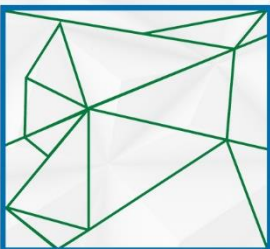


# A Reading of the Real Estate Documents Restoration Law No. 33 of 2017



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**A Reading of the Real Estate Documents Restoration Law No. 33 of 2017**

*Law No.33 threatens to further jeopardize property rights in Syria, already undermined by the ongoing armed conflict*

Ongoing hostilities in Syria continue to present Syrians with massive challenges, threatening to inflict irreparable harm to their rights. Military activities have targeted several real estate departments across Syria. Consequently, their archived property records and documents have been lost, partially damaged, or destroyed. Simultaneously, many Syrians have suffered losses or damage to their title deeds and other ownership documents during shelling in their areas or while fleeing combat.

The loss or damage of property documents is becoming a pressing challenge that looms large on property rights in Syria—especially since the Syrian real estate laws pre-dating the conflict remain incapable of addressing conflict-induced issues.

Attempting to remedy the legal shortfall, Syrian President Bashar al-Assad issued [Law No. 33](#) on 23 November 2017. The law regulates the restoration of lost or partially or fully destroyed real estate records. However, at odds with its declared purposes, the law threatens to worsen the situation. To legal experts, the law appears ineffective because several of its articles are ambiguous and grant stakeholders and claimants only tight deadlines to object against or appeal court decisions while bestowing on the executive authorities broad powers.

In this report, Syrians for Truth and Justice (STJ) defines some recurrent real estate-related terms based on their usage within the Syrian context, explains the term “restoration of real estate documents”, and investigates some of the problems inherent to Law No. 33 of 2017.

## Common Real Estate Terms

### ➤ *Al-Sijil al-‘Aqari* (Cadaster)

The cadaster is the collection of documents stating the characteristics of every property, its legal status—whether it is *Mulk* (owned) or *Amiri* (state-owned), the rights and obligations stemming from it, and the transactions and amendments related to it.<sup>1</sup>

### ➤ *Components of the Cadaster*

The cadaster comprises of a set of records and documents, each attesting to a specific type of real estate transaction. The collection includes the property record and its complementary documents—the journal, boundary marking and registering reports, survey maps, aerial imagery, survey charts, documentary proofs presented by holders of the real right (or right in rem), betterment records, and related maps.<sup>2</sup> Notably, the loss of any of these documents threatens the status of the holders’ right.

### ➤ *Registration in the Cadaster*

In Syria, the cadastral system is called *al-Shahr al-‘Aqari*, which derives its function from the Arabic verbs *ishhar* and *‘elan* (making public). This system has been in force since 1926. Through the cadaster, the government makes information related to property accessible to the public. Properties are registered in the cadaster of the area they lie in and in keeping with these areas’ corresponding numbers.

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<sup>1</sup> Article 1 of Resolution No. 188 of 1926—the Law of Cadaster and its amendments (In Arabic).

<http://parliament.gov.sy/arabic/index.php?node=5588&cat=16256>

<sup>2</sup> Ibid.

Notably, Resolution No. 188 of 1926, subsequent to the Law of Cadaster, states that only properties that underwent boundary marking and registration can be registered in the cadaster, tagged with the same numbers they were given by the survey department that carried out the boundary marking and registration.<sup>3</sup>

Upon registration, every property is given a *Sahifeh 'Aqariyeh* (cadastral certificate) in the property record. The certificate documents all the property-related rights and obligations that must be made public. Additionally, the certificate exhibits the property's description and its legal characterization.<sup>4</sup> Under this cadastral system, an interested person does not have to know the property owner's name to obtain information about the status of the property. Access to this information requires only the number of the property and its location.

