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Supporting Democratic Transition In Syria

# The Property Issue and its Implications for Ownership Rights in Syria



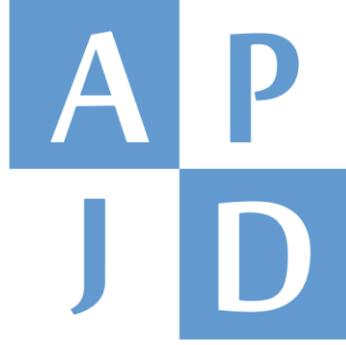
# **Problems Relating to Property Laws in Syria and the Ramifications for Ownership Rights (Law No. 10 of 2018)**

**Researchers:**

**Judge Khaled El Helou**

**Judge Riyad Ali**

**Judge Mohamad Anwar Majanni**



Problems Relating to Property Laws in Syria and the Ramifications for Ownership Rights  
(Law No. 10 of 2018)

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The Day After organization (TDA) is a Syrian organization working in support of the democratic transition in Syria, with a focus on the following points: Rule of law, transitional justice, security sector reform, design of electoral systems and election of a Constituent Assembly, constitutional design, economic reform and social policies.

The Day After - Istanbul, Turkey

Pürtelaş Hasan Efendi Mahallesi, Cihangir Caddesi, No:3 , D:1

Estambul

Tel : +90 (212) 252 3812

Email: [sy.org-info@tda](mailto:sy.org-info@tda)

[www.tda-sy.org](http://www.tda-sy.org)

<b>Introduction</b>	<b>06</b>
<b>Preface</b>	
<b>Background of Law No. 10 of 2018 and Relevant Risks</b>	<b>08</b>
<b>I. Mechanisms for identifying property rights holders</b>	<b>09</b>
<b>II. Rights of Residents in Irregular Areas</b>	<b>13</b>
<b>III- Appropriation and the Prerogative of the Administrative Unit</b>	<b>18</b>
<b>Chapter One</b>	
<b>Syrian Legislation and Real Estate Ownership</b>	<b>19</b>
<b>Topic 1:</b>	
<b>The concept of property, its types, reasons for ownership, and real estate rights</b>	<b>20</b>
<b>I: The concept, types and rights of real estate according to the provisions of civil law</b>	<b>20</b>
<b>II: State funds according to the provisions of the Civil Code and other laws</b>	<b>21</b>
<b>III: Registration and protection of real property</b>	<b>23</b>
<b>Topic 2:</b>	
<b>History of the origin of real estate laws and property rights in the Syrian constitutions</b>	<b>24</b>
<b>I: History of the origin of real estate laws</b>	<b>24</b>
<b>II: Right of ownership in the Syrian constitutions</b>	<b>30</b>
<b>Topic 3:</b>	
<b>Real estate and urban legislation and its role in the real estate problem</b>	<b>34</b>
<b>I: Laws relating to Urban Regulation</b>	<b>34</b>
<b>II: Land Reform and Expropriation Laws</b>	<b>43</b>
<b>III: Real estate laws that limit or affect private ownership</b>	<b>48</b>

**Topic 4:**

<b>Other laws affecting private property rights</b>	<b>52</b>
<b>I: Emergency Law promulgated by Legislative Decree No. 51 of 1962</b>	<b>52</b>
<b>II: Lease Laws</b>	<b>52</b>
<b>III: Foreign Ownership Law</b>	<b>55</b>
<b>IV: Counter-Terrorism Law</b>	<b>55</b>

**Chapter Two**

<b>Law No. 10 of 2018 amending Decree No. 66 of 2012 and its Ramifications</b>	<b>57</b>
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**Topic 1**

<b>Law No. 10 of 2018 amended by decree 66 for the year 2012</b>	<b>57</b>
<b>I: Time frames provided</b>	<b>57</b>
<b>II: Established Committees</b>	<b>61</b>
<b>III: Appropriation in favor of Administrative Units</b>	<b>66</b>
<b>IV: Prohibitions provided</b>	<b>67</b>
<b>V: Solutions available to equity holders</b>	<b>67</b>

**Topic 2**

<b>Legitimacy of the above-mentioned law and its future ramifications</b>	<b>71</b>
<b>I: Compatibility of the above with Syrian Constitution and laws</b>	<b>71</b>
<b>II: Compatibility of Law No. 10 and Decree 66 with international covenants</b>	<b>75</b>
<b>III: Reflection of these laws on the course of the political process: (Return of refugees and IDPs)</b>	<b>81</b>

