

Legal Obstacles to Housing, Land and Property Rights in Syria

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Housing, land and property rights of Syria's displaced people have been negatively affected through the creation of new Syrian property laws since 2011. These housing, land and property (HLP) legislative changes have taken place against the backdrop of 8 years of ongoing conflict that has resulted in the upheaval of an entire state, the migration of millions of refugees, and the displacement, disappearance or death of many more. Since the beginning of the conflict, over 5.6 million Syrians have fled Syria and live outside the country as refugees or asylum seekers and 6.6 million people are internally displaced.¹

Since 2016, PAX has reported on the Syrian government strategy to forcibly transfer large parts of the population from areas opposing its rule, as well as on the obstacles to return faced by people forcibly displaced from Homs.² This policy brief shows how new legislation that has been enacted by the Syrian government since 2011 has either affected the rights of those displaced, or made them unable to claim these rights. The brief focuses on 12 laws, enacted by the Syrian Government, which have the effect, by specific design or as a by-product of another goal, of creating obstacles for returning Syrians to recover property that was in their possession prior to the conflict. The aim of this brief is to help equip civil society organisations, governments, donors and international organisations with information as to how these obstacles affect the Syrian diaspora, internally displaced people (IDPs) in Syria, and the missing and detained and their families. We hope that it will contribute to the development of policy responses to promote and protect housing, land and property rights in Syria.

Recommendations

1. The United Nations and other relevant international actors should ensure Housing Land and Property rights are a core element of political and transitional justice processes to end the conflict in Syria.
2. An independent international mechanism should be developed to document property claims of the forcibly displaced, to collect and preserve proof of property, to prepare for justice including property restitution and reparations.
3. Organisations working with refugee and IDP communities should develop programming to raise awareness about and to provide legal aid on HLP rights.

1. Background

a. Summary of property administration structure in Syria

Syrian property is managed by a land registration system called the 'land cadaster', which comes from a mixture of the French and Ottoman property systems. Physical documents are often the only form of proof available and accepted as evidence to prove property ownership. Whilst there is some digitization of records, which commenced in 2010, this only occurs for new property transactions, meaning the majority of property records remain un-digitized. The conflict in Syria has resulted in damaged and destroyed land registry offices, causing the Syrian government to find ways to preserve property records either by relying on these new digital means or reconstituting the old physical documents. This has meant that real estate records generally, and land registries in particular, have been particularly susceptible to disruption and damage during the ongoing conflict. The effect of this destruction could have catastrophic consequences for the system of property ownership in Syria.

Furthermore, despite the formal registration system, many property transactions still occur informally and remain unregistered. This is due to the complexities of complying with legal requirements and the need for security clearance or government approval to buy, sell, transfer or inherit property for many non-Syrians or refugees. Furthermore, a significant amount of the Syrian population live in informal or slum housing. In 2013 it was estimated that approximately 32% of the total urban population lived in informal settlements.³ Informal property ownership is not registered under the formal 'land cadaster' and can therefore be incredibly difficult to track.

This situation causes obvious difficulties in proving property ownership, which is worsened for certain vulnerable groups. Additionally, the proliferation of informal living arrangements means that expropriation and rezoning of lands will impact most heavily on those in informal housing or without registered legal ownership. This means many people will not be eligible for the same compensation and rental subsidies as those with formal legal ownership when property is expropriated.

b. Vulnerable groups

The conflict in Syria has created conditions that make it difficult for citizens to participate in processes that are essential to the proper administration of property rights. This situation is exacerbated for particular vulnerable groups who are unable to participate effectively in new processes established by the Syrian government. These processes set unrealistic time limits, onerous financial requirements or security clearances that are in many cases unattainable.

The following groups have specific legal vulnerabilities:

i. Refugees

Syria is not a member of the Refugee Convention 1951, and as such there is no legal framework for the complex legal needs of Syrians seeking refuge in other countries, including in relation to HLP rights. The legal regime in Syria does not provide any mechanism to assist or account for refugees living outside the country. Syrian diplomatic services push for refugees to gain permanent residency in their host countries to help with procedures. Furthermore, refugees are reluctant to declare themselves to the Syrian Government for fear of prosecution for leaving Syria by way of an illegal means, which is punishable by imprisonment for between 6 months to 2 years.

Recent jurisprudence in Syrian courts have added to the problems. The civil court in Syria has recently held that refugees who leave Syria during the conflict are considered to have violated public ethics. This has been used as a justification for the termination of lease contracts.

