do not have a legal representative.”⁶⁸ This should protect Amiri land belonging to displaced persons from seizure.⁶⁹

Amiri lands remain Amiri lands as long as they lie outside city limits, administrative zones, or a formal land use plan.⁷⁰ However, when cities expand and subsume Amiri lands, they lose their Amiri status and become urban land.⁷¹ This on its own would not necessarily dispossess the now-owners of their property. However, Urban Planning Development Law No. 23/2015 provides that when Amiri lands are integrated into urban zones, a portion of the property’s surface will be transferred to the state for public benefit without compensation. According to law 23/2015, the portion of the land that has to be turned over to the state can amount to up 40 to 50 percent of the total area of the property.⁷² In the Urban Renewal Law No. 10/2018 it is a maximum of 20% of the total surface area that it transferred to the state without compensation.

63 “Property Law No. 10 and its Implications on Syrian Cities” (video), Syrbanism, 4 Jan. 2018, <https://www.syrbanism.com/project-details/Lawn010>.

64 The right to alternative accommodation is limited to residents of houses built on private land.

65 Article 25, Law No. 10/2018.

66 “Explained: Amiri Lands,” The Syria Report, 3 March 2021, <https://syria-report.com/hlp/explained-amiri-lands/>.

67 Article 775 of the civil code provides that if people do not cultivate the land for more than 5 years, they would lose the right to the land and the state can reallocate it.

68 “Explained: Amiri Lands,” The Syria Report, 3 March 2021, <https://syria-report.com/hlp/explained-amiri-lands/>, quoting Article 379, Civil Code.

69 Article 379 of the Syrian civil code. The Syria Report, Explained: Amiri lands, 3 March 2021

70 “Explained: Amiri Lands,” The Syria Report, 3 March 2021, <https://syria-report.com/hlp/explained-amiri-lands/>.

71 “Explained: Amiri Lands,” The Syria Report, 3 March 2021, <https://syria-report.com/hlp/explained-amiri-lands/>.

72 “Explained: Law N°23 of 2015,” The Syria Report, 21 Oct. 2020, <https://syria-report.com/hlp/explained-law-no-23-of-2015-seizure-of-properties-in-the-name-of-the-zoning/>.

Documentation

Finally, laws relating to the reconstitution of damaged land registries and their digitalization also pose a risk of dispossession. The concern is that displaced owners are not informed about the process and thus will not be able to verify or contest the information contained in the new registries.⁷³ There are also concerns that property records will be erased.⁷⁴ Rubble Removal Law No. 3/2018 has been also cited as a process to remove evidence of HLP rights, notably utility meters which can be linked to a property's occupants.⁷⁵ Adding this on top of the pre-conflict situation of pervasive informal settlements and limited formal registration compounds what was already a high dispossession risk even before 2011.

Other forms of dispossession

Dispossession can also occur outside of any legal justification or judicial process, as a result of deliberate or accidental actions. It may or may not involve the use of force or intimidation.

Destruction and demolition

Aerial attacks and protracted siege undertaken by the Syrian Government to regain control of territory have unsurprisingly resulted in extensive property destruction and are one of the main causes of physical dispossession in Syria. In a 2017 report covering ten Syrian cities, the World Bank estimates that 27 percent of the housing stock in Syria had been damaged or destroyed.⁷⁶ It seems reasonable to assume that the percentage is even higher several years later. The destruction is often directed at perceived opposition neighbourhoods.⁷⁷ Further, Decree 40/2012 prohibits reconstruction in areas bombarded by the government.⁷⁸ The Syrian government has also demolished inhabitable neighbourhoods after retaking control, leaving little or nothing for people to return to, as in the Damascus suburb of Qaboun.⁷⁹ Even individual homes of opposition members are bulldozed.⁸⁰ Many of the buildings affected by demolition were still inhabitable and there were no security reasons justifying these demolitions. This could therefore represent wanton destruction, and a disproportionate attack against civilian objects, which is prohibited by international humanitarian law.⁸¹ In addition, urban "renewal" projects

73 Law 33/2017 Establishing the reconstitution process for damaged or destroyed records, and law 12/2016: Providing digital copies of real property records legal status to be used as replacement for damaged records. Pax, Impunity Watch, 6 March 2019, p.7. "We Leave or We Die: Forced Displacement under Syria's Reconciliation Agreements," Amnesty International, 2017, p. 58, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

74 Law 33/2017 Establishing the reconstitution process for damaged or destroyed records, and law 12/2016: Providing digital copies of real property records legal status to be used as replacement for damaged records. Pax, Impunity Watch, 6 March 2019, p.7. "We Leave or We Die: Forced Displacement under Syria's Reconciliation Agreements," Amnesty International, 2017, p. 58, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

75 << Violations of Housing, Land and Property Rights: An Obstacle to Peace in Syria: What can International Policymakers do? >> Impunity Watch and Pax, March 2020, p. 8, <https://paxforpeace.nl/media/download/policybrief-syria-hlp-2020-english-10-03-2020.pdf>.

