

## POLICY BRIEF

# Violations of Housing, Land and Property Rights: An Obstacle to Peace in Syria

## What can International Policymakers do?

March 2020

*The analysis and recommendations contained in this policy brief are the result of a meeting attended by Syrian civil society experts and practitioners in the field of housing, land and property, convened by PAX and Impunity Watch in July 2019 in The Hague. Co-signatories were among the participants.*

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Over the past years of conflict, violations of housing, land and property (HLP)<sup>1</sup> rights have been committed by all parties to the conflict in Syria. In some contexts, these have led to changes in the demographic composition of communities. Since 2011, the Assad regime has enacted a raft of measures to consolidate its control by systematically dispossessing groups or communities it considers a threat to its authority. Today, it continues to punish these groups while simultaneously rewarding loyalists. The structured measures and regulations that violate HLP rights affect millions of refugees, internally displaced persons (IDPs), as well as political detainees and the missing persons, and their family members. In addition, particular social groups with a history of suffering discrimination in property rights – such as women, Palestinian refugees, and Syrian Kurds – stand to be disproportionately affected.

<sup>1</sup> As defined in the 'Principles on Housing and Property Restitution for Refugees and Displaced Persons' (the 'Pinheiro Principles,'): <https://daccess-ods.un.org/TMP/205856.189131737.html>

The international community must take urgent steps to address HLP rights violations and avoid complicity in these crimes, including putting HLP rights at the centre of negotiations for a political settlement, and ensuring that property records are protected, violations investigated, and perpetrators held accountable. Any policy or measure to address HLP abuses must be informed by the needs and demands of affected communities, and must support transformative solutions that address both historical and current HLP issues and end discrimination.

## Background: HLP rights in Syria

Since 2011, much media, policy and civil society attention has rightly focused on the grave abuses that have forced Syrians from their homes in massive waves of displacement, from chemical weapons and barrel bombs to the systematic detention, torture and summary execution of political opponents. Alongside these flagrant violations of Syrians' human rights, the Assad regime

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has built up an intricate legal framework that allows it to expropriate anyone it considers a threat or an inconvenience: those accused of 'terrorism,' a catch-all term used for any political opposition or civic action; political detainees and their family members; and the internally displaced and refugees.

This legal framework underpins an apparent plan for demographic change in Syria whereby individuals or communities perceived as government opponents are systematically dispossessed, cementing displacement as a permanent reality for those forced from their

homes. Meanwhile Assad loyalists profit from expropriated land and property, and investments benefit only the country's economic elite. Contemporary HLP rights abuses also consolidate decades of violations of HLP rights used as a tactic of coercion and control in Syria, from the Arabization of Kurdish areas via discriminatory laws to the arbitrary confiscation of homes and businesses of political opponents. These deliberate manipulations of property rights by the authorities, as well as other issues such as the lack of land and property registration in informal settlements and widespread forgery of property deeds and other documents, represent barriers to respect for HLP rights.<sup>2</sup>

There is growing recognition among Syrians and the international community that unaddressed challenges to property rights and increasing impediments they pose to the return of refugees and internally displaced people (IDPs) have become major obstacles to peace and justice in Syria. Yet there have been relatively few interventions to address these challenges, which are further complicated by the challenges of working with scattered, intimidated populations preoccupied with a daily struggle for survival, and by difficulties to work independently in regime-controlled areas. Although comprehensive solutions to HLP violations in Syria may seem a long way off, initial measures to protect and preserve property and housing rights should be adopted in the meantime to try to create a safe environment for the voluntary and dignified returns for the displaced, and to prepare for an eventual comprehensive transitional justice process.

### Legal framework for expropriation

The Assad regime has enabled expropriation of properties through a series of laws and administrative decisions introduced since 2011. The most notorious of these is Law No. 10 of 2018, which allows the authorities to designate areas as new urban zones, then take possession

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<sup>2</sup> <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>

of these areas and evict residents. The law provides property owners with stocks in the new zone as compensation, and some residents are eligible to have their rent paid until receiving substitute housing, or a maximum compensation of two years' rent for those without formal residency. However, conditions to prove eligibility are very difficult to meet, especially for those who are displaced, those wanted by the regime and the many who lived in informal, unregistered housing in these areas.<sup>3</sup> Such individuals can thus be expropriated at little notice and without compensation or access to legal remedy. In practice, this law means that informally housed areas are transformed into luxury real estate projects benefiting government loyalists at the expense of the original inhabitants, who could never afford to live in the new developments.