These problems motivate people to remain outside Syria, thereby limiting their opportunities to assert their property rights back home. Additionally, certain rules make it difficult for refugees and asylum seekers to participate in these legal processes. They are prohibited from arranging official applications in Syrian embassies, such as applications for power of attorney or replacing identity documentation. Security checks for such applications need to be referred back to the Ministry of the Interior further preventing participation in the process.

ii. Internally Displaced Persons

Syria is not party to any international conventions protecting the rights of IDPs, and there are no internal laws which protect their rights. IDPs lack the capacity to access real property record systems that would prove ownership over their property. This is exacerbated by the lack of access to identity documents, and the high financial cost involved in proving ownership. IDPs may also be ineligible for replacement housing, in situations where they remain a lessee of an unoccupied house in another area of Syria.⁴ Syrian courts have not adopted a unified approach to people who have left leased housing due to the conflict, stating that vacancy of a property for a year may be sufficient to terminate a lease, but conversely forbidding eviction on an *in absentia* basis.

iii. Detainees

There is no specific legal exclusion from property rights for people in detention. Despite this, the Court of Cassation has considered detention, by the political security branch, to be an unforeseeable circumstance preventing a person from fulfilling a lease. In general, detainees are permitted to retain ownership of property, unless they are sentenced for a crime relating to a deprivation of civil rights. In that case the convicted person is required to appoint a guardian. This appointment is made possible at detention facilities

where legal assistance is available (such as central prisons and military prisons). Detainees in other locations and certain secret facilities are not permitted to appoint guardians.

iv. Missing and Disappeared Persons

Syria is not a party to the International Convention for the Protection of all Persons from Enforced Disappearances. Laws relating to HLP do not contain specific provisions on the status of missing persons. However, Sharia Law and the Personal Status Law both deal with the status of missing persons to some degree.

A “missing person” is defined as a person who has disappeared and whose status as alive or dead cannot be confirmed. This means that a person could still be alive, but their whereabouts remain unknown.⁵ An “absentee” is defined as a person who is unable to return to his home due to the unforeseen circumstances and is therefore unable to manage their affairs for a period more than one year. The definition requires that this absence cause serious prejudice to their other interests.⁶

In either case, the Court, with the approval of a religious judge, may appoint a judicial agent to represent a missing person or absentee’s interests. Missing person status ends upon the reappearance of a person, proof of the person’s death, or a declaration of death at the point the person would have reached 80 years old.⁷ The missing person status may also end if the circumstances surrounding a person's disappearance overwhelmingly support the belief that the person has died, and a declaratory judgment is made after 4 years have passed from the date of disappearance.⁸

2. Legislation affecting HLP rights introduced since 2011

This paragraph describes 12 laws, decrees and official circulations and letters that have been enacted by the Syrian government since 2011 and the way they impact the HLP rights.

a. Laws affecting non-Syrian’s and vulnerable groups’ rights to ownership:

i. Law No. 11/2011: Limiting rights of non-Syrians to own, transfer and develop property, and inheritance rights.

The purpose of this law is to limit non-citizens right to own, transfer and develop property. Non-citizens are defined as non-Syrians with a legal right to live in Syria. This includes any refugees who might be living in the country.⁹ Whilst a Prime Ministerial decision specifically excludes Palestinian refugees registered in Syria from being subjected to this law in the context of property,¹⁰ in practice, Syrian administrators still require Palestinian refugees registered in Syria to obtain the permission of the Ministry of Interior, and to be subjected to the other abovementioned restrictions in respect of property ownership.

The law specifically limits ownership of one property per non-citizen family in various ways, requiring that the property must be owned for a minimum of 2 years and have minimum size standards. Permission can be obtained from the Ministry of the Interior for exceptions. The law also prevents non-citizens from splitting or repurposing their property in any way, or from owning property that is within 3 kms of the Syrian border (known as the border belt). There are additional limitations in respect of renting, with a time period of 15 years set as the maximum period that a property can be rented to a non-Syrian.

Inheritance rights are also limited for non-citizens if the nationality of the person conducting the transfer does not have reciprocal laws in their country allowing Syrians to own property. If that is the case, the person conducting the transfer loses any rights to the property. Alternatively, the house will be repossessed by the administration of public properties.