### ➤ The Function of the Cadastral Certificate

The [1949 Syrian Civil Code](#) defines the owner of the property as the person registered in the cadastral certificate. This is an essential highlight because the cadastral certificate is the only means through which a real right is transferrable. A real right is open to transfer only through registration in the cadaster, whereby registration functions as evidence of ownership. Therefore, placing a sale lien on the certificate under an irrevocable power of attorney (POA) does not transfer ownership to the person whose name the POA holds,<sup>5</sup> and the property remains owned by the person under whose name it was registered. Other than the transfer of the real right, creditors can exercise their full rights over this property, including exercising the right to distrain, or seize someone's property to obtain payment of rent or other money owed. In other words, a sale contract or irrevocable POA does not function as proof of the buyer's ownership of property shares but rather as a document obligating the seller to transfer the ownership of these shares to the buyer's name in the cadaster.

## Methods of Proving Ownership

Because the loss or damage of real estate documents has serious repercussions for owners and their entitlements over the properties they own, the Syrian government had to come up with a solution— albeit in theory. The government issued Law No. 33 of 2017, which provides for the restoration of records through two types of procedures:<sup>6</sup>

1. The administrative procedure: The law entitles the General Directorate of Real Estate Interests to restore the damaged cadastral certificate should it have the necessary documents. This measure is the subject matter of this report.
2. The judicial procedure: The law warrants this measure when the first is infeasible because necessary documents are lacking. In this case, property owners resort to the judiciary. They submit documents proving their ownership to the court, which works to restore lost records.

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<sup>3</sup> Article 5 of Resolution No. 188 of 1926.

<sup>4</sup> Exceptions apply to the cases in Article 23 of [Resolution No. 189 of 1926](#)—the executive list of the Law of Cadaster.

<sup>5</sup> Article 825 (a) of the Syrian Civil Code of 1949 states that “Real rights are acquired and transferred by registration in the cadaster.”

<sup>6</sup> Article 3 (a) of Law No. 33 of 2017.

“The Ministry of Local Administration Issues the Executive Instructions for the Law of Real Estate Documents Restoration” (in Arabic), the Ministry of Local Administration and Environment, 25 March 2018 (Last visited: 1 January 2023).

<http://www.mola.gov.sy/mola/index.php/plans-and-laws-4/item/6374-2018-03-25-08-24-49>

## What is Administrative Restoration?

The need to prove property ownership is frequent and necessary during times of war. Owners might decide to dispose of their properties or even transfer ownership rights to others. In this case, owners must possess evidence that they own the property, such as a title deed or a copy of the cadastral extract.

If an owner loses his/her property record for whatever reason, Law No. 33 enables him/her to restore the record administratively should the documents available at the General Directorate of Real Estate Interests be sufficient.

Sufficient documents include any of the materials listed in Article 1 of [Resolution No. 188](#) and Article 13 of [Resolution No. 189](#) of 1926.<sup>7</sup> All these materials have the same probative power the original record possesses, even though the lost or damaged record is the culmination of operations of boundary marking and registration initiated under [Resolution No. 186 of 1926](#). These operations are tedious, demanding, governed by technical due process, carried out by several engineers, and include the compilation of testimonies from neighbors and owners of rights, among other measures.

As they provide inputs for the property record, boundary marking and registration operations result in a wide range of documents that possess sufficient evidentiary power. These documents include the registration record, journal, boundary marking and registration reports, survey maps, aerial imagery, survey charts, technical and dual survey charts, and others.<sup>8</sup>

Lost or partially or fully destroyed records can be restored through any of the above-listed documents, especially the plan of the location of the property the technical teams establish before they write down the boundary marking and registration reports. The plan is an essential probative and restorative element because its design involves extensive verification measures. Notably, the ability to rebuild lost or destroyed documents based on other available documents is the essence of the administrative restoration procedure warranted by Article 3(a) of Law No. 33.

Owners can use other materials deemed as having a similar evidentiary power, including digital images and microfilms archived by the concerned Directorate of Real Estate Interests and the Central Cadastral Directorate at the Directorate General.<sup>9</sup>

## The Defects of Law No. 33

### ➤ Vague Articles

One of the law's flaws is that it does not list the procedural measures of restoration. The law does not mention whether the competent department can conduct administrative restoration at the request of the stakeholders. Unlike Resolution No. 186 of 1926, which Article 16 details the proceedings stakeholders must initiate to start property boundary marking and registration operations, Law No. 33 neglects to list the measures stakeholders must observe, including whether they have to submit a restoration request.

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<sup>7</sup> Article 2 of Law No. 33 of 2017.

<sup>8</sup> "The Ministry of Local Administration Issues the Executive Instructions for the Law of Real Estate Documents Restoration" (in Arabic), the Ministry of Local Administration and Environment, 25 March 2018 (Last visited: 1 January 2023).

<http://www.mola.gov.sy/mola/index.php/plans-and-laws-4/item/6374-2018-03-25-08-24-49>

<sup>9</sup> Article 2(b) of Law No. 33 of 2017.



Beyond the procedural gap, the text of Law No. 33 remains highly generic, overly broad, and obscure. It provides for a comprehensive restoration process of all documents lost or destroyed in a real estate zone, which is the registered location of numerous properties. Several such areas exist across Syria which were beset by the loss of cadastral documents.

Impreciseness and ambiguity are significant issues in the law. To put this vagueness into perspective, legal researchers with STJ analyzed Article 9. The article prescribes that everyone with a right registered in the cadaster is entitled to “file a lawsuit before the ordinary courts within five years from the date the decision of the real estate judge has become final to claim the real property and within fifteen years to claim material compensation.”

The article, however, does not specify the beginning date of the compensation interval. It remains unclear whether the duration starts only after the period for claiming the real property is due—making the overall period for claiming the property and compensation 20 years, or after the decision of the judge has been final—making the overall period 15 years.

Additionally, the article does not define the nature of intervals granted for claiming the property or compensation, whether lapse or limitation periods. Should they be lapse periods, the right holder cannot claim the right once the designated periods have expired, regardless of whether he/she has reasons or impediments that may require suspension or discontinuation of court proceedings. By contrast, should the interval be of limitation, it then would be subject to the provisions of suspension and discontinuation, which usually apply to the statute of limitations if available.<sup>10</sup>

Notably, this distinction is necessary because it establishes the obligations of the court and claimant regarding the proceedings of the claim. Lapse periods fall under public order and thus make the court responsible. In other words, the judge decides on the case even if claimants do not act themselves. However, limitation periods are not part of the public order; therefore, the responsibility is that of the claimant, not the court.<sup>11</sup> Claimants themselves should urge the court to decide on the case.

### ➤ **Broad Powers Granted to Executive Authorities**

Article 4 of Law No. 33 stipulates that the commencement of “restoration” is due to a decision from the relevant minister, which the minister makes based on a proposal from the General Directorate of Real Estate Interests.

Before filing a restoration proposal, the concerned directorate of real estate interests must prepare a memo about the damaged or lost real estate documents attached to the reports corroborating the loss or damage. The note identifies the real estate areas where the

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<sup>10</sup> For additional details, see Articles 379, 380, 381, and 382 of the Syrian Civil Code of 1949.

<sup>11</sup> “What Is the Difference between Lapse and Limitation Periods?” (in Arabic). Mohama.net, 21 January 2017 (Last visited: 3 January 2023).

<https://www.mohamah.net/law/%d9%85%d8%a7-%d8%a7%d9%84%d9%81%d8%b1%d9%82-%d8%a8%d9%8a%d9%86-%d9%85%d8%af%d8%af-%d8%a7%d9%84%d8%aa%d9%82%d8%a7%d8%af%d9%85-%d9%88%d9%85%d8%af%d8%af-%d8%a7%d9%84%d8%b3%d9%82%d9%88%d8%b7%d8%9f/>

restoration of documents would be conducted, the type of documents to be restored, and the activities the restoration would involve.<sup>12</sup>

The Director General of Real Estate Interests then assesses the memo, checking whether it is sufficient and complies with the law. Should the memo be convenient, the Director General submits a proposal to the Minister of Justice to issue the commencement decision.<sup>13</sup>

By assigning the assessment to the Director General of Real Estate Interests, the legislator places the power of decision-making on a vital issue in the hands of the executive authority, which the directorate represents. Consequently, this dynamic puts the fate of property owners and their rights at the mercy of the executive authority's interpretation of the law and, by extension, the security services, with which the directorate maintains tight ties. Under such an affiliation, the restoration measure is no longer a manifestation of justice but rather a politicized conduit subject to the whims and agendas of the security services.

Notably, the Syrian government has turned the flexibility of interpretation and its influence on the evaluation of the restoration memo into a punitive tool. The government has used the restoration measure against residents who held anti-government sentiments in areas armed opposition groups controlled in previous years.<sup>14</sup>

### ➤ A Tight Objection Deadline

Law No. 33 provides for posting the decision for commencing restoration at least two months before restoration is initiated, purportedly to ensure that stakeholders are informed. The decision must be published in the Official Gazette and three other local newspapers. Additionally, the law mandates that the decision be communicated to the Provincial Directorate, which channels it to the administrative authorities and circulates it within the administrative areas that include the affected real estate areas.<sup>15</sup>

The decision must reach other parties including remaining public departments, district directors, and *mukhtars* (neighborhood governors).

Under the executive instructions of Law No. 33, the decision for starting the restoration of destroyed real estate documents must be published in the Official Gazette and three local newspapers and notified to all departments in the province, area, and district. Furthermore, the administrative restoration decision must be displayed in the lobbies of the Provincial Directorate and the competent department while published in the Official Gazette. This display amounts to a personal notification to stakeholders.

The law stresses that restoration-related decisions are subject to appeal before the Court of First Instance in the area where the property is located within 15 days, starting on the day following the publication date. The period is challenging to stakeholders given the publication

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<sup>12</sup> "The Ministry of Local Administration Issues the Executive Instructions for the Law of Real Estate Documents Restoration" (in Arabic), the Ministry of Local Administration and Environment, 25 March 2018 (Last visited: 1 January 2023).

<http://www.mola.gov.sy/mola/index.php/plans-and-laws-4/item/6374-2018-03-25-08-24-49>

<sup>13</sup> Ibid.

<sup>14</sup> "Syria: Urban Scheme for Jobar – a New Attempt to Seize Residents' Properties Based on Legislative Decree No.5", STJ, 1 September 2022 (Last visited: 4 January 2023). <https://stj-sy.org/en/syria-urban-scheme-for-jobar-a-new-attempt-to-seize-residents-properties-based-on-legislative-decree-no-5/>

<sup>15</sup> Article 4 of Law No. 33 of 2017.

conduits the law stipulates. Law No. 33 does not incorporate any up-to-date information dissemination channels. Article 4 of the law states that the publication of the decision shall adhere to the procedures and notification methods stipulated in Article 7 of Resolution No. 186 of 1926—measures the government set up nearly a century ago.

To ensure necessary outreach, Law No. 33 should have incorporated widely used technological applications and stipulated the establishment of a website for the Directorate General of Real Estate Interests. The website would post property-related laws, decisions, and executive instructions, including Law No. 33 and the restoration decisions.

Additionally, the law should have assigned a website or an email address to courts and made it available to licensed lawyers. Through this email, lawyers could file objections from concerned persons against the decisions of the General Directorate of Real Estate Interests.

Moreover, the law should have legitimized the POAs lawyers receive from concerned persons via email instead of obliging citizens who are internally displaced (IDPs), immigrants, or expatriates to refer to the Syrian consulates to initiate POAs in person. Virtually initiated POAs could spare citizens the burdens and risks of resorting to government departments.

For all practical purposes, justice demands that laws grant citizens sufficient time and allow them to virtually initiate all types of mandatory POAs and legal transactions. Additionally, justice necessitates that the government repeals decisions and circulars that oblige stakeholders to get security approvals to obtain the POAs crucial for processing many of their affairs, including property-related ones.

In addition to the limitations in the information dissemination system, which threaten to keep a large number of stakeholders uninformed of critical decisions, the law further jeopardizes the rights of property owners by presenting them with a short interval to protest the decision. The objection interval does not consider the challenging circumstances of IDP, immigrant, and expatriate property owners. Therefore, the law must provide a more considerate objection period.

Additionally, the law does not clearly address “third-party opposition,” which remains essential, especially following restoration decisions. The law likely had sufficed with the provisions already inscribed into Article 15 of Resolution 188 of 1926 of the Cadaster Law. The article states that any person whose rights have been affected by a restriction, alteration, or revocation within the cadastral records without a legitimate reason is entitled to repeal or alter the changes. The article also prohibits revocations or alterations in cadastral records without a judicial decision unless the relevant parties approve the changes in writing.

Article 15 also prohibits, in any case, objections to revocation or alteration to registered rights towards other persons of good faith. The judge's decision to revoke or alter the right cannot provide for legally canceling the rights acquired and registered before the disputed registration transaction. In response, the aggrieved party can invoke Article 14 of Resolution 188 of 1926. The article provides that whoever is harmed by a registration transaction can directly claim the illegality of that registration against the ill-intentioned third person.

### ➤ **Insufficient Appeal Period**

Law No. 33 stipulates that an “appeal against verdicts issued during judicial proceedings must be submitted simultaneously with an appeal on the merits”. Additionally, the law stipulates



that “an appeal against verdicts made by a Single Real Estate Judge must be submitted, under penalty of inadmissibility, to the region’s Court of Appeal within 15 days starting from the date of notification, made per the specified conditions.”<sup>16</sup>

Notably, the appeal period is brief and disproportionate to the administrative conditions of Syrians, especially since it takes citizens months to obtain legal POAs, which adhere to various prerequisites, including security approvals.<sup>17</sup>

The period is unaccommodating on a second level. This period remains insufficient for claimants to “acquire knowledge” about restoration decisions through the Official Gazette alone, while the law deems publication in the Gazette tantamount to a personal notification.

Similar to its treatment of objection, argued above, Law No. 33 of 2017 does not account for the areas whose residents were displaced and who lost their real estate documents during hostilities. This lack of concern is likely a systematic measure consistent with other courses of action the Syrian executive authority has taken to render these residents liable to prosecution for their anti-government stances. Given this retaliatory approach, none of these residents would risk their lives to appear before the competent courts to protest or appeal decisions.

This situation hampers the law’s ability to protect real estate rights in Syria. To fulfill its core purpose, the law should have stipulated an objection period of no less than three months instead of providing for an appeal, which residents would not dare initiate. Additionally, the law should have ensured the publication of decisions in ways that guarantee that IDP and expatriate owners are informed.

This retaliatory approach can be traced in Article 8(d) of the law. The article states that the real estate judge issues a final decision considering initial real estate documents that were not subject to objection as valid and viable immediately after the objection period has ended. The article corroborates that the purpose of this law is to provide the executive authority and security services with a pretext to manipulate the contents of the cadaster through forgery and tampering with facts, especially in areas whose locals were displaced by hostilities.

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<sup>16</sup> Article 26 of Resolution No. 186 of 1926 on Boundary Marking and Registering.

<sup>17</sup> For further details, see: “Syria: The Ministry of Justice Newly Requires Security Clearances for Receiving Powers of Attorney for Missing and Absent Persons”, STJ, 22 October 2022 (Last visited: 4 January 2023). <https://stj-sy.org/en/syria-the-ministry-of-justice-newly-requires-security-clearances-for-receiving-powers-of-attorney-for-missing-and-absent-persons/>



## About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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