Law No. 10 is only one of a host of legal obstacles to HLP rights affecting vulnerable populations inside and outside of the country. Criminal legislation allows the authorities to confiscate the properties of those failing to perform military service or facing terrorism charges, which are frequently brought against anyone involved in civil, political or humanitarian work.<sup>4</sup> A set of zoning and rubble removal laws particularly affect properties and housing in destroyed and informally built areas,<sup>5</sup> and a series of cadastral laws create obstacles for recovering or transferring property records.<sup>6</sup> Finally, national security legislation means that people need security clearance for various property transactions.<sup>7</sup> These laws have the effect, by specific design or as a by-product of other goals, of dispossessing large parts of the Syrian population, both inside and outside the country's borders.

### Opposition-controlled areas targeted

Areas that have been under opposition control have been specifically targeted by HLP rights violations, including destruction of civilian residential areas, expropriation of property using the legal measures described above, and civil rights violations such as arrest and harassment by security services which prevent enjoyment of HLP rights. In the most extreme examples, Assad forces and allies have implemented siege tactics accompanied by intense aerial bombardment and destruction of civilian infrastructure, forcing communities to surrender. The forced surrender deals that were then signed offered the coercive choice of submitting to regime rule - with its high risk of detention, torture or forced conscription - or of being forcibly transferred to northwest Syria via the infamous green buses that became a symbol of this policy of collective punishment.<sup>8</sup>

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<sup>3</sup> For more on Law 10, see <https://www.hrw.org/news/2018/05/29/qa-syrias-new-property-law>

<sup>4</sup> Law No. 35 of 2017: Confiscation of assets for failing to perform military service; Law No 19/2012, Law No. 22/2012 and legislative decree No. 63/2012: Empowering judicial powers to confiscate assets relating to terrorism offences. In "Legal Obstacles to Housing, Land and Property Rights in Syria", <https://www.paxforpeace.nl/publications/all-publications/legal-obstacles-to-housing-land-and-property-rights-in-syria>.

<sup>5</sup> Law No. 66/2012: Dissolving ownership rights over property in highly populated and slum areas under Damascus Governorate; Law No 10/2018: Establishment of new urban zones; Law No 3/2018: Confiscation removal and sale of debris in areas allocated by Government appointed commission. Ibid.

<sup>6</sup> Law No 11 of 2016: Suspending changes to property records in areas deemed a security risk; Law No 33 of 2017: Establishing reconstitution process for damaged or destroyed records; Law No. 12 of 2016: Giving digital copies of real property records legal status to be used as replacements for damaged records. Ibid.

<sup>7</sup> Law No. 11/2011: Limiting rights of non-Syrians to own, transfer and develop property, and inheritance rights; Legislative Decree No. 43/2011: Restricting the establishment, transfer and acquisition of property rights near the Turkish Border; Letter No. 4554/W dated 04/08/2015: Security clearance requirement for purchase, sale and leasing of residential and commercial properties. Ibid.

<sup>8</sup> <https://www.paxforpeace.nl/publications/all-publications/siege-watch-final-report>

At least 200,000 people were forcibly transferred, with the real figure estimated to be even higher.<sup>9</sup>

This use of siege tactics followed by forced displacement that may amount to forcible population transfers has caused demographic change in these areas. The original residents were displaced and obstructed from return, while their properties were in some cases occupied by regime-affiliated militias, who sometimes also forged property documents in order to sell the properties.<sup>10</sup> Some of these formerly besieged areas such as the Damascus suburb of Darayya, a symbol of revolutionary self-governance before being retaken by the regime, now remain totally depopulated. People originating from these formerly besieged areas continue to face human rights violations such as the threat of arrest or harassment when returning to check on or claim property.

### Barrier to refugee and IDP returns

Since the beginning of the conflict in 2011, Syria has witnessed massive waves of displacement, with roughly 12 million of its pre-war population of around 23 million displaced internally or outside the country as refugees. Though security concerns are the main obstacle to return,<sup>11</sup> the lack of access to HLP rights has become another major barrier for the foreseeable future. The legal changes described above disproportionately affect refugees and IDPs, as in most cases it has become impossible to meet the criteria and take the steps required to comply with any of the established legal processes to claim or transfer property.

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An indirect but important barrier to accessing property rights, and hence to dignified and voluntary returns, is lack of civil documentation. 70% of refugees do not have basic identification documents, which will be needed for any property claims mechanisms in the future. Documents issued by opposition groups that hold or have held territory are not recognised by the Assad authorities, and, many HLP records have been lost or destroyed during the ongoing conflict and victims of forced evacuation had their documents confiscated during the evacuation, making property claims even more problematic for this group.<sup>12</sup> In addition, much civilian infrastructure has been destroyed in indiscriminate attacks by the parties to the conflict, as well as in what seem to be targeted campaigns to depopulate certain neighbourhoods and prevent the original population from returning.<sup>13</sup> Without major reconstruction efforts, many refugees have no homes to which they can return.

### Communities disproportionately affected by HLP violations

All Syrians are at risk of HLP violations due to the ongoing conflict, widespread destruction, and unfavourable legal framework combined with a generalised lack of respect for the rule of law, but some groups have faced historical discrimination or are at higher risk of new violations under the

<sup>9</sup> Siege Watch final report p. 21, <https://siegewatch.org/wp-content/uploads/2015/10/pax-siege-watch-final-report-spread.pdf>

<sup>10</sup> See for example “No Return to Homs”, <https://www.paxforpeace.nl/publications/all-publications/no-return-to-homs>, that describes the factors obstructing the inhabitants of the old city of Homs from return.

<sup>11</sup> <https://www.worldbank.org/en/country/syria/publication/the-mobility-of-displaced-syrians-an-economic-and-social-analysis>

<sup>12</sup> <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>; <https://www.fes-europe.eu/news-list/nachrichten/reclaiming-home/?L=1&cHash=b9ecb4c2f892c6de301e4047be2767ed>

<sup>13</sup> As for example in the old city of Homs, Yarmouk camp, and Qaboun.

post-2011 legal framework. These include the Kurdish minority, detainees and missing persons and their family members, Palestinian refugees, and women.

### **Historic discrimination against Kurds**

Over the past decades, the cultural rights of ethnic minorities have been undermined under the ideology of Arab nationalism, dating back to the period of Syrian-Egyptian unity in 1958-61 and continued by the Baath party. Syria's successive constitutions have sought to homogenize the Syrian population and suppressed non-Arab languages and cultural practices seen to be at odds with this ideology. The Kurds are the second largest ethnic group in Syria after Arabs and have been singled out for discrimination based on their linguistic and cultural identity through expropriation of property and the Arabization of their areas via demographic engineering. After the 1962 census, around 350,000 Kurds in al-Hasakah were stripped of their Syrian citizenship; they became 'foreigners' in their own country, holding identity documents but not citizenship. Other Kurds in the area were stateless and lacked any identification papers even before the 1962 census and remain so today. Both groups face additional hurdles to own property.

In 1973, the Syrian authorities removed tens of thousands of Kurdish citizens from the Jazeera area bordering Turkey and Iraq in al-Hasakah province.<sup>14</sup> These areas represent among the most fertile agricultural lands owned and cultivated by the Kurds, and were given to Arab families brought from the governorates of Raqqqa and Aleppo. Similarly in 2007, the Syrian authorities signed contracts with 150 Arab families from the Shadadi area of al-Hasakah to acquire 6,000 acres in the al-Malikiyah area of the governorate, while tens of thousands of Kurdish villagers were systematically displaced. Later, in an effort to quell the uprising and divide the opposition, President Bashar al-Assad granted citizenship to the 'foreigner' Kurds in 2011. By 2018, most Syrian Kurds had obtained citizenship, but some 45,000 remain without.<sup>15</sup> Law No. 11/2011 limits the rights of non-Syrians to own, transfer and develop property, as well as inheritance rights, while Legislative Decree No. 43/2011 restricts the establishment, transfer and acquisition of property rights near the Turkish Border. These laws further undermine the HLP rights of the Kurdish population of northeast Syria.

Furthermore, as a result of Operation Olive Branch by Turkey and Syrian armed groups since March 2018, many Kurds from the Afrin region were forcibly displaced. In a signal of the complexity of property rights and displacement in Syria today, some of those who were settled in formerly Kurdish properties by Turkish proxies had previously been forcibly displaced from the formerly opposition-held Damascus suburb of eastern Ghouta.<sup>16</sup> Kurds have since faced obstacles to return. Most recently the Turkish-led offensive in the area of Tel Abyad and Ras al-Ayn/Serekaniye led to large scale forced displacement. As of 11 December 2019, around 74,000 people remain internally displaced in northeast Syria, while more than 17,500 people had crossed into Iraq by 30 November 2019.<sup>17</sup> At the time of writing it is unlikely people will be able to return home in the near future, and there are serious concerns about the HLP rights of the displaced.

### **Detainees and missing persons**

HLP rights and the issues of detention and disappearance are closely interlinked, and the anti-terrorism and national security legislation outlined above particularly affects detainees and their families. Anyone charged before the notorious anti-terror court or military or field courts, even if tried in absentia or not convicted, is liable to have their properties confiscated by the state as well

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<sup>14</sup> <https://lib.ohchr.org/HRBodies/UPR/Documents/session12/SY/KIS-KurdsinSyria-ara.pdf>

<sup>15</sup> <https://aawsat.com/english/home/article/1393276/over-19000-syrian-kurds-deprived-citizenship-46000-remain-stateless>

<sup>16</sup> 'Nothing Is Ours Anymore' – HLP Rights Violations in Afrin, Syria, in 'Reclaiming Home: The struggle for Socially Just Housing, Land and Property Rights in Syria, Iraq and Libya,' Friedrich Ebert Stiftung (2019)

<sup>17</sup> OCHA update, 11 December 2019, <https://reliefweb.int/map/syrian-arab-republic/syrian-arab-republic-north-east-syria-displacement-11-december-2019>.



as being stripped of their civil rights. The security apparatus also places a security 'mark' against the names of these individuals, signalling that they may not exercise their civil rights and preventing them from carrying out any property transactions in future without security approval, and allowing the authorities to expropriate them. The security mark is also applied to those who were arrested and interrogated by security branches, even if not charged with any crime. In addition, released detainees are banned from travelling outside

Syria and kept under security surveillance, prompting many to leave the country via irregular means. These measures also affect the 3 million people reportedly wanted by the authorities.<sup>18</sup>

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Family members of the missing and disappeared seeking to know the fate of their loved ones often suffer for years in pursuit of this knowledge. A secondary consequence of not knowing the fate of the missing and disappeared is that family members can rarely obtain a death certificate or interim equivalent, making it all but impossible for them to inherit, let, sell or otherwise make use of their loved ones' property and further exacerbating the economic impact of disappearance. According to media reporting and activists, forcibly disappeared persons are particularly vulnerable to losing their property via criminals forging their property records and quickly reselling them to accomplices, since under Syrian law, the rightful owner is unable to reclaim their property after it has changed hands twice, even if the original sale was based on forged documents.<sup>19</sup> The property rights of more than 100,000 detainees, disappeared and missing persons and their families are thus at risk under a system put in place to rob political opponents of their properties.<sup>20</sup>

## Palestinian refugees in Syria

The Palestinian refugee population that came to Syria in successive waves, mainly after the 1948 and 1967 wars, has been severely affected by the conflict. There are around 552,000 Palestinian refugees officially registered with UNRWA in Syria, of whom around 438,000 remain in the country. Most have been displaced inside Syria at least once, and an estimated 114,000 have fled to neighbouring countries and Europe.<sup>21</sup> Though Palestinian refugees' access to property rights has traditionally been better than in other countries in the region, they still face restrictions in comparison to Syrian nationals. Palestinian refugees have the right to own one apartment on condition that they are married. They may also own additional apartments or agricultural lands, but the deeds for this property may only be registered by a notary, not at the cadastre registry department, which weakens their rights to recover these properties in cases of expropriation or destruction.

The case of Yarmouk Camp in Damascus illustrates the complexity of Palestinian refugees' situation with respect to property rights. Yarmouk, once the largest Palestinian camp in Syria and in the region, was besieged in 2013 and almost completely depopulated over the course of the conflict. By 2018 around 80% of its buildings had been destroyed by Syrian government forces and their allies. That year, Law No. 10 (see above) was passed, and the old part of Yarmouk was

<sup>18</sup> In March 2018 Syrian news website Zaman al-Wasl published a database of 2.5 million names reportedly leaked from regime security wanted lists; most were wanted for evading military conscription, and it is thought that other wanted lists also circulate. See <https://en.zamanalwsl.net/news/article/33862/>

<sup>19</sup> See for example <https://stj-sy.org/ar/1229/>; <https://www.enabbaladi.net/archives/43236>.

<sup>20</sup> According to the UN, "more than 100,000 people have so far been detained, abducted, disappeared or went missing, largely, but not only, by the Syrian government." <https://dppa.un.org/en/security-council-briefing-detainees-and-missing-persons-syria-under-secretary-general-rosemary>

<sup>21</sup> <https://www.unrwa.org/where-we-work/syria>

designated as part of a new urban zone, exposing its residents to the risk of expropriation. The land on which Yarmouk camp is built is not rented by UNRWA, as in other camps, but is owned by the General Authority for Palestinian Arab Refugees (GAPAR), a Syrian government entity, meaning Yarmouk is an ‘unofficial’ camp where UNRWA can only provide services to the population but not engage in reconstruction efforts. Most residents’ ownership contracts are registered only with a notary, not the cadastre registry department, and according to local activists, many HLP-related documents stored at the Yarmouk court building were damaged during shelling in early 2013. Former Yarmouk residents need a special permit and have to pay bribes to access the camp to check on their properties. To date only 1,700 persons have been able to return to the camp, mainly through connections with the regime or with Palestinian factions with ties to it.<sup>22</sup> These challenges will inevitably complicate proof of ownership during any restitution efforts in the future.<sup>23</sup>

## Women face extra obstacles

The challenges to HLP rights that women already faced prior to 2011 have been exacerbated by the conflict. Very few properties are registered in the name of women – as little as 4% according to research by the Norwegian Refugee Council – due to patriarchal traditions and customs as well as discriminatory family and inheritance laws.<sup>24</sup> When the male owner of a property is killed, detained or missing, female family members therefore face multiple obstacles to access the property. For instance, in-laws often ask the woman to waive her rights because they do not recognize her right to own property.<sup>25</sup>

Displaced women often lack the necessary documents to claim their rights, such as death certificates or marriage contracts needed for inheritance. This may be the result of damage, loss or confiscation of official documents, or because documents related to births, marriages, divorces, and child custody issued in areas not under opposition control are not recognised in regime-controlled areas.<sup>26</sup> Poverty is a major factor determining whether women are able to acquire legal documentation, as procedures are often costly and unsuccessful without paying bribes. Women forcibly displaced from formerly besieged areas are an especially vulnerable group, as many have no recognised marriage or birth certificates for their children, and their husbands have in many cases been killed, detained or disappeared. Furthermore, women and men interviewed by the NGO Women Now in Lebanon “were uninformed of their housing, land and property rights and unaware of the risks related to not having proper documentation proving their ownership.”<sup>27</sup>

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<sup>22</sup> Interview with former UNHCR employee.

<sup>23</sup> [https://projustice.org/ar/news\\_views/views/%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D8%AA%D8%AF%D8%A7%D8%B9%D9%8A%D8%A7%D8%AA-%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%A7%D9%84%D8%AA%D9%86%D8%B8%D9%8A%D9%85-%D8%A7%D9%84%D8%B9%D9%85%D8%B1.html](https://projustice.org/ar/news_views/views/%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D8%AA%D8%AF%D8%A7%D8%B9%D9%8A%D8%A7%D8%AA-%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%A7%D9%84%D8%AA%D9%86%D8%B8%D9%8A%D9%85-%D8%A7%D9%84%D8%B9%D9%85%D8%B1.html)

<sup>24</sup> Norwegian Refugee Council, May 2016, Syrian Refugee HLP and Civil Documentation Research Project: Dataset. Quoted in: NRC BRIEFING NOTE: HOUSING LAND AND PROPERTY (HLP) IN THE SYRIAN ARAB REPUBLIC, May 2016, <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>

<sup>25</sup> Syrian Feminist Lobby, “The impossibility of return under regime rule and without activating a political transition”, p. 21, <https://drive.google.com/file/d/1BliMzZaMv1F34rwOdgQ3RGbZTQS2mtKd/view>

<sup>26</sup> Ibid. p. 20-21, <https://drive.google.com/file/d/1BliMzZaMv1F34rwOdgQ3RGbZTQS2mtKd/view>

<sup>27</sup> Women Now, Unpublished policy paper “VOLUNTARY” RETURN: Between International Law and the Experiences of Syrian Refugee Women in Lebanon.”

## Property rights and reconstruction

In this context of widespread violations of HLP rights, international actors are reluctant to engage in reconstruction in Syria due to fears of complicity in sustaining violations of international law. The official EU position is that “it will be ready to assist in the reconstruction of Syria only when a comprehensive, genuine and inclusive political transition, negotiated by the Syrian parties in the conflict on the basis of UN Security Council Resolution 2254 (2015) and the 2012 Geneva Communiqué, is firmly under way”. Nor will the EU “engage in early recovery/stabilisation efforts in any part of Syria that could support social and demographic engineering.”<sup>28</sup> In addition, the EU has imposed sanctions on those profiting from reconstruction related to demographic engineering. For example, in January 2019 it sanctioned Samer Foz and others involved in the Marota project, one of the new urban zones in Damascus that will be built on the lands of Basateen al-Razi where informal housing had been constructed over the past decades. According to the EU,

Foz and others are profiting by “supporting and benefiting from the Assad regime, including through the use of expropriated property.”<sup>29</sup>

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Still, many early recovery and rehabilitation initiatives undertaken in areas where forced displacement has taken place risk contributing to violations of HLP rights. For example, rubble removal efforts can destroy evidence such as water and electricity meters, which in informally built areas are a means to prove a person has lived there. Reconstruction efforts are problematic in a

context of systematic and large-scale forcible population transfers (which constitute an international crime) and violations of HLP rights are problematic, and implementers of humanitarian programs in areas where such violations have occurred must also take responsibility for potential impact on HLP rights and apply due diligence by ensuring that proof of rights or evidence of crimes are not damaged or destroyed.

## Lessons from other conflicts

Several countries emerging from periods of conflict or repression have developed mechanisms to deal with property disputes, return and reparations. Though outside models cannot be imported wholesale, there are nonetheless several examples that provide some relevant lessons for Syria.

- In **Bosnia and Herzegovina**, local groups of displaced people from all key ethnic communities (Bosniaks, Bosnian Serbs and Bosnian Croats) joined forces to create a federation representing a million displaced people, the Union for Sustainable Return and Integration. This Union generated political pressure to support HLP rights demands after the conflict there, lobbying local, national and international bodies. This example shows that by organising themselves, especially in large numbers, displaced persons and refugees can ensure leverage in political processes.<sup>30</sup>
- In **Palestine**, UNGA Resolution 194 of 1948 confirmed the right of return of refugees and established the UN Conciliation Commission for Palestine (UNCCP), tasked with

<sup>28</sup> Foreign Affairs Council Conclusions of 16 April 2018, <http://data.consilium.europa.eu/doc/document/ST-7956-2018-INIT/en/pdf>

<sup>29</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:32019D0087&from=EN>

<sup>30</sup> More information on the way HLP rights were addressed in Bosnia can be found in: Paul Prettitore, “The Right to Housing and Property Restitution in Bosnia and Herzegovina. A Case Study”, [http://www.badil.org/phocadownloadpap/Badil\\_docs/Working\\_Papers/WP-E-01.pdf](http://www.badil.org/phocadownloadpap/Badil_docs/Working_Papers/WP-E-01.pdf)



facilitating the repatriation, resettlement, rehabilitation and compensation of refugees.<sup>31</sup> Yet history has shown that very few Palestinians have been able to return. The main lesson from the Palestinian experience is that the longer it takes, the harder it becomes to ensure justice to victims of HLP rights violations; an especially important point given the Assad regime's strategy of playing for time.<sup>32</sup>

- In **Colombia**, around 8 million people have been displaced by paramilitary groups, guerrilla groups and the Colombian army since the mid-1960s. The 2011 Victims and Land Restitution Law aimed to allow IDPs to return to their land or to grant alternative land or financial compensation within 10 years, but eight years later only 5-6% of IDPs have retrieved their land or been compensated. Decision-makers in the capital, where most ownership is formally registered, failed to take the largely informal ownership structures in remote areas into consideration, while the vast number of cases eligible for processing under the law dwarf the system's capacity. This shows that reparation schemes must adequately address informal or collective ownership structures and be appropriately resourced.

## Tackling the issue

Syrians' HLP rights have been systematically violated since 2011, compounding violations that predated the conflict. Yet so far, the HLP crisis has been largely absent from the political process. Like the issue of detainees and missing persons, violations of HLP rights affect millions of Syrians, so addressing them in any political process and agreement is crucial. Efforts are needed by policymakers, civil society and victims to ensure the topic is on the table, and mechanisms must be developed to engage affected communities and victims in the development and implementation of measures to address violations of HLP rights.

Realistically there can be no comprehensive solution to the HLP crisis in Syria without a wide-reaching political settlement to the conflict accompanied by a meaningful transitional justice process. Without such a process, violations of HLP will remain unaddressed and create new grievances. With no resolution of the HLP crisis, IDPs and refugees will be unable to safely return and reconciliations in affected areas will be seriously hindered, preventing a sustainable peace from taking hold and making future conflict all the more likely.

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Unfortunately, the regime and its allies seem determined to consolidate their grip on power even as active conflict continues in parts of the country, and is unlikely to accept any comprehensive resolution of the HLP crisis that might challenge the demographic shifts it created and on which its control depends. Other actors responsible for HLP violations, including Turkey and various armed groups active in Syria, also continue to act with impunity and have little incentive to change their behaviour, as demonstrated by the ongoing offensives by the Syrian army and Russia in Idlib governorate, and in the north-east by the actions of Turkey and its Syrian proxies, as well as of the Kurdish-dominated Self Administration which has burned and emptied Arab-majority villages in the area.<sup>33</sup> These actions by multiple actors threaten demographic engineering with an ethnic

<sup>31</sup> More information on UNCCP can be found in Terry Rempel, "The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees", [http://badil.org/phocadownload/Badil\\_docs/bulletins-and-briefs/Brief-No.5.pdf](http://badil.org/phocadownload/Badil_docs/bulletins-and-briefs/Brief-No.5.pdf)

<sup>32</sup> *The Wisdom of Syria's Waiting Game: Foreign Policy Under the Assads*, by Bente Scheller

<sup>33</sup> <https://www.amnesty.org/en/documents/mde24/2503/2015/en/>

dimension. Interim measures must therefore be taken by the international community to safeguard HLP rights to the extent possible in this politically unfavourable context.