**Topic 3:**

<b>Housing and property restitution rights and available solutions</b>	<b>84</b>
<b>I- Rights of refugees and displaced persons to housing and property restitution</b>	<b>84</b>
<b>II: Housing Restitution Problems</b>	<b>89</b>
<b>III: The role of the judiciary in housing and property restitution during the transitional phase</b>	<b>98</b>

<b>IV: Comparison between Law No. 10 of 2018 and the Absentee Property Law issued by the Israeli Occupation</b>	<b>103</b>
(II) Consequences of applying provisions of the Absentee Property Law	106
(III) Comparisons between the Absentee Property Law and Law No. 10	107
<b>V: Highlights of the Bosnia and Herzegovina experience</b>	<b>109</b>
<b>Conclusion and Recommendations</b>	<b>113</b>
<b>Research References</b>	<b>117</b>

## Introduction

Law No. 10 of 2018 sparked Syrians' fears over their rights regarding homes, land and property. The law was issued at a time when most of Syria's metropolises had suffered extensive destruction and nearly half the country's population were either refugees or displaced. Large areas of land had fallen outside the regime's control, local governing frameworks had been created, real estate records exposed to fire and damage, and as a result many Syrians lost their property deeds. Moreover, this law was issued ignoring decades-long inheritances and violations of housing and property rights in Syria, in the absence of constitutional protection of these rights and a succession of unfair laws, as well as administrative and legal dysfunction in registration and protection of property.

These circumstances make this law a real threat to property rights; therefore, it is necessary to clarify the background that led to its issuance; to identify the challenges of haphazard housing structures, common property, lack of allocation of land intended for construction; and to review real estate legislation and its impact on private possession, the right to ownership under the Syrian constitution, and legislative floundering in Syria, especially when related to property ownership.

It is also important to clarify the impact of real estate legislation, especially that issued after the conflict broke out, on the return of refugees and displaced persons; the challenges Syria will face in the period following a political agreement and the impact of such an agreement on the creation of a safe and neutral environment; the compatibility of this legislation with international covenants and conventions, and solutions available to a new Syria to address the effects of legislation violating Syrians' rights; and to ensure their access to ownership rights.

Therefore, this research means to present a more comprehensive understanding of the real estate problem, in particular Law No. 10; to identify its reasons, risks of its application, and its relationship to

the property problem in Syria; and to explain its provisions and shortcomings, and ways to overcome its repercussions.

The research is based mainly on an analytical descriptive approach which helps analyze the scientific content of the study, and because this approach deals with the problem's nature, working out its reasons and characteristics in order to identify the reality on the ground and look for solutions. This approach, and especially in this study, describes the range of real estate problems in Syria before and after the revolution, the crises that have occurred as a result of this problem, and the challenges that will face displaced Syrians who wish to protect their basic rights, including property rights; it shows the extent to which Law No. 10 and real estate laws that preceded it are compatible with Syrian laws, especially the Syrian Constitution, which affirmed the sanctity of ownership rights, as well as with international conventions and covenants relating to ownership rights.

## Preface

### Background of Law No. 10 of 2018 and Relevant Risks

Almost all researchers and scholars concerned with Law No. 10 agree that the property issue in Syria is not the product of this law alone, nor is it the product of the present conflict, but one of its causes. Most findings conclude that searching for the roots of the current conflict in relation to causes of the property problem gives a clearer picture of the reasons this law was issued and the risks of its application.

Especially as most of the areas that witnessed the fiercest and most bloody periods of conflict, leading to the largest waves of migration and displacement and destruction of property, were areas violating construction regulations, built outside the boundaries of urban regulation and common property. There is no sustainable protection of their property in real estate records. The risks to property rights have been exacerbated by the current conflict and the widespread devastation it has left, the erasure of property features in the absence of their owners, with many losing their property deeds.

Perhaps the most serious danger of Law No. 10 is that it was issued ignoring all previous legal problems, exacerbated by the current conflict; the study would be limited in achieving its desired results if it did not take into account these problems and contexts.

To achieve the purpose of this study, the Preface is devoted to explaining the root causes of these real estate problems and how they will affect housing and property rights as a result of the provisions of Law No. 10, in order to gain an understanding of the background and legal, political and economic reasons behind the issuance of this law. To clarify this, we review the mechanisms for determining rights holders under Law No. 10, and how far the reasons for acquiring in rem real estate rights according to Syrian laws and regulations affect identifying these rights holders. Then we will explain the rights of owners of irregular buildings in accordance with Law No. 10 and its relation to the phenomenon of

haphazard housing and common property. Finally, we talk about appropriation and the privileges of the administrative unit on the real estate area under Law No. 10 and the economic reasons behind it.

### **I. Mechanisms for identifying property rights holders:**

After a decree was issued at the proposal of the Minister of Local Administration and the Environment to create one or more regulatory zones under the general regulatory plan for administrative units, rights holders are initially identified in two steps stipulated in Articles 5 and 6 of Legislative Decree No. 66 of 2012, as amended by Article 2 of Law No. 10 of 2018.

#### **Step 1 (Article 5):**

Within one week after the regulatory area is established, the administrative unit shall request of the Directorate of Cadastral Affairs, or any public body authorized by its establishment to keeping property registration records, to prepare a list of real estate owners that conforms to real estate registers or digital records, including notes written on their pages.

#### **Step 2 (Article 6):**

Within one month of issuing a decree establishing the zone, the administrative unit shall in an announcement call on owners and in rem rights owners to declare their rights, and together with anyone concerned with real estate in the regulatory area, personally or by guardianship or mandate, each must apply to the administrative unit within thirty days from the announcement date identifying his selected place of residence within the administrative unit, accompanied by documents and deeds in support of his rights, or copies if unavailable. He must state in his application the locations, boundaries and legal type of the property, or the rights he claims to and all lawsuits filed against or by him.

The legislator amended this article with Law No. 42 of 2018 to make the time limit for owners to declare rights one calendar year

from the date of announcement, with the exemption of owners of rights recorded in the land registry or with other authorities.

In fact, these texts may be logical and fair if viewed in isolation from the legacy of real estate problems in Syria, as long as the legislator adopts the system of declaring property disposition, since declaring in rem estate rights is by proving acquisition in publicly available and certified records, which facilitates property circulation and encourages mortgage credit.

Article 1 of Resolution No. 188 of 1926 defined the Land Registry as "the collection of documents that show the descriptions of each property, its legal status, provides for rights and obligations, and related transactions and modifications".

These documents are organized through the processes of delimitation and registration. Therefore, unclassified properties are not subject to the provisions of the Land Registry, but are subject to the provisions of the Ottoman Tapu. It is noted that identifying real estate in the Land Registry is similar to identifying persons in civil records.<sup>1</sup>

But will a table issued by the Directorate of Cadastral Affairs and the Directorate of Temporary Registry and other authorities accurately reflect the owners' rights? To answer this question, one must first look at the reality of delimitation and registration works, recording rights, and archiving and maintaining records.

## **1- Reality of Delimitation and Registration Work.**

### **A. Finalized real estate areas:**

Finalized real estate maps were completed in all Syrian governorates, and the number of finalized real estate areas nationwide was 5,971 out of a total of 11,092 estate areas. On the other hand, the percentage of finalized real estate maps can be extrapolated to about 31% of the expected total of maps in areas subject to delimitation and registration works, around 74,000 maps.

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<sup>1</sup> Muhammad Wahid al-Din Sawar, Primary Rights in Rem, Damascus University Press, 2006, p. 154.

## B. Temporary (non-finalized) real estate areas:

Temporary real estate maps (according to concepts of cadastral affairs) are identification maps in areas where field work has ended and plans have not yet been finalized, or not yet been set. These temporary maps are all paper-based, and this classification includes maps in various stages of work, as follows:

- Maps of real estate areas pending before real estate courts.
- Maps of areas which have not yet been calculated.
- Maps of areas which have not yet been drawn.
- Maps of areas which have not yet been audited.

The number of non-finalized real estate areas was 4,822, compared to 5371 finalized real estate areas out of 11,092 real estate areas nationwide .

## C. Remaining real estate areas:

In addition to the above-mentioned delimitation maps are a number of maps for the following real estate areas:

- Areas of real estate where delimitation and registration work has not started.
- Areas of real estate under delimitation and registration process.
- Areas of real estate suspended for various reasons.
- Delimitation maps organized in areas to be technically surveyed.

The total number of these areas is about 341, of which 203 are real estate areas where delimitation and registration works have not yet begun.<sup>2</sup>

Nearly 100 years after the start of delimitation and registration work in Syria, the percentage of finalized real estate areas has not reached more than 53% of total real estate areas nationwide.

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<sup>2</sup> First Annual Report (Reality and Aspirations) