



8 February 2021



Discriminatory Real estate policies against Syrian Kurds

Discriminatory Real Estate Policies Against Syrian Kurds

*The importance of abolishing all legislations which deprived Syrian
Kurds from their right to property*

Introduction

Several laws, legislative decrees, executive instructions, and circulars have been issued over the past decades to regulate issues of ownership in Syria's border areas.¹ Each of these legislations required Syrian citizens to obtain license/security clearance/permits if they wanted to purchase real estate in specified regions.²

While these legislations are themselves flawed in multiple ways we will discuss in this report, importantly, they have been criticized for not adopting clear and indiscriminate standards of implementation. These laws distinguish between one Syrian region and another and, practically, are enforced differently from one person to the next. Recognizing this flaw in implementation, some might suggest that the solution for these legislations is to indiscriminately implement them across all Syrians, regardless of regional, personal, or factional distinctions. However, we discuss in this report that even if the laws were equitably applied to all Syrians, they would not be just. With the unfair implementation of these legislations, the government exacerbated social fractures on the basis of national and area-based discrimination for decades. This report describes how these real estate legislations primarily affected Syria's Kurdish population, and in doing so, contributed to a discriminatory system which led to feelings of oppression among Syria's Kurds.

In the following paper, we will provide an overview of the legislations in question, their purpose, their legality, their practical application, and how successive governments used them exclusively against the Kurds. Afterwards, we will offer recommendations on how to address their negative impacts and prevent similar discriminatory policies in the future.

1. A brief overview of the legislation issued to regulate ownership in border areas and the agenda behind them

The first decree that put restrictions on the constitutional right to own property is Legislative Decree No. 193 of 1952, which stipulated obtaining a license to buy or sell a property in border areas. However, the same decree excluded estates within the town's zoning plan under Communication No. 55 on 21 May 1952³ and stated that the border areas

¹ Legislations' names differ depending on the level of the entity that issues them; there is a hierarchical system, a legislation cannot contradict another passed by a higher level. Laws are issued by the People's Assembly, Legislative Decrees are passed by the President of the Republic in special cases and have the rank of laws, while the executive instructions are issued by a relevant minister to clarify the mechanisms for implementing a law, and the circulars are often issued by an administrative body to direct and guide its employees.

² The license/security clearance/permit is an approval granted by security authorities to a Syrian citizen to allow him/her own an estate in the areas covered by the mentioned legislation. This permit is totally different from the building permit that the municipalities grant to the owner or the contractor to allow him/her to construction.

³ A general zoning plan should be put in place that clarifies the future vision for the residential community and its expansion by determining the urban boundaries, main road network and all uses of the land within it. While the detailed zoning plan is based on the zoning program, it specifies all the details for the main and secondary road networks, pedestrian pathways, public spaces, and other details for development of lands according to

affected by the restrictions would later be better defined by a decree at the suggestion of the Minister of Justice, upon approval by the Minister of National Defense⁴.

Consequently, in 1956 the government passed Decree No. 2028 which identified the specified border areas as the Quneitra area and the entire al-Zwayia area,⁵ as well as areas adjacent to the Turkish border to a depth of 25 km, starting from Latakia passing through Idlib, including the entire Jisr al-Shughur city, down to the last Syrian frontier in the province of al-Hasakah.

Later in 1964, after the Arab Socialist Ba'ath Party assumed power in a coup on 8 March 1963, the government issued Decree No. 1360 which, besides affirming what was already written in Decree No. 2028, added the whole locality of al-Hasakah and other towns to the defined border areas.⁶

While we may understand the definition of the entire province of Qunaitra as a border area given its proximity to Israel, there is no reason to justify the designation of the entire al-Hasakah region, which has an area of 23.000 km, as a border area – except its Kurdish-majority population.

Syria's border areas in general, and those inhabited by the Kurds in particular, are agricultural, which means that most of the land should be outside zoning plans which require restrictions. However, in practice, after being designated as border areas, people were obliged by all ownership regulation decrees issued to have the licensing for the transactions of buying and selling unbuilt estates inside or outside the zoning plan.

2. Discrimination in giving licenses

In practice, it was extremely difficult for the average Syrian Kurdish citizen to obtain a license if he/she wanted to own unbuilt real estate within the zoning plan, presumably because of the government's dissatisfaction with the presence of the Kurds and thus its attempt to push them out of the area. However, some Kurds tried to adapt and manage under these restrictions. For example, the buyer and seller would organize a contract between them, send the application to the relevant court, place an encumbrance of

their decreed usage. For more info see: Legislative Decree No. 5 for 1982, known as the 'Urban Planning Law', website of the Syrian Parliament, <http://www.parliament.gov.sy/arabic/index.php?node=5588&cat=6590> (last visited: 7 February 2021).

⁴ Rule 1 of the mentioned Decree prohibits the building, transferring or amending of the land located in the border areas. This includes leasing, joint ventures or contracting for agricultural investment for longer than three years, without first obtaining a license. To read the full text please see: http://www.welateme.net/erebi/modules.php?name=News&file=article&sid=4539#.X2kgGj_is2w (last visited: 7 February 2021).

⁵ The source mentioned the area's name as al-Zawya area, but we expect a typo, meaning that the area is Jabal al-Zawiya in Idlib.

⁶ Rabhan Ramadan: "Decree No. 49 of 2008, restriction on ownership or protection of it", al-Noor website, <http://www.alnoor.se/article.asp?id=34847> (last visited: 7 February 2021).

equitable lien upon the cadastral certificate,⁷ then have the buyer confirm the ownership transfer to the seller before the court. This way was used to preserve the seller's right to invest in or sell the property based on the judicial recognition they received. Despite the risks of this method, buying and selling continued in this way under legislative restrictions.

In November 2020, Syrians for Truth and Justice met a Kurdish lawyer who dealt with real estate sale cases in this period, and she confirmed that only estates included in the zoning plan could be sold under a confirmation of transferring ownership from the seller to buyer before the court, followed by the placement of an encumbrance of equitable lien upon the cadastral certificate to preserve the rights of both parties.

The lawyer added that there used to be supplementary procedures to this transaction up to the point of obtaining an outright sale contract, which can guarantee all the rights of the buyer and ensure the termination of any appeals from the litigant (the second party). She explained:

“The Kurds concentrate in border areas which are mostly agricultural. It was impossible for the Kurds to buy or sell any estate outside the zoning plan for their inability to obtain the license. Even if the seller made a confirmation before the court and the buyer got an outright sale contract, the case used to be dismissed, for the lack of a license, and consequently written off like it never existed. Failure to obtain a court decision while holding an outright contract was problematic for the seller and the buyer.”

In the same context, the lawyer recounted an anecdote saying:

“An Arab colleague was assigned once to a real estate case by an Arab client from Ad Darbasiyah town in al-Hasakah, so he applied for the license fairly certain that he would obtain it since he and his client are Arabs. However, the shock was that the application was rejected and when the lawyer looked into the reason, he found that it was the client's name, Hamo, which is a common Kurdish name.”

Things remained this way until 2004, when the government passed Law No. 41 which dropped the requirement of the license⁸ for transactions related to built and unbuilt real estate within the zoning plan.⁹ This created some breakthrough in the real estate market and gave grounds for some optimism among the Kurds in al-Hasakah and in other border areas, creating a hope to further advances, like shrinking the area of the defined border areas or abolishing the unjust law in its entirety.

⁷ Placing an encumbrance of equitable lien upon the cadastral certificate in the real estate registry is an important and necessary procedure for preserving the right of the seller who first applied for it, and the failure to place it leads to the case being dismissed on procedural grounds, in accordance with Article 9 of Resolution 188 of 1926. (the absence of the encumbrance of equitable lien means that someone may claim a right in this property).

⁸ Articles 1 and 2 of Law 41 of 2004 published on the website of the Syrian Parliament.

⁹ The text of Law No. 41 of 2004 amended by Decree No. 49 of 2008, website of the Syrian Parliament, <http://parliament.gov.sy/arabic/index.php?node=5595&cat=16133> (last visited: 7 February 2021).

Consequently, the population and opponents of the legislation were shocked in 2008 when law No. 41 was amended by Decree No. 49, which again stipulated licenses for the registration of ownership of built and unbuilt estates in and out the zoning plan and also for the placement of an encumbrance of equitable lien upon the cadastral certificate. The new decree also prohibited the registration of any real estate action in rem if not attached to a license,¹⁰ and ordered the courts to dismiss all the cases awaiting decisions if not containing licenses.¹¹

The lawyer said that Decree No. 49 of 2008, paralyzed the real estate market in al-Hasakah, as it made it absolutely impossible for the Kurds to obtain the license. That led some of the Kurds who wanted to buy an estate to submit for license on names of their Arab acquaintance, who could easily get them, in order to complete the official procedures, then the two parties were to make a contract between them.

The lawyer said that Decree No. 49 paralyzed the real estate market in al-Hasakah, as it made it impossible for Kurds to obtain licenses. This led some of the Kurds who wanted to buy an estate to apply for a license under the names of their Arab acquaintances, who could easily obtain licenses, in order to complete the official procedures, then the two parties were to make a contract between them.

The lawyer added: "Even the simplest procedures, like transferring a property ownership, required a license."

However, less than three years after passing the decree, in March 2011, the Syrian people rose up against the regime and took to the streets in almost all of Syria. Then, the Syrian government considered that it could win the Kurdish people to its side or at least neutralize them from what was happening if it addressed some discriminatory policies. So, it issued Decree No. 49 which regranted the Syrian nationality to hundreds of thousands of Kurds who were stripped of it by the special census of 1962. Furthermore, on 24 March 2011, the aforementioned decree was amended by Decree No. 43 which dropped the condition of obtaining a license for the ownership of the estates within the zoning plan but not of those outside it¹².

¹⁰ Real estate action in rem is based on a real encumbrance and seeks to preserve it, whether it is principal or consequential, such as a claim of ownership, beneficial right, easement right and pledging of real estate. For further info see Article 85 and following of the Syrian Civil Code issued by the decree Legislative No. 84 of 1949.

¹¹ Law No. 41 of 2004.

¹² Ibid.

3. The practical application of the addressed legislations

According to Decree No. 193 of 1952, the real estate action in rem¹³, can be registered at the relevant court and the buyer can place an encumbrance of equitable lien upon the cadastral certificate and the court in turn can decide on the merits. Here, if the court recognized the validity of the act of sale and affirmed the right of the buyer to the property, the case forwarded to the real estate registry requires a license to register the estate in the buyer's name. This was what had been stipulated in Article 4 of Decree No. 41 in 2004, but on the ground, courts normally dismissed the case after the seller's confirmation about the transfer of ownership to the buyer before the court.

These procedures were applied to transactions of estates outside the zoning plan, in accordance with the aforementioned Communication No. 55 of 1952. Then, the cases of estates inside the zoning plan did not need a license to be decided; their only requirement was the inspection of the estate by an engineer sent from the court to make sure it was built and located inside the zoning plan.

Matters remained this way until the issuance of Law No. 41 in 2004, which made only a modest step forward in allowing the courts to accept the sale cases of unbuilt estates inside the zoning plan and to decide them without licensing.

However, Law No. 41 was amended by Decree No. 49 of 2008, which ceased all the sales and purchases of built or unbuilt real estate both within and outside the zoning plan, as this decree required the courts not to register any real estate action in rem if not attached with a license. That made it impossible to place an encumbrance of equitable lien upon the cadastral certificate, which preserves the right of the seller to the property, as confirmed by Article 9 of Resolution No. 188 of 1926.

Besides, Decree No. 49 became effective from the very date of its issuance when the courts were told to dismiss all real estate cases which did not fulfil its requirements.

The real estate market at the border areas remained paralyzed until the issuance of Decree No. 43 in March 2011, which dropped the license requirement to the sale cases related to estates inside the zoning plan; as was the case under Law No. 41 before being amended in 2008.

In all the cases and stages we mentioned above, it was almost impossible for the Syrian Kurdish citizen to obtain a license, while those from other nations could get a license by routinely simple procedures and carry out their business and investments normally.

¹³ It is the lawsuit that focuses on matters related to the property itself like the ownership or easement rights. It is different from the personal real estate lawsuits which target people, as it may be filed against someone who seized the property unlawfully, or by the owner against the tenant for example.

4. Methodology of the implementation of real estate policies and their effects

Successive Syrian governments have tended to restrict the Kurds in all walks of life and followed systematic policies to do so. The most unjust of these policies was the special census of 1962¹⁴, which deprived many of the Kurds of their Syrian nationality, rendering them stateless. Oppressive laws followed one another, especially in the area of real estate ownership, as a major decision was made in the third Regional Congress of the Arab Ba'ath Party in 1966, which provided in the fifth paragraph of its recommendations: "considering the lands at the Syria-Turkey border, with a length of 350 km and 10 to 15 km depth, the property of the state, and implement investment regulations there, in a manner that ensures Syria' security." Thus, 5250 km² of land to the north of the fertile Jazira region was seized by the government with the aim to establish model farms and house Arab Syrians in them, as a part of a bigger plan to change the demographics of the area by suppressing the Kurdish existence and identity¹⁵.

These exclusionary politics deprived many Kurds of their right to own land, especially agricultural land, whose ownership procedures always required a license – since it was located outside the zoning plan – which was impossible for the Kurds to obtain. The fact that Syria is a rich agricultural area, especially the Jazira region, as well as those areas adjacent to the Syria-Turkey border, made the inability to own agricultural land a source of great difficulty for the people living there who could not use agriculture as a source of revenue. Therefore, some Kurds sought alternative solutions to own agricultural land through the conclusion of a personal contract between the buyer and the seller based on trust between the two parties. But, with the passage of time and the hike in real estate prices, the contractors went into disputes in which the stronger was always the seller since the property was registered in his/her name in the official records. Consequently, many Kurds refrained from buying real estate in those areas due to the impossibility of obtaining licenses and the subsequent inability to register ownership in the official real estate registry. This led to a stalemate in the real estate market and thus to economic stagnation in those areas.

Furthermore, these restrictions ceased construction projects in the area, especially inside the zoning plan, which led to a reduction in related industries like blocks, building materials, plumbing and electrical wiring industries, resulting in the lack of demand for manpower and scarcity of real estate transactions and law cases. Consequently, the economic and trade movement in these areas was almost paralyzed, thereby prompting many of the area's residents to migrate internally or externally. By this, the plan proposed by the Political

¹⁴ For more info see: "Syrian Citizenship Disappeared", STJ, 15 September 2018, <https://stj-sy.org/en/745/> (last visited: 7 February 2021).

¹⁵ "Deprivation of Existence: The Use of Disguised Legalization as a Policy to Seize Property by Successive Governments of Syria", STJ, 9 October 2020, <https://stj-sy.org/en/deprivation-of-existence-the-use-of-disguised-legalization-as-a-policy-to-seize-property-by-successive-governments-of-syria/> (last visited: 7 February 2021).

Security Lieutenant Muhammad Talib Hilal, which was adopted by the Ba'ath Party (leader of the state and society according to Article 8 of the 1973 Constitution) who embodied it in the so called 'Arab Belt' project, was achieved¹⁶.

5. Legality of those legislations

What was stated in aforementioned laws and decrees contradicts the right to property laid down in all of the successive Syrian constitutions. Those legislations considered that the negative reply of the minister responsible for issuing licenses was unequivocal and is not subject to revision. This contradicts what is provided in the Syrian constitutions which say that administrative decisions are not immune and allow the citizen to contest the decision before a competent court. This procedure course insults the judiciary and violates the principle of separation of powers, as the ownership issues must be decided by the competent judicial authority rather than the executive authority represented by the Minister of Interior.

In addition, the discriminatory policy followed in applying these legislations violates the principle of equality among citizens stipulated in the successive Syrian constitutions¹⁷, and international covenants and instruments¹⁸.

What was stated in Decree No. 49 of 2008, and was not amended by Decree No. 43 of 2011, regarding the prohibition of courts from registering in rem actions of real estate outside the zoning plan, placing an encumbrance of equitable lien upon the cadastral certificate, and dismissing cases presented to them not attached with licenses, constitutes blatant interference from the executive authority in the functions of the judicial authority. Additionally, the dismissal of existing actions constitutes a direct contravention of the principle of non-retroactivity of laws stipulated in successive constitutions and Syrian laws¹⁹, as well as to the legal norm known as acquired rights. These discriminatory legislations even dismissed sale cases registered at the courts before the issuance of Decree No. 49 for being not licensed.

The suspension of the execution of judicial decisions of cases of real estate covered by Decree No. 193 and Law No. 41 for not attaching a license constitutes a flagrant violation of the principle of the sanctity of judicial decisions. Therefore, public interest litigation should be filed against those who do not implement these rulings and decisions for infringing upon judicial decisions, in accordance with the provisions of Article No. 361 of the Syrian Penal Code.

¹⁶ Ibid.

¹⁷ Article 7 of the 1950 Constitution, Article 25 of the 1973 Constitution, and Article 19 of the 2012 Constitution.

¹⁸ The International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1 and 7 of the Universal Declaration of Human Rights of 1948, Articles 2 and 3 of the International Covenant on Civil and Political Rights of 1966 and many other international covenants and instruments.

¹⁹ Article 52 of the Syrian Constitution of 2012.