### Civil society, UN and other international efforts

Despite the challenges posed by this context, Syrian and international civil society organisations have been laying the groundwork for such a time when a more comprehensive resolution including transitional justice measures may be feasible. Organisations, including those that contributed to this brief, are documenting HLP violations; preserving records for use in future restitution and compensation processes; producing new knowledge and research on HLP rights to inform future policy interventions; advocating for justice and redress; educating Syrians on their HLP rights; and facilitating access to civil documentation necessary for proving property ownership. Syrian and international civil society initiatives include:

- The [Syria Justice and Accountability Center](http://syriaaccountability.org) has conducted research on ways forward for property restitution in Syria.<sup>34</sup>
- The [Syrian Legal Network](https://www.paxvoorvrede.nl/media/files/legal-obstacles-policy-brief-pax.pdf) in collaboration with [PAX](https://www.paxvoorvrede.nl) have researched the legal framework for HLP rights violations in Syria.<sup>35</sup>
- Concerted efforts by [The Day After](https://www.thedayafter.org) and the [Free Syrian Lawyers' Association](http://freesyrianlawyers.com) have preserved property records in areas currently and formerly under opposition control,<sup>36</sup> in cooperation with the League for Peace, Justice and Documentation as well as conducting research on HLP issues.<sup>37</sup>
- The independent researcher Lama Qanout has addressed HLP issues in her study on gender-sensitive transitional justice.<sup>38</sup>
- The [Syrian Legal Development Program](https://tda-sy.org) runs educational programming on human rights in the context of reconstruction efforts.
- The [Syrian Association for Citizens' Dignity](http://syrianwomenpm.org) has conducted extensive research on housing and other challenges for Syrians returning to areas under Assad regime control.<sup>39</sup>
- The [Syrian Women's Political Movement](http://syrianwomenpm.org) researches and advocates for gender transformative solutions to displacement issues, including HLP rights.<sup>40</sup>
- The [Norwegian Refugee Council](https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf) conducts research, advocacy and legal aid on HLP issues in Syria.<sup>41</sup>

The UN refugee agency UNHCR has a mandate to collect information from refugees about their property holdings for use in facilitating durable solutions in the future.<sup>42</sup> In 2017 UNHCR started to file copies of Syrian refugees' property documents in Lebanon as part of a standard procedure to update information on persons of concern, but has not been doing so in Jordan.

Palestinian refugees from Syria displaced to neighbouring countries are obliged to register with UNRWA rather than UNHCR, but UNRWA is not currently preserving their property records, either in Syria or outside. In Syria, this is because GAPAR is responsible for Palestinians' property records, preventing UNRWA from setting up a parallel system, while in neighbouring countries

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<sup>34</sup> <http://syriaaccountability.org/wp-content/uploads/Property-Restitution.pdf>

<sup>35</sup> <https://www.paxvoorvrede.nl/media/files/legal-obstacles-policy-brief-pax.pdf>

<sup>36</sup> <https://iwpr.net/global-voices/safeguarding-rights-syrian-citizens>; <http://freesyrianlawyers.com/index.php/ar/e-lawyers>

<sup>37</sup> <https://tda-sy.org/en/content/228/653/reports-&-research/problems-relating-to-property-laws-in-syria-and-the-ramifications-for-ownership-rights>

<sup>38</sup> <https://tda-sy.org/uploads/reports/pdf/IgXQrRbGpviUIVT5OuSQd3sluWi1oNZNOZog5R.pdf>

<sup>39</sup> <https://syacd.org/reports/vengeance-repression-and-fear-reality-behind-assads-promises-to-displaced-syrians/>

<sup>40</sup> <http://syrianwomenpm.org/en/articles/69-no-return-without-political-transition-feminist-roadmap-to-ensure-safe-voluntary-neutral-and-sustainable-return-of-refugees-and-idps>; <http://syrianwomenpm.org/en/articles/70-a-comprehensive-feminist-plan-for-reconstruction-in-syria-with-the-condition-of-political-transition>

<sup>41</sup> For example: <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>

<sup>42</sup> <https://emergency.unhcr.org/entry/214524/housing-land-and-property-hlp>

HLP documentation issues are not currently a priority issue for the agency. Nonetheless UNRWA's mandate does not prevent it from addressing HLP rights, as it does in the West Bank and Gaza, and it cooperates with HLP-concerned actors such as UN Habitat inside Syria.

UNHCR's role in protecting Syrian refugees' property rights by preserving their property records is a welcome first step, but further efforts through other avenues are still required because of the scale of the task (especially given UNHCR's existing functions for which it is already under-resourced), because of political sensitivities around UNHCR documenting HLP records in Lebanon and Syria, and because it excludes Palestinian refugees.

The International Organization for Migration is working to integrate due diligence on HLP rights issues into camp management practices as well as running legal assistance programming. GIZ is likewise working on HLP issues via awareness-raising, exploring alternative documentation mechanisms where formal registration deeds are missing, piloting new approaches to HLP safeguarding, and research and networking for legal experts.

## Recommendations

Urgent action is needed to safeguard Syrians' HLP rights, and delays will only further entrench the many negative consequences of their neglect, making them harder to address in future. We recommend that actors in the international community take the following steps to protect HLP rights in Syria and preserve proof of such rights. The following recommendations focus mainly on provisional measures needed urgently to safeguard and preserve HLP rights until the situation in Syria allows for a comprehensive and just solution to the problem, including through transitional justice approaches.

### Overarching principles

- All of these actions should be inclusive, gender-transformative, protective of minority rights (including but not limited to the rights of Palestinians and Kurds), and responsive to the specific issues faced by detainees.
- They should be coordinated with Syrian civil society organisations including those representing affected communities to the highest extent possible.

### Documenting, registering and preserving HLP rights

- An independent and international mechanism must be developed, preferably under the auspices of the UN, with support from the international donor community, to document property claims, collect and preserve proof of property or other HLP rights including those resulting from informal housing or attached to unregistered land and prepare for justice, including property restitution and other forms of reparations. Such a mechanism should:
  - operate independently from UN agencies present inside Syria,
  - be well publicised and widely accessible to those who need to use it,
  - benefit from the necessary funding and resources to carry out its mandate,
  - incorporate existing databases containing HLP-related information.
  - pay attention to the property rights of the missing and disappeared whose fate has not been clarified and those of their relatives, by documenting their property claims in order to ensure that their property rights are upheld until investigations into their fate are complete, in line with international standards.<sup>43</sup>
- International actors including UN agencies involved in humanitarian activities, early recovery work or any other types of operations in Syria should refrain from any action that may result in damaging proof of HLP rights or of evidence of crimes such as forcible

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<sup>43</sup> <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

population transfer. They must conduct thorough due diligence before initiating any programmes to ensure they are not sustaining or becoming complicit in international crimes. Localised strategies, consultation with affected communities, and risk analysis are essential.

- Private sector entities including international construction companies or contractors must conduct thorough due diligence to ensure they refrain from any actions that may violate HLP rights and which in some instances may amount to complicity in international crimes.

### **Coordination of efforts**

- Those actors working on HLP rights, including UN agencies, intergovernmental bodies and states, must work to improve coordination between relevant actors.
- Actors involved in HLP-related efforts should establish a working group to coordinate action, avoid duplication of efforts, and exchange information and data.

### **Participation of affected communities and awareness raising**

- Representatives of affected communities and victims of HLP rights violations must be included in the design and implementation of processes and instruments aimed at addressing HLP issues.
- Actors involved in HLP-related efforts including donors should dedicate additional time and resources to raise awareness of HLP issues amongst refugees and IDPs, assist them with obtaining documentation relating to their HLP claims, and fund relevant legal support.

### **Political Process**

- The UN Special Envoy for Syria as well as UN Member States that sponsor the Geneva peace process should ensure that addressing violations of HLP rights is included in ongoing and future talks and that HLP rights form an integral part of negotiations for any future peace process or agreement, in line with the internationally accepted Pinheiro Principles.<sup>44</sup>
- Allow the meaningful participation and consultation of affected communities including groups who have suffered from historic HLP-related injustices in talks to resolve HLP problems.
- The international community including UN Member States that sponsor the Geneva peace process should pressure the Syrian authorities to suspend the implementation of any legislation that may affect HLP rights including those of IDPs, refugees, former detainees, the disappeared or the missing.

### **Accountability**

- National and international bodies involved in accountability efforts for serious crimes and human rights abuses committed in Syria such as the International, Impartial and Independent Mechanism (IIIM) and the UN Commission of Inquiry on Syria should collect evidence on and investigate (or continue to do so) any crimes such as forcible transfer of populations or persecution whose commission may be connected to violations of HLP rights.

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<sup>44</sup> <https://www.unhcr.org/uk/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>

### **Support efforts by Syrian civil society**

- International actors involved in HLP matters should better coordinate their work with Syrian civil society organisations and improve information and knowledge sharing to ensure fair and two-directional cooperation.
- Donors should increase financial and knowledge support to Syrian civil society organisations working on HLP rights, including those working on documentation, awareness-raising, advocacy and legal counselling.

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