76 "The Toll of War: the Economic and Social Consequences of the Conflict in Syria," The World Bank Group, 2017, page 17, <https://www.worldbank.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria>.

77 Clerc, Valérie, "Informal Settlements in the Syrian Context: Urban Planning as a Weapon," March 2014, p. 44, 46-47, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon. Yazigi, Jihad, "Destruct to Reconstruct: How the Syrian Regime Capitalizes on Property Destruction and Land Legislation," p. 5, 6, 12, July 2017, <https://library.fes.de/pdf-files/iez/13562.pdf>.

78 Clerc, Valérie, "Informal Settlements in the Syrian Context: Urban Planning as a Weapon," March 2014, p. 46, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

79 "Syria: Residents Blocked From Returning," Human Rights Watch, 16 Oct. 2018, <https://www.hrw.org/news/2018/10/16/syria-residents-blocked-returning>.

80 Clerc, Valérie, "Informal Settlements in the Syrian Context: Urban Planning as a Weapon," March 2014, p. 45, https://www.researchgate.net/publication/263145369_Informal_Settlements_in_the_Syrian_Conflict_Urban_Planning_as_a_Weapon.

81 Human Rights Watch, *Syria: Residents blocked from returning*, October 2018

targeting informal settlements and resulting in their destruction have been interpreted as a government strategy to prevent return and ensure new construction that benefits elites.⁸²

Non-state parties controlling different areas in Syria have also deprived people of their HLP rights. The Autonomous Administration in North-East Syria (AANES) has reportedly demolished, looted, or took over properties whose Arab and Turkmen owners were perceived as ISIS supporters.⁸³ The Hay'at al-Tahrir al-Sham (HTS) has looted properties and detained individuals over land disputes.⁸⁴ In Idlib they particularly targeted properties belonging to Christians which they consider as spoils of war. Since 2018, many Christian properties were taken over and allocated to HTS combatants.⁸⁵ The Turkish-backed Syrian opposition, under the de facto administration of the Syrian Interim Government, has been responsible for looting and appropriation of Kurdish properties whose owners are perceived to be members of or involved in the AANES. After being taken over, such properties were occupied by Syrian National Army (SNA) fighters and families in the Afrin and Ra's al Ayn regions.⁸⁶

Forced displacements

The various waves of displacement that affected Syria have also resulted in de facto dispossession by separating people from their home and land. The conflict has been characterized by forcible transfers of population by the Syrian government which had a strong impact on the north-west region of the country, where most people relocated further to the signing of the so-called "reconciliation agreements." Such agreements were the last stage of the government's "Surrender or starve" strategy⁸⁷ that consisted of besieging cities and cutting them off from food and humanitarian supply until the population would accept such agreements. Typically, the government would lift a siege following an agreement under which non-state armed actors and civilians are allowed to evacuate to areas under opposition control.⁸⁸ Between 2016 and 2018, reconciliation agreements were signed in various locations such as Darayya, Eastern Aleppo, Homs, and neighbourhoods of Damascus and Daraa, resulting in the displacement of some 200,000 people.⁸⁹ Most of these populations were displaced to the Idlib governorate, in the north-west of Syria. As of January 2022, that region hosted 2.8 million IDPs from different areas of the country.⁹⁰ Those who fled fear the demolition or occupation of their properties and worry that the loss or destruction of property documents will make it difficult to later re-claim their HLP rights.⁹¹

82 Yazigi, Jihad, "Destruct to Reconstruct: How the Syrian Regime Capitalizes on Property Destruction and Land Legislation," p. 2, July 2017, <https://library.fes.de/pdf-files/iez/13562.pdf>.

83 Amnesty International, "We had nowhere else to go >> Forced displacement and demolitions in Northern Syria," October 2015, pp.5-6

84 UN General Assembly, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/ HRC/45/31, 14 August 2020, para.83 and 89

85 USDOS, *International Religious Freedom Reports: Syria 2020*, 12 May 2021, p.16: Syrian for Truth and Justice, *HTS confiscates no less than 550 homes and businesses belonging to Christians in Idlib*, 14 January 2020

86 UNGA, A/HRC/45/31, para. 46-53

87 "Syria: "Astana produced a promising step. This agreement simply has to succeed," UN Humanitarian Chief ERC O'Brien Statement to the Security Council on Syria, UN OCHA, 30 May 2017, <https://www.unocha.org/story/syria-astana-produced-promising-step-agreement-simply-has-succeed-un-humanitarian-chief>. "We Leave or We Die: Forced Displacement under Syria's Reconciliation Agreements," Amnesty International, 2017, p. 6, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

88 "We Leave or We Die: Forced Displacement under Syria's Reconciliation Agreements," Amnesty International, 2017, p. 16, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

89 The Day After, *In the absence of the choice to remain or return: Mass forced displacement and its consequences under a << reconciliation agreement >>*, 2019, p. 8

90 UN News, *Senior humanitarian describes "horror scenes" in Syria camps*, 24 January 2022

91 "We Leave or We Die: Forced Displacement under Syria's Reconciliation Agreements," Amnesty International, 2017, p. 8, 33, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2473092017ENGLISH.pdf>.

Secondary occupation

Occupation is a typical feature of forced displacement contexts contributing to physical dispossession. Secondary occupants are persons who take up residence in a home or on land after the legitimate owners or users have fled due to forced displacement, forced evictions, violence or disasters.⁹² Secondary occupation represents a strong obstacle to return if no legal means to repossess occupied properties are put in place. Those displaced by conflict often find themselves with no choice but to occupy abandoned properties in the place where they are displaced, while their own properties in their place of origin are occupied by other displaced persons.

The arrival of large streams of IDPs to the Idlib governorate and other areas of northwest Syria has caused serious housing shortages, and secondary occupation has often taken place out of need when homeless displaced people who cannot afford to rent move into other people's houses or build settlements on public or private land without authorization. In some cases, occupants have tried to regularize their situation by making a rental arrangement with the owner of the land or property they occupy. The Syrian Interim Government has also tried to regularize the situation. Its local councils have attempted to accommodate the housing needs of the displaced by allocating to them land on which they can start building a settlement or by rehabilitating empty housing. While it may be necessary from a humanitarian perspective to make housing available for these displaced persons, caution should be exercised to ensure that this does not result in preventing return and repossession by the property owner, for instance when the owners are asked to bear the cost of improvements they never asked for nor allowed.⁹³

Secondary occupation can be the result of a spontaneous initiative of the displaced or it can be organized by authorities who allocate properties to respond to housing needs. The Self-Administration in northeast Syria adopted Absentee Law No. 7/2020 aimed at protecting and managing property of absentee owners. The proclaimed objective was to reduce illegal occupation by a process leading to rental contracts. Confronted by protests of people who feared dispossession of their property through this mechanism, the Self-Administration suspended implementation of the law. Though absentee laws can be a way to protect abandoned property, adequate safeguards are necessary to protect the rights of the displaced owners and ensure that allocation of property is only temporary and must be interrupted should the owner wish to dispose of their property.

Allocation of property to new occupants is also routinely used as a strategy to assert control over a town or territory. People fleeing threats and violence often see their properties taken over by de jure or de facto authorities and subsequently redistributed as part of a patronage system which serves to reinforce political support of the "beneficiaries" and to prevent the return of the displaced, who are often associated (rightly or not) with the opposing party. It is in this context that instances of corruption and forgery of land registries and sales have been reported in government and non-government controlled areas, with the complicity of various public officials and private actors. This cronyism also extends to pro-government foreign military factions, which are reportedly acquiring land and settling in various parts of Syria enabled by government institutions. The government has for instance facilitated the settlement of Iraqi Shi'a families in Darayya (Damascus) into houses left empty as a result of the forced population transfers that took place pursuant to a 2016 reconciliation agreement.⁹⁴ Similarly,

92 FAO, IDMC, OCHR, OHCHR, UNHABITAT, UNHCR, Handbook: *Housing and property restitution for refugees and displaced persons: implementing the Pinheiro principles*, March 2007, principle 17, p.81.

93 IBJ, ILAC, Second HLP roundtable: *Access to justice in land and property rights in liberated areas*, 2021, p.4

94 Somi, George, "Syria under Pinheiro: Reformulating Syrian Domestic Law for Decentralized Reconstruction," *Brooklyn Journal of International Law*, vol 43, Issue 2, 2018, p.721, <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1921&context=bjil>.

occupation of homes by pro-Iranian armed groups from Iraq or Lebanon have also been reported in different parts of the country following the displacement of local populations.⁹⁵

In other cases, a range of actors involving individuals, or organized crime, military factions linked to the Government, to the Islamist group Hay'at Tahrir al-Sham (HTS), the Kurdish Syrian Democratic Forces (SDF) or the Syrian National Army (SNA) have taken over property for their own benefit, out of greed.

Taking over and appropriation of property

In this paper, taking over or appropriation refers to situations where individuals or an entity dispose of a property by arranging for its rental, occupation, or sale. This can be done legally or illegally.

In Hama and Idlib, several organizations linked to the Baath party, the Hama Security and Military Committee (HSMC), the Hama Farmer's Association, and the Idlib Farmers League took control of 6,000 hectares of land belonging to displaced persons and organized public auctions for these lands to be cultivated and rented for one season.⁹⁶ While arguably such a move could be considered a reasonable temporary measure to ensure productive use of valuable agricultural land, the grounds justifying this usurpation of property belie any purported motivation based on public good. The administrative order issued by the Head of the HSMC in 2020 justified the public auction on the ground that the land belonged to people displaced in territories held by "terrorist groups."⁹⁷ Assimilating the displaced to terrorists sends a strong signal that they are not welcome back, and the allocation of their land to other people on this ground prevents the displaced from disposing of their land through relatives or proxies who could tend the land on their behalf. This also recalls similar actions by the Ministry of Interior against people accused of belonging to the Muslim Brotherhood or other opposition groups since the 80s. Initially, the allocation of their land was done on an annual basis but it ended up being permanent.

The Farmer's League announced public auctions for land whose owners were purportedly indebted to the Agricultural Cooperative Bank.⁹⁸ The process contradicts the provisions of Article 9 and 15 of the Agricultural Cooperative Bank law, which specifies how the Bank may recover a debt. This law authorises the Ministry of Finance to decide and implement a seizure of property in case of debt, while in this case the decision was taken directly and inappropriately by the Farmer's League.⁹⁹ Many lawyers consider these public auctions as illegal dispossession of property even if it appears to be temporary .

95 Chulov, Martin, "Iran repopulates Syria with Shia Muslims to help tighten regime's control," *The Guardian*, 14 Jan. 2017, <https://www.theguardian.com/world/2017/jan/13/irans-syria-project-pushing-population-shifts-to-increase-influence>.

96 Some 230 000 hectares of land in Hama and Idlib were retaken by the regime between 2019 and 2020 during a series of offensives that displaced up to a million people from these areas. The Syria report, Northern Hama's pistachio farmers restricted from their lands during latest harvest, 26 August 2020. Syrians for Truth and Justice, *The Syrian Government is seizing large swathes of IDP lands in Hama and Idlib*, June 2021, p.4.

97 The Syria report, *Hama and Idlib: Farmlands owned by displaced residents go up for auction*, 28 October 2020

98 Ibid.

99 Ibid.

Fraudulent sales, sale under duress

Throughout the country fraudulent sales without the owner's knowledge have also been reported as well as forged sale contracts registered with the complicity of corrupt officials in the land registries or in the judiciary.¹⁰⁰ This can be part of a system of dispossession, such as described above, or simply individual criminal acts. Moreover, in a context of intimidation and fear, sale under duress or at a price not commensurate to the value of the asset is a frequent occurrence.

Groups at particular risk of dispossession

As described above, displaced people are particularly vulnerable to dispossession as their absence inhibits their ability to protect their HLP rights from potential violations or to contest any actual violation. Additionally, the perceived ethnic, religious, or political affiliation of certain individuals may increase the risk of bias-motivated forced evictions and dispossession. Detainees, missing persons, and their relatives are also at great risk of confiscation or seizure of their property.¹⁰¹ People subject to restrictions on the purchase and sale of property (foreigners, Palestinians, or people living in border areas) face additional difficulties to protect their HLP rights.¹⁰² In many cases, these groups attempt to circumvent restrictions on their property rights by engaging in informal transactions, which simply reinforces the precarious nature of their rights.

As in other conflicts, gender inequalities are exacerbated as the conflict intensifies. Today, women and children make up the majority of the internally displaced, who often find themselves in camps or informal settlements with shelter that falls far short of minimum emergency standards relating to water and sanitation, health care, education, and privacy. This situation is compounded by a discriminatory legal framework and an entrenched patriarchal system that accepts and legitimizes discrimination against women and girls, preventing them from fully enjoying their human rights.¹⁰³ For example, the personal status law grants a lower inheritance share to women at the same level of kinship. While data is hard to obtain due to the complex land registration system, research shows that, prior to the conflict, women only owned about 10 percent of the land in Syria due to the judicial system's bias in favour of men when it comes to property issues as well as social norms that presume men—and not women—should own property.

In only rare circumstances will a woman's name be listed on a family's title to property, thus women must prove their relation to the owner (father, husband, brother, etc.) in order to inherit. Proving a familial relationship usually begins with establishing identity. However many women do not have adequate personal identification documents. The conflict has made matters worse. Displacement, security clearance requirements, movement restrictions, and the non-recognition of documents issued by competing authorities impede the ability to register life events. Not to mention the fact that, in many cases, husbands and other male relatives are deceased, detained, or missing. In cases of missing persons, the absence of information of their fate or lack of a death certificate prevents relatives from disposing of property via rental or sale.

100 TDA, *The property issue and its implications for ownership rights in Syria*, June 2019, p.92

101 "Violations of housing, land and property rights: an obstacle to peace in Syria," Impunity Watch and Pax, March 2020, p. 5–6, https://www.impunitywatch.nl/docs/PolicyBrief_Syria_HLP_2020_eng.pdf. See also "Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria by Syrian Victims' and Family Members' Organisations," Association of Detainees and Missing Persons in Sednaya Prison, Caesar Families Association, Coalition of Families of Persons Kidnapped by ISIS (Massar), Families for Freedom, and Ta'afi Initiative, 10 Feb. 2021, pgs. 4, 6, 10, https://www.impunitywatch.org/_files/ugd/f3f989_ea2bcacb68664b52a2b9dc090b3c775e.pdf.

102 "Violations of housing, land and property rights: an obstacle to peace in Syria," Impunity Watch and Pax, March 2020, p. 5–7, https://www.impunitywatch.nl/docs/PolicyBrief_Syria_HLP_2020_eng.pdf.

103 See e.g. Alrifai, Tamara and Dore-Weeks, Rachel, "Here's Why Syrian Women are Integral to Peace," UN Women, 31 July 2018, <https://arabstates.unwomen.org/en/news/stories/2018/8/why-syrian-women>.

Understanding the various forms of dispossession in Syria is key to design an adequate and comprehensive response for Syria, that contributes to peace-building.

- Categorizing the various forms of dispossession can help establishing an inventory of issues to address in a post-conflict Syria and design a mass claim dispute resolution mechanism that addresses all these aspects.
- Providing a remedy for violations of HLP rights contributes to the rule of law, accountability and to the restoration of trust in institutions.
- It also facilitates a safe and dignified return, economic recovery, and access to livelihoods
- The analysis of conflict and pre-conflict reasons that contributed to dispossession shows the necessity to combine short-term solutions addressing war-time dispossession, and longer-term ones reforming laws and governance issues related to land administration, housing policies and the judiciary.

Access to justice, notably in relation to HLP rights is indeed a key peace-building and renewed social cohesion.

Access to Justice

“Access to justice” requires that the whole justice system can and does respond to the needs and realities of people and empowers them throughout the justice chain, particularly vulnerable groups such as the displaced, women, children, and minorities. Courts are a common step on the road to accessing justice, but as the situation currently stands, courts are not able to fulfil that role in Syria. People’s ability to obtain a remedy for violations of human rights, including HLP rights, has become increasingly difficult in Syria, due to:

- massive displacement
- the security situation which limits freedom of movement and access to courts
- the cost of administrative procedures such as the use of power of attorney
- the requirement to obtain a security clearance to initiate procedures remotely in government and non government controlled area
- the fragmentation of the justice system

What was already a weak and pluralistic justice system before the conflict is now divided into four areas controlled by the Syrian government, the Self-Administration of northeast Syria (SA), the Syrian Interim Government (SIG), and the Salvation Government (SG). Their respective judiciaries are only competent to address issues affecting property situated in their geographic jurisdiction. A person displaced to an area under the administration of the SIG, who is seeking to contest a decision by a court in government areas can only bring the case in front of a court in the government areas.

Compounding the jurisdictional problem is a lack of independent and impartial tribunals in all areas. In Syrian government areas, the reporting lines and appointment procedures of high-level judicial bodies confirm the close control of the executive on the judiciary and its consequent lack of independence.¹⁰⁴ The High Judicial Council is chaired by the President of the Republic with the Ministry of Justice as deputy. Judges of the Constitutional Court

¹⁰⁴ “Challenges and options for dispute resolution mechanisms: safeguarding HLP rights in the context of the Syrian conflict,” GIZ, 2021

are nominated by the President of the Republic and are therefore unlikely to raise issues of unconstitutionality of laws.

In non-government controlled areas, courts and other institutions are administered by different political entities which are often under a strong influence from armed groups. Moreover, the radicalisation of political positions because of the conflict reinforces the control of the judiciary by the executive power, and the risk of politically biased decisions are high. The authority and legitimacy of courts in non-government held areas are also hampered by the impunity enjoyed by military factions, which are known to take over, occupy, allocate, and loot property, sometimes after having forcibly evicted people.

Concerns about judges' professional training and independence have also been raised in the Self-Administration (SA) and Salvation Government (SG) areas.¹⁰⁵ In SG areas, the Ministry of Justice appoints judges and issues decrees and laws. And the SG bases its justice system on Sharia tenets, a system with few written laws or procedures. Judges in these courts are not chosen for their expertise in the law, but instead must have a familiarity with Sharia and a reliably "revolutionary" background. Additionally, military officials and other powerful figures in SG areas exert considerable power over court decisions.¹⁰⁶ In the SA areas, the justice system appears to be also characterized by a lack of power separation.¹⁰⁷

The justice system established under the Syrian Interim Government (SIG) remains tainted by its close association with and reliance upon Turkey, which provides training and salaries.¹⁰⁸ Judges and lawyers are often seen to favour their benefactor when Turkish interests are at stake.¹⁰⁹ The SIG represents the government of the Syrian opposition; it covers areas in the northwest retaken by the Turkish Armed Forces and the various armed forces of the Syrian National Army. There are numerous reports of property looting and illegal appropriation by these factions in SIG areas, and courts are powerless to address these cases of occupation if such occupants refuse to move out.

On top of that, the decision of the Syrian government to close courts and other regulatory bodies in non-government controlled areas has resulted in accumulation of unresolved cases, which have and will continue to overwhelm the system for years to come.

Even if courts were independent and impartial and not burdened by a large case backlog, the lack of conflict-sensitive laws and clear and accessible procedures hamper access to justice for HLP rights. Many pre-conflict laws are not suited to the exceptional circumstances created by conflict, insecurity, and displacement. Typically, those seeking vindication of HLP rights must file claims before institutions located in their place of origin or require that challenges to administrative or judicial decisions should be initiated within a certain time period. These requirements are often impossible for refugees and IDPs to fulfill. They may not be able or willing (due to security concerns) to travel to their place of origin to initiate procedures to establish or protect their HLP rights. While the power of attorney instrument permits a refugee or displaced person to delegate authority to somebody, it is costly and requires a security clearance.¹¹⁰

105 "Challenges and options for dispute resolution mechanisms: safeguarding HLP rights in the context of the Syrian conflict," GIZ, 2021

106 ILAC Rule of Law Assessment, page 12.

107 ILAC Rule of Law Assessment, page 122.

108 Center for Operational Analysis and Research (COAR), Northern corridor: *Needs oriented strategic area profile*, October 2019, p.17

109 Ekman, Mikael and William D. Meyer, "ILAC Rule of Law Assessment Report: Syria 2021," International Legal Assistance Consortium, p. 11, <http://ilacnet.org/wp-content/uploads/2021/11/ILAC-Rule-of-Law-Assessment-Report-Syria-2021.pdf>.

110 In 2015, Circular 4554 issued 4 August 2015 required a security clearance for real estate sales and rental.

Documentation

Petitioners must also submit documentation supporting their claims. However, many people never had formal ownership documentation, even before the conflict. Land registries are largely inaccurate and do not reflect the reality of tenure. A Norwegian Refugee Council survey indicates that about 70 percent of refugees declared that their property is registered in somebody else's name, and many lost their HLP documentation in the conflict. According to the same study, only 17 per cent of the refugees interviewed in neighbouring countries still had property documentation in their possession.¹¹¹

As a consequence of the conflict, land registries are often damaged and documentation missing, which make it even more difficult for local councils and courts to ensure reliable ownership checks prior to registering transfers, and to prevent fraudulent transactions. As a result, courts in Afrin temporarily suspended the confirmation of property sales. In January 2021 the Social Justice Council of the Self-Administration issued a decision more closely regulating how courts adjudicate property disputes in order to protect HLP rights.¹¹² Lawyers reported that in Idlib, the difficulty for people dealing with the validation of sales to access land registries contributed to forged sales contracts, which prevented the lawyers from effectively representing their clients.¹¹³ In other areas, like Azaz and Al Bab, a process has been put in place to preserve land records and prevent registration of forged property transactions. In Al Bab, a cadastral record was opened and a three-year probation period is applied to newly-registered properties to protect those whose rights may have been affected by the registration.¹¹⁴

The Syrian's government's decree 11/2016 suspends the functioning of cadastral offices in areas outside of its control and considers any subsequent recordings as void. This creates challenges for HLP rights-holders to register property transfers. In some cases people have compromised their security to travel to the locations where the land registries corresponding to opposition-held areas have been relocated by the government. In case they are not able to register in these land registries, their ownership right is at risk of not being recognized in the future.

De facto authorities also commonly refuse to recognize civil documents issued in different jurisdictions, leaving people in a legal vacuum. Afrin for instance has been controlled successively by different non-state actors which do not recognise each other's documentation: Turkish authorities do not recognise documents issued by the Democratic Union Party (Kurdish party). People's inability to provide valid documents or contracts to military factions has also led to situations where military factions take the property over, notably in cases of inheritance.¹¹⁵

Mass displacement

Mass displacement also created practical, financial, and security obstacles for people, hampering their ability to seek remedies in the courts and elsewhere. People have been forced to cross dangerous lines of contact to reach their place of origin and obtain civil or HLP documentation; or they chose not to travel at all for fear of detention or other security risks. While powers of attorney can be a tool to initiate formal processes without having to travel to or within Syria, obtaining one requires a security clearance, which is costly and can be refused if the applicant is perceived to be a political opponent of the regime.¹¹⁶ Further, the power of attorney can put at risk the person mandated to act on behalf of the claimant.

111 NRC, Briefing note: Reflections on future challenges to housing, land and dproperty for Syrian refugees, January 2017

112 Enab Baladi, Autonomous administration suspends real estate in-rem actions, March 2021

113 IBJ, ILAC, Second HLP roundtable: Access to justice in land and property rights in liberated areas, 2021, p.10

114 *ibid.*

115 *ibid.*

116 Although this mostly applies to opponent to the Syrian Government, non-government held areas also impose a security clearance prior to the sale and purchase of property to check whether the owner or buyer lives in government-controlled area or is considered a supporter of the Syrian Government.

These conditions make it particularly difficult for displaced people to access and initiate procedures to protect their HLP rights or to contest decisions within the required timelines.

Alternative dispute resolution mechanisms

As a result of the conflict and limited access to the courts, some have sought out alternative approaches to vindicating their HLP rights. In western Aleppo, legal arbitration is often employed to address HLP disputes, with courts automatically validating the arbitration decision. Arbitration, which exists in Syrian law,¹¹⁷ is appreciated for its efficiency and the fact that arbitral decisions carry the same weight as court judgments and are immediately enforceable and recordable in the land registry once validated by the court.¹¹⁸ The validation of the arbitrary decision by the court contributes to maintaining the resolution of HLP disputes within the judiciary.

Other alternative mechanisms have been attempted as well. In October 2020 in Afrin, the Syrian Interim Government established a Grievance Committee for HLP issues. These committees are composed of members of military factions who adjudicate HLP violations perpetrated by military factions. While the military's involvement facilitates the enforcement of decisions, the composition of the Grievance's Committee calls into question its impartiality. The Grievance Committee reportedly resolved many cases in an expedient manner but numerous concerns have been raised. For one, its rules are unclear. It often grants the losing party up to one year to vacate the property, which is excessively long if the owner wants to dispose of it earlier.¹¹⁹ Many lawyers lament the lack of judicial review of Grievance Committee decisions and assert that courts are a more appropriate forum. They consider that the Grievance Committee contributes to discredit the authority of the judiciary in SIG areas and weakens the rule of law.¹²⁰ Similar mechanisms were also created in Ra's al Ayn and Azaz.¹²¹

The discredit and limitations of the judiciary since the conflict resulted in an increased use of social or traditional mediation or arbitration to address HLP disputes. Respected community leaders or public figures such as Mokhtars have been employed by parties to resolve disputes. The use of these mechanisms is prevalent in northern Syria where it is part of the Arab tribal tradition.¹²² Although many people trust these mechanisms, they are often powerless when the alleged violator of HLP rights belongs to a military faction.¹²³ Further, given their strong community ties with the local community, there has been some concern about a potential bias against displaced persons in HLP cases.¹²⁴ It is unclear to what extent IDPs and refugees have access to mediation and arbitration in their place of origin.¹²⁵ Additionally, community leaders often reflect the social norms of a patriarchal society which fails to recognize the full spectrum of women's rights, including their housing, land, and property rights.

117 Law 4/2008

118 Khaled El Helo, *HLP dispute resolution mechanisms*, 2020, p.28

119 GIZ, 2021, p.31

120 IBJ, ILC, Second housing, land and property roundtable report: Access to justice in land and property rights in liberated areas, April 2021, p.5

121 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/43/57, 28 January 2020, paragraph 41 and report A/HRC/45/31, 14 August 2020, paragraph 52

122 GIZ, 2021, p.29

123 COAR, p.16

124 GIZ, 2021, p.29

125 GIZ, 2021, p.29

Conclusion: which accountability for Syria?

People's access to justice and accountability for the numerous violations of international human rights and humanitarian law committed during the Syria conflict has so far been very limited. As exposed in an ILAC 2020 discussion paper,¹²⁶ the threat of veto at the UN Security Council has prevented this organisation to refer the situation of Syria to the International Criminal Court. Although an International, Impartial, and Independent Mechanism (IIIM) was created in 2016 to compile evidence of war crimes, it has no mandate to prosecute crimes. Finally, the UN Independent International Commission of Inquiry for Syria documented numerous human rights violations, war crimes, and crimes against humanity but there is still no international mechanism able to investigate and prosecute those responsible for those crimes.¹²⁷ Despite a few examples of prosecutions in European countries, under universal jurisdiction, these are isolated cases that will not address most violations.

Peace talks are stalled as the Syrian Government is increasingly regaining control of its territory. However, several actors such as the European Union and the United States, have made assistance to reconstruction conditional to the conclusion of a political settlement. While this positioning has done little to influence progress so far, the goal of a political settlement that would include transitional justice measures to acknowledge and provide remedies to the crimes committed and reform institutions such as the judiciary should be pursued. The inclusion of remedies (restitution and compensation) for the violation of HLP rights committed during the conflict are essential to facilitate durable solutions to the displaced and provide an environment conducive to the rule of law and peace-building.

Pending a political settlement of the Syria conflict, steps should be taken now to support the protection of housing, land, and property rights with a view to a possible future transitional justice process. Any political settlement in Syria must include considerations of HLP rights of Syrian refugees and IDPs. Such a settlement should include provisions for how to address the rights of unregistered property holders or those with rights less than full ownership. Dispute resolution mechanisms should accept a lower evidentiary threshold and allow a wide range of alternative evidence than can be considered in a property claim. It must recognize that purportedly legal actions often resulted in effectively illegal dispossession. In order for these measures to be effective, there must be continued monitoring of HLP issues and documentation of both potential individual violations as well as patterns of violations. Further, awareness on the intricacies of HLP should be cultivated among all Syrians as well as those working toward an eventual peace.

126 ILAC, *Resolving the property issue in Syria: Technically possible, politically challenging and central to accountability*, December 2020, p.4-5

127 ILAC, *Resolving the property issue in Syria: Technically possible, politically challenging and central to accountability*, December 2020, p.4-5

Recommendations

To the government of Syria

- Establish transitional measures to protect Housing, Land, and Property rights, including recognizing the eligibility of informal HLP rights-holders to restitution, compensation, and reconstruction and ensuring that a gender strategy is adopted to protect the HLP rights of women.
- Allow the provision of legal aid in Syria by both local and international actors to support HLP rights.
- Create a list of accepted evidence to support HLP claims, including documentation issued by non-state actors.
- Recognize the conflict as a situation of force majeure, allowing derogation from certain contractual obligations (mortgage or rental payment, land use obligations) and from procedural timelines which may lead to dispossession.

To the international community

- Advocate for the inclusion of HLP issues in discussions on a political settlement, transitional constitution, or peace agreement, including provisions on restitution and compensation.
- Support legal assistance programming to advise Syrians on HLP and related issues such as civil documentation.
- Advocate for any future dispute resolution mechanism to recognise the HLP rights of unregistered property holders and accept alternative evidence.

To all actors

- Document violations of HLP rights: identify categories of violations that will need to be addressed in a post-settlement HLP dispute resolution mechanism. This includes supporting initiatives to document informal HLP rights.
- Document HLP violations to identify and counter patterns of violations and make evidence available to various national and international accountability mechanisms.
- Raise awareness on the necessity to keep and preserve formal and informal evidence of property rights and provide free legal aid on documentation and HLP issues.
- Provide legal assistance to facilitate the conclusion of rental contracts between occupants and owners to regularise the situation and the ownership of the original owner.
- Monitor changes to the Syrian legal framework that impacts HLP rights.
- Monitor the implementation of urban renewal projects and their potential impact on HLP rights and the right to return.

About the Author

Barbara McCallin is an expert consultant on housing, land and property in forced displacement contexts (post-conflict and post-disaster). She has 25 years of professional experience as a field practitioner, researcher, advocate and trainer working on these issues for UN organizations and NGOs in particular the Norwegian Refugee Council. Barbara has field and research experience in Africa, Asia, Europe, Latin America and the Middle-East. Since 2018 she has focused on the housing, land and property rights of Syrian displaced people (legislation and reconstruction notably in urban areas).

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