This unlawful interference from the executive authority, particularly the Minister of Interior, in the work of the court contravenes what was stipulated in Article 1 of the basic principles relating to the independence of the judiciary issued by the United Nations General Assembly of 1985 under Resolutions 40/32 and 40/146. These resolutions stipulate that the independence of the judiciary shall be guaranteed by the State and that the judiciary shall have jurisdiction over all issues of a judicial nature and there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. Moreover, what was provided in the aforementioned legislation about the inadmissibility of filing grievance or appeal against the negative decisions of the Minister of Interior contradicts the principle of the sanctity of the right to defense, which is considered a sacred human right as it constitutes the basic pillar of a fair trial – one of the most important criteria for a state governed by laws. This right was stipulated in Article 51 of the Syrian Constitution itself, as well as in several international covenants and instruments²⁰.

6. Conclusion and recommendations

Beyond the increased unemployment and the economic recession they caused, the addressed legislations had disastrous effects on the social fabric in Syria's border regions, demonstrated in hostility, malice, and spite among the components of the area's population. The government's discrimination in granting licenses and thus denying certain people of estate ownership stripped people's very sense of belonging to Syria, driving some to migrate in hope of a better life.

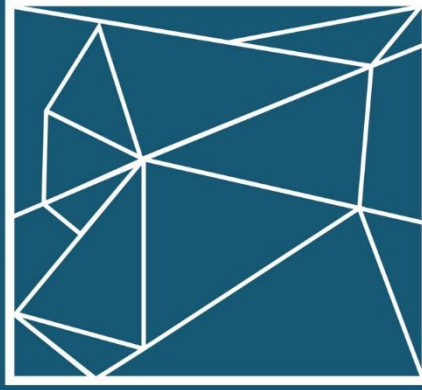
Therefore, it is necessary to search for solutions that could contribute to limiting the issuance of such legislations, and deal with the effects of those already issued. We recommend to:

1. Repeal Law No. 41 of 2004 and its amendments (Decrees No. 43 and No. 49) and address their negative effects as much as possible. That can be achieved if the transitional governing body, which is supposed to lead the country in the transitional phase that will follow the achieve of the anticipated political solution, passes a new law which overturns all of its predecessors
2. Stop promulgating such laws that contradict international instruments and conventions as well as the Syrian Constitution. That will not be achieved unless a constitutional court is found to examine the constitutionality of laws. As of now, the Supreme Constitutional Court is unable to carry out this task because its judges are named by the head of State (the executive power), so the function is therefore in the mandate of members of the Constitutional Commission established under the auspices of the United Nations.

²⁰ See Article 11 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the 1950 European Convention on Human Rights, Article 8 of the American Convention on Human Rights of 1969, and Article 7 Of the African Charter on Human and Peoples' Rights of 1981, and Article 13 of the 2004 Arab Charter on Human Rights.

3. To define the depth of the border areas (10 or 15 km for example) covered by the legislations of regulating ownership, if it is inevitable to issue them, and monitor discrimination in their designation.
4. Assign the task of issuing licenses to the governor of the governorate to which the property belongs and make his decision subject to appeal before a competent court, since the judiciary is the only entity which can guarantee people's rights, including the right to property.
5. Strengthen the independence of the judiciary and promote the principle of separation of the three powers (legislature, executive and judiciary), as well as limiting the role and dominance of the executive authority over the judiciary, which should be enshrined in the new Constitution to be written for Syria.
1. Strengthen the independence of the judiciary and promote the principle of separation of the three powers (legislature, executive and judiciary), as well as limiting the role and dominance of the executive authority over the judiciary, which should be enshrined in the new Constitution to be written for the new Syria.

سوريون
من أجل
الحقيقة
والعدالة
Syrians
For Truth
& Justice



History

Syrians for Truth and Justice was conceived during the participation of its co-founder in the Middle-East Partnership Initiative (MEPI) Leaders for Democracy Fellowship program, who was driven by a will to contribute to Syria's future. Starting as a humble project to tell the stories of Syrians experiencing enforced disappearances and torture, it grew into an established organisation committed to unveiling human rights violations of all sorts.

Convinced that the diversity that has historically defined Syria is a wealth, our team of researchers and volunteers works with dedication at uncovering human rights violations committed in Syria, in order to promote inclusiveness and ensure that all Syrians are represented, and their rights fulfilled.

-
- 🌐 www.stj-sy.org
 - 📘 [syriaSTJ](https://www.facebook.com/syriaSTJ)
 - 🐦 [@STJ_SYRIA_ENG](https://twitter.com/STJ_SYRIA_ENG)
 - 📷 [Syrians for Truth & Justice](https://www.instagram.com/Syrians_for_Truth_Justice)
 - ✉ editor@stj-sy.org