Non-Syrians must also legally register their property, to prove ownership, however registration requires permission of the Ministry of the Interior. This has ramifications for non-citizens who will need to resort to alternative mechanisms for property ownership ¹¹ causing ongoing issues for proving ownership in the context of the Syrian conflict. The ramifications for non-compliance with this law are serious and range from a fine that is equal to the value of the contract, confiscation of any funds or property associated with the breach and imprisonment for between one and three years.

ii. Legislative Decree No. 43/2011: Restricting the establishment, transfer and acquisition of property rights near the Turkish Border

The effect of this decree is to place further restrictions on establishing, transferring and acquiring property rights within borderland areas to prevent changes to property rights (either the principal or associated rights). ¹² Borderlands are defined as land within 25 kms of the Turkish-Syrian border. ¹³ The restrictions, in essence, affect the rights of the Kurdish minorities who live along the Turkish border and seek to prevent them from owning property.

The law additionally disallows claims being made through the civil law claims process of jus in re preventing non-legal or informal interests from being adjudicated. It further prevents land being rented or invested, without special permission from various government departments, including the military and security branches. ¹⁴ The requirement for special permission essentially prevents vulnerable groups from owning properties in these regions. It is further notable that any application for special permission must be made within a short time frame or the property transaction will be considered to be null and void. There is however, an exception to this requirement for registration, if the period of occupation is less than three years, or the property is located within an urban zone.

iii. Circulation of Ministry of Justice No.369/T/20148/2013: Verification requirement for ownership, before court proceedings relating to sale

This circulation restricts the commencement of Court proceedings in relation to property, if a verification of ownership of that property has not been undertaken. This verification procedure appears to only apply to

registered properties, as opposed to informally owned properties. If the owner of a property is living outside of Syria, the Circulation requires a Judge in charge of the matter to conduct a check on the relevant property to verify who the owners/residents are and conduct local investigations. This would include interviewing neighbours about the property, verifying land records, comparing the identity of the signature or thumb print on the record with that of the alleged owner. The intention of the Circulation in imposing these additional measures, is stated as an attempt to prevent fraudulent property transactions, but impacts considerably on those displaced, families of those deceased or any person thought to have opposition links.

iv. Letter No. 4554/W dated 04/08/2015: Security clearance requirement for purchase, sale and leasing of residential and commercial properties

This letter adds security clearance requirements to the purchase, sale or lending of residential unit and commercial properties in both urban and agricultural zones. The stated aim of this letter by the Government of Syria is to prevent terrorism. In order to obtain a security clearance, an application must be made through the Ministry of the Interior to the Directorate of Finance. That application can be referred to the Bureau of National Security or the intelligence services to determine whether clearance is given to a person wishing to make a property transaction. Matters of consideration include whether the person is considered a fugitive, or has had any prior issue with an intelligence service. A failure to obtain the security clearance can lead to a freeze on all real property.

In respect of a leasing arrangement the applicant must submit the lease to the municipality, which refers it to the closest police station to the property. The police are then responsible for providing the application to the intelligence services who will perform a cross-check of the applicant's name. If security issues are detected, approval is denied and the application is subsequently investigated. This security clearance provides an additional level of control by the Syrian government on everyday property transactions, further hindering the rights of non-Syrians, IDPs and refugees and especially affecting anyone who may have issues with an intelligence service.

v. Law No 11 of 2016: Suspending changes to property records in areas deemed a security risk

This law suspends the registration processes at real estate administrative offices in parts of Syria where the security situation relating to the conflict with the Syrian opposition groups reaches a specific level. It then provides for the creation of "daily supplementary records" which can substitute the "real property records" and renders any other changes made to them invalid. In the cases where supplementary records have been established, record-keeping responsibility has been relocated to neighbouring cities in more secure government control. This effectively makes it difficult to carry out transactions in any areas that the government has defined as having security concerns.

The result of this is to prevent any amendments or changes to property records in areas outside the control of the Syrian government. All real estate bureaus in areas out of government control are considered closed and further changes to property ownership cannot be made. This is made more difficult in practice, as

attempts to engage with the supplementary system are frustrated by the fact that very few “daily supplementary record” systems have been established. Where it has been put into practice (such as in Arbin, Douma at Damascus countryside and Safira at Aleppo), the supplementary system is in control of Syrian government employees and further makes access difficult.

b. Laws relating to damaged or destroyed property records

i. Law No 33 of 2017: Establishing reconstitution process for damaged or destroyed records

This law implements a process for reconstituting property records in the event that one of the physical documents becomes damaged or destroyed. A typical real property record can be made up of multiple different types of “cadastral documents” that go towards proving ownership, provenance and the physical delineation of the property.¹⁵ The Directorate for Cadastral Affairs in the relevant area is responsible for preparing a report regarding the lost or damaged records and submitting it to the General Directorate of Cadastral Affairs to make the final determination on whether or not it is possible to reconstitute the record.

There are then two processes that are possible to attempt the reconstitution of the records. The first is the administrative process, which is conducted by a commission consisting of cadastral judges, which can be final if there are sufficient documents and files stored in the relevant directorate of cadastral affairs. The judicial process is conducted if it is impossible to reconstruct the documents administratively. In that situation, interested parties are given 6 months to present evidence and provide supporting documents and objections to the judge.

Decisions relating to these processes are published in the local gazette, ostensibly giving those with interest in the property notice and the opportunity to participate. However, this publication is considered personal notification, and there is nothing in the law to account for people who do not have access to the local gazette by reason of their vulnerable situation.

These processes give rise to possible problems, such as missing important transaction events. The short periods involved in the processes make it difficult for Syrians residing outside Syria to participate and protect their interests. Furthermore, there are high financial barriers for individuals to participate and many of the cadastral offices are under-resourced to properly carry out the reconstitution process to an appropriate standard.

ii. Law No. 12 of 2016: Giving digital copies of real property records legal status to be used as replacements for damaged records

This law changes the status of some digital copies of physical real property records and gives them value as evidence of the original document. This law was implemented due to the loss or damage of physical documents during the conflict. Where the original has been lost or destroyed the law provides that the digital copy can have the legal authority of the original and permits the Syrian Government to re-publish this digital version.

Originally, digital copies of physical real estate applications and other real property records were kept as back-ups. These documents were scanned and stored according to the different cadastral zones. Only the raw files of these digital copies were kept. No data entry or analysis was conducted on the digital records due to the paramount position of the original records.

The law provides for five conditions to confirm the legitimacy of the digital documents and to have them authorised by the Minister. These conditions relate to the type of software used, the method of transfer from physical to digital and the manner in the file is stored. A process has been established whereby public notices are published concerning the intention to print the replacement document. Anyone with an interest in the property has a right to object within 4 months. Objections are heard at the Court of First Civil Instance in the zone where the real property is located. This can be appealed to the Court of Appeal.

To date, this law has not been used, and there is little explanation available as to its intended use and effect. This may result in a lack of accountability and transparency regarding the storage, use and validity of the reclaimed records. The full extent of the damage done to land registries is not known.

c. Laws relating to confiscation of assets as a penalty

i. Law No. 35 of 2017: Confiscation of assets for failing to perform military service

This law allows the Military Recruitment Directorate to seize real and moveable assets of Syrian males who have not met their obligations to perform military service¹⁶. By the age of 45, Syrian males must have performed military service or alternatively paid the “age passing substitute”, which is in essence a fine. This law allows the Minister of Defense to seize property from a person who has not met the obligations. Failure to pay the fine within 3 months after request may result in further penalties, including 1 year imprisonment, or a further fine to a maximum of the equivalent \$2000 USD.

ii. Law No. 19/2012 and legislative decree No. 63/2012: Empowering Court to confiscate assets relating to terrorism offences

In 2012, the Syrian government put in place an anti-terrorism legal framework. Law 22 of 2012 created the new Anti-Terrorism Court, thereby replacing the Court of National Security, which deals both with terrorism offences, and with the appropriation of property related to terrorism as prohibited under anti-terrorism Law No. 19/2012. The definition of terrorism under Law No. 19 is so broad that it affects thousands of Syrians who engaged in political, civic or humanitarian activities. Article 12 of Law No. 19 gives the court the right to confiscate the properties of people charged with the crime of terrorism. Legislative Decree No. 63 of 2012 then gave the *police judiciaire* the right to seize property. Prior to Decree 63, criminal seizure was originally only permissible in relation to property that was directly used during a terror offence, and was therefore relatively limited. Whilst these powers were extended in the 1960s under martial law to allow for seizure of property by way of a simple administrative decision, this law has replaced that system all together.¹⁷

These anti-terror laws removed the system under martial law and replaced it with a new national security mechanism, whereby the Court is empowered to confiscate all assets, revenues and instruments used in a relevant crime and to further dissolve a terrorist organisation upon an accusation decision.¹⁸

In respect of confiscation, the authors note that there is a potential conflict with Article 15 of the Syrian Constitution, which prohibits general confiscation for a violation of the law. The decree further authorizes the *police judiciaire*, the public prosecution, and the *juge d'instruction* to seize property as well as the Court.¹⁹ It is also noteworthy that this Decree entitles the Commission of Counter-Money-Laundering and Terrorism to seize real property on the mere suspicion of terrorist activities.²⁰

d. Laws relating to re-urbanisation process:

i. Law No. 66/2012: Dissolving ownership rights over property in highly populated and slum areas under Damascus Governorate

This was the original law that established new urban zones within the administrative border of the Damascus governorate,²¹ as part of the urban 'Masterplan'. This law allows the Syrian government to deal with highly populated urban and slum areas, known for their informal housing, without having to comply with other expropriation and urban development laws. In order to achieve this objective the law dissolves the individual rights of property owners and replaces them with shareholder rights in the plot of land to be developed. Whilst there are legislative protections to stipulate that the Commission responsible for distributing the plots of land should assign the owner a property in the same prior location, there is an issue as to whether this actually occurs in practice.

This law further restrains property transactions (including buying, selling, merging, licensing or changing the property) for homes located within the two urban zones as any transaction, which occurs within these areas must go through the Directorate of the Execution of Decree 66. It is a criminal offence to violate these administrative limitations, which is punishable by a short period in detention.²² The procedures for obtaining a share are the same procedures, which have been extended to the new Law No.10 which will be dealt with below in more detail. Following the implementation of this law, the Directorate embarked on a mass eviction and building removal project that increased rental and house prices in Damascus. New projects called Marota and Basilia have been declared under this law.

ii. Law No 10/2018: Establishment of new urban zones.

The most recent and controversial law relating to property rights in Syria is Law No.10, which is essentially a geographical extension of Law No. 66.²³ This national law relates to the establishment of new urban zones within the existing general urban master plan in each administrative unit.²⁴ In order to implement the urban zone, eviction of people and demolition of buildings must be undertaken. The Law states that the purpose of expropriation is to use it to construct public buildings, including social housing.²⁵ However, in practice it has been used to take control of areas that have caused difficulties to the government. It also has significant

impacts for refugees, IDPs and the family of missing persons as the processes are extremely difficult to navigate.

By way of process, the urban zones are created by the President with an Executive Decree. Once this has occurred the Administrative Unit is required to provide a list of real property records and legal notices, including details of owners, within that urban zone.²⁶ This may cause significant problems where property records are damaged, incomplete or where owners do not have legal documentation. If the urban zone contains agricultural land, which a farmer or planter holds rights over, such rights are removed by the urban rezoning process, either in whole or in part, and the person is entitled to compensation by way of stocks.²⁷

After the lists of real property have been provided, the appropriation is complete and all owners will lose their individual rights to their properties, gaining instead recalculated stocks in the new urban zone. The Law also provides the power for appropriation of land to continue even after the assessment process of the urban zone has been finalized.²⁸ The value of the stocks that people are given depends on several factors, including the location of the property and a complex mandated calculation process.²⁹ Once an owner has been provided with stock they are prevented from dealing with the property in any way,³⁰ which effectively forces them to utilize their stocks in one of mechanisms mandated by the Law, which will be described below.

The next step in the process is to establish a Commission responsible for evaluating and describing the existing assets within the urban zone.³¹ The Law does not however provide for how this process is to occur, or how the Commission is to be structured. As such, there is no appeal process in respect of objections to the value or description of properties. Whilst this evaluation is occurring non-legal rights holders are requested to provide evidence of their property ownership within 30 days of the creation of the zone.³² This time period was increased to a period of 1 year when the president issued Law 42, an amendment to Law 10, in November 2018. Law 10 provides that all rights should be declared, including powers of attorney and guardianships as well. A physical application must be lodged with all relevant documents within this short time frame. Should these documents not be available the owner must describe the characteristics of the property.³³ Relatives of rights holders³⁴ or persons holding power of attorney may also lodge a claim. At the time of writing it does not appear that a security clearance is required for this process, however that is subject to change with limited notice.

There has been some confusion in respect of what rights need to be proved by way of documentary evidence, and which will already be included on the ownership register entitling owners to shares of the urban zone. Furthermore, rights holders who cannot prove their legal ownership may lose their rights all together which is far more likely to occur to persons who are no longer present in Syria due to displacement, or to families of deceased or missing persons. After the Commission assessment is completed the list of real property is passed to the second level Commission.³⁵

The assessment procedure

The assessment procedure takes into consideration a number of factors when determining the value of the property including any enhancements to the land and its location.³⁶ The law also stipulates that the value of the land should not be increased on the basis of the creation of the urban zone, but rather should be assessed in relation to similar surrounding zones.³⁷ Should buildings not be licensed, they are not included in the assessment of the value, except in so far as it relates to compensation for leasing and eviction.³⁸

Owners can object to the decision but only if it contains a miscalculation, which can be rectified.³⁹ If the objection period is exhausted, the administrative unit publishes the list of value assessments. There is a right to appeal to the Court of Civil Appeal within 30 days. There are additional appeal rights to a decision of the Court, however any appeal will not stop the execution of the urban plan.⁴⁰

The Distribution Commission

The Distribution Commission is responsible for allocating land plots and calculating the increase and decrease in the assessed value of the land. The Commission issues its decision through two charts that are published publically and contain the details of the owners of each property, including their share in the real property or *jus in re*. An owner's share is provided with each share having the value of one Syrian pound.⁴¹ Owners of stocks have a limited time period of one year to perform any transaction in relation to those shares, however in order to transfer stock they must be registered. A registration can be refused if there is any violation of legislative decree no. 66.

Eviction and the eligibility for compensation

The eviction process begins with eviction notices that are provided to residents. These notices stipulate the time frame for eviction and provide further details on their property. Residents are required to surrender their empty properties to the government within that time frame.

Evictees are classified into five categories, which correlates to their entitlement for compensation:

1. Residents of homes on public land (such as informal or slum dwellings). They are eligible for the rental compensation for a period of two years. They have an additional right to take the debris of the removed properties.
2. Residents of homes on private lands (such as informal or slum housing). They are eligible for rental compensation for two years.
3. Permanent leaseholders who are eligible to receive a share equal to 30% for the residential properties and 40% for the commercial properties. Notably this share is deducted from the share of the property owner. Permanent leaseholders are further entitled to receive rental compensation for up to two years.
4. Properties owners are eligible to receive substitute housing and provisional annual rental compensation.

5. Leaseholders who lived in the house prior to the issue of the urban zone decree and who remain there until the eviction stage are eligible for substitute houses.

Shop owners have priority to buy or lease new buildings, which are created in the new urban zone.⁴² Substitute housing and rental compensation is regulated by a ministerial decision of the Minister of Housing and Urban Development.⁴³ However, there have been significant issues in respect of housing actually being provided and rental compensation and stock shares being insufficient. In order to determine the dweller category and resolve the disputes among occupants, the Dispute Settlement Commission is utilized.⁴⁴

Disputes Settlement Commission

This Commission deals with disputes and has the power to determine all legal disputes in respect of objections, property claims, jus in re disputes and the progress of other lawsuits which are transferred from the Courts.⁴⁵ Essentially, the Commission is designed to replace a number of civil courts and tribunals and is exempt from the rules of civil procedure. It also has the additional power to arbitrate disputes, meaning that it has the ability to issue binding decisions.⁴⁶ Requesting the Court to issue an arbitration decision is often done to avoid the long delays in Court. A decision is made on the 'principles of justice' rather than the actual law. There is no right to appeal an arbitration decision.

The Commission's decisions are also appealable to the Court of Civil Appeal. However, the decision of the Appeal Court is final and enforceable.⁴⁷ Enforcement is carried out by a letter issued either by the Commission Chief or the President of the Civil Court of Appeal. Compared to the normal civil procedure this removes an additional level of judicial review, being the Court of Cassation.⁴⁸

Options with stock shares

For those who are provided with stocks they may use that stock to acquire a land plot, if it equates with the value of stocks earned.⁴⁹ If multiple requests for the same plot are made, the first application in time will prevail. Previous experience demonstrates that stocks are usually insufficient to re-purchase within the same urban zone. As a result, there are also three additional options of utilizing these stocks:

1. Stock can be sold at a public auction through the Administrative Unit. The Administrative Unit can purchase that stock themselves with the amount to be deposited into the Central Bank of Syria and not accessible for a period of 6 months.
2. Stock can be combined with other stock-owners and a land plot can be requested from the Administrative Unit. However, there are certain difficulties for smaller stock owners who will not have the same decision-making powers as larger owners.
3. Stock can be combined to establish a joint stock company in order to build, sell and invest in land plots.⁵⁰

Administrative costs

The Law provides that a maximum of 20% of the urban zone will be used by the Administrative Unit. Should more than 20% of space be utilized then the owner should be compensated by exempting the builder from green space and atrium requirements and allowing an increasing in the height of the buildings instead. Based on the experience of Law 66, normally the actual amount of land left to the owner after the various deductions are made (including licensing, greenspace, the contractors share and the land to be provided to the government) is closer to 17% of the total value of the land.

iii. Law No 3/2018: Confiscation removal and sale of debris in areas allocated by Government appointed commission

This law governs the removal and sale of debris from damaged buildings around Syria. It sets out the process for identifying, removing and selling debris from zones identified by the Governor. Claims for ownership of the debris can be made after the Governor assesses the damage to buildings and prepares a report detailing the damage to the building, the cost of removal, the value of the debris and a plan of the area including personal details of owners. Claims can be made by property owners or relatives of those owners⁵¹ and must include proof of ownership. If proof cannot be provided a description of the property can be accepted.

A Commission is subsequently established to review the reports prepared and to issue a chart within two weeks for review. Owners have the right to object on the published chart to the Court of Civil Appeal within 30 days from the date of the chart publication. In the event of an objection the Court makes the final decision within 30 days starting at the day of objection registration.

After any disputes, the administrative unit opens up a period for requests for the collection of debris or moveable properties. Following the finalisation of all the above stages, the administrative unit organizes for the owner to attend the property and collect any moveable property from the damaged buildings. A record is kept of the process and details. Debris and movables can be collected for a period of 30 days.

Following this, the administrative unit has the right to enter the damaged buildings built over public properties and destroy them. The administrative unit keeps any valuable property in special warehouses, in order to return it to the owners or to sell it at auction after a period of one year has elapsed. The debris is sold at auction according to the regime of public contracts, and any money earned is deposited in a bank account managed by the administrative unit, with any amount owed to the beneficiaries frozen after the deduction of the debris removing and transferring costs.

Although currently in force, this law has not yet been put into practice. It allows for the Governor to make a determination regarding the condition of an entire cadastral zone, which would include both damaged and undamaged buildings. It is clear that this law is a key piece of legislation, especially in connection with other legislation such law No 10 of 2018. It enables the administrative unit to start the process to remove the existing building in order to launch the urban re-planning process, even without the presence of the owners.

Rubble removal also complicates HLP claims for informal building, as water and electricity meters provide evidence when proper documentation is unavailable.

4. Conclusion and Recommendations:

The housing, land and property legal framework in Syria will be one of the most controversial issues to arise from the conflict in coming years, especially with regards to legislative disorientation created by the frequent amendments to urban planning laws. The above laws highlight the difficulties faced by vulnerable groups when laws directly and or indirectly limit their access to HLP rights. The international community may become more involved in the issues that arise in relation to HLP rights when it comes to the difficult project of resettling IDPs and returning Syrian refugees. Returning and resettling will be made complicated unless HLP rights are respected and the livelihood of Syrians is secured in accordance with principles of international law such as the Pinheiro Principles.

A thorough understanding of the jus in re and cadastral regimes in Syria will be necessary to protect persons in fragile situations such as refugees, IDPs, detainees and missing persons. Considering that the extensive destruction and appropriation of property, not justified by military necessity, can amount to a war crime, the protection of HLP rights should become one of the core human rights themes in the Syrian context. It should also be at the core of political and transitional justice efforts for Syria. The millions of victims should be central in these processes.

Recommendations

1. The UN and other relevant international actors must put HLP rights at the core of political and transitional justice processes to end the conflict in Syria.
2. An independent international mechanism must be developed to document property claims of the forcibly displaced, to collect and preserve proof of property, to prepare for justice including property restitution and reparations.
3. Organisations working with refugee and IDP communities should develop programming to raise awareness about and to provide legal aid on HLP rights.

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Endnotes

- 1 UNHCR, 'Syria Emergency', (2019) accessed at: <https://www.unhcr.org/syria-emergency.html>
- 2 See the quarterly reports of the Siege Watch project, www.siegewatch.org/reports and the report "No Return to Homs", <https://www.paxforpeace.nl/publications/all-publications/no-return-to-homs>
- 3 Relief Web, 'Briefing Note - Emergency response to Housing Land and Property issues in Syria' (2013), accessed at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Emergency%20response%20to%20Housing%20Land%20and%20Property%20issues%20in%20Syria.pdf>
- 4 Ministerial Development Decision 112 of 2015
- 5 Article 202 of the Personal Status Law
- 6 Article 203 of the Personal Status Law
- 7 Article 205 of the Personal Status Law
- 8 These situations are detailed in military legislation.
- 9 Applies to all non-Syrian nationals, including refugees except for Palestinian who has the same rights as Syrian's under Syrian law.
- 10 Prime Ministerial Decision No. 2484/013
- 11 Such as non-revocable authorizations by notaries and decisions by courts.
- 12 Which amended the prior legislative decree No 41/2008.
- 13 There are additional areas of Hassakeh, Daraa and Qunitra, which are considered to be entirely part of the 'borderland'.
- 14 Specifically an application for permission is to be made to the Ministry of Agriculture who will consult with the General Directorate of Cadastral Affairs, the Governorate and the military and political security branches within the Ministry of Defence.
- 15 Cadastral documents are defined in the order 188 of 1926, order 189 of 1926 the cadastral documents and according to executive directions of the law 33 (issued by decision No 1/W of 14/03/2018 by the minister of local affairs and environment
- 16 RefWorld, 'Compulsory military service, including age of recruitment, length of service; occasions where proof of military service status is required; whether the government can recall individuals who have already completed their compulsory military service; penalties for evasion' (2014), accessed at: <https://www.refworld.org/docid/54042353a.html>
- 17 Legislative Decree No. 148/1949 and Art 4 Para F of Legislative Decree No 51/1962 including the Minister of the Interior and all the Heads of Security.
- 18 An accusation decision is a decision of what is known as a 'one level court'. This means that their decisions are able to be appealed to the Cours de Cassation on the basis of an error of law.
- 19 Practically, seizures are carried out by a letter sent to the Minister of Finance, who will circulate this request to the General Directorate of Cadastral Affaires and Governorates, to pursue and freeze all assets that any accused person may have.
- 20 As mentioned in the Article No.1 of the law No 27 and the amendments of the law No 33 which is amended by the legislative decree No 27 of 2005, the legislative decree No 46 of 2013 and the executive instructions issue by the cabinet of ministers (Decision 12102 of 2011 and 1311 of 2014.
- 21 In the regional zones of Kafouseh, Mezzeh, Kanwat Basatin, Darya and Al Qadam
- 22 Article 756 of penal law.
- 23 Despite the numbers of other Laws applicable previously to property matters in Syria this law now applies exclusively for the specific zones mentioned in the law. Law No. 66/2012 continues to apply to urban zones in the case of any gap in the new Law No. 10.
- 24 This intent of this law was developed to essentially simplify the process of redevelopment of other urban laws which was explained in a joint memorandum issued by both Minister of Local Administration and Environment and the Minister of Housing and Urban Development which stated that special legislation was needed in order to realize a development urban zone which meets the highest standards of urban and architectural design.
- 25 Art 11(21) Law No.10/2018
- 26 Article 1/5 of Law No.66/2012 which also specifies these must be provided within one week of the Decree.
- 27 Art 26(51) Law No.10/2018
- 28 Art 22(35) Law No. 10
- 29 Article 3 Law 66/2012
- 30 Art 4 Law 66/2012 includes buying, selling, donating, loaning, substituting membership, assignment, mortgaging, pledging, authorization, merging, demarcating, building licensing or changing the property.
- 31 Article 1(5)(G) Law No.10/2018 including buildings, plants, trees, constructions and houses.
- 32 Article 6(2) Law No.10/2018
- 33 Including the borders, geolocation, legal and customary types of claims and all connected rights to the property including any potential claims or lawsuits on the same property.
- 34 Up to a 4th grade relative.
- 35 Article 7 Law No.66/2012
- 36 Article 7 Law No. 66/2012
- 37 Art 10 and 5 of Law No. 10/2018
- 38 Art 5 of Law No. 10/2018
- 39 Art 9 Law No.10

40 Art 6(12) of Law No. 10

41 Art 13(25)

42 Art 25(45) Law No. 10

43 Law No. 112/2015

44 Per Article 23(38) Law No.10 this Commission is comprised of a Minister of Housing, the Governor, the Head of the Administrative Unit and a legal expert.

45 The Commission is made up of one Judge, a representative of the Directorate of Cadastral Affairs and a representative of the administrative unit. They must all have a legal qualification per Art 14.

46 Art 18 Law No.10/2018

47 Although some claimants may retain the right to claim compensation where they were not represented in the Commission.

48 As articulated in Article 229 of the Civil Procedure Law

49 Article 18(3) Law No.10/2018

50 Art 17(29) Law No. 10/2018

51 Up to relatives of the 4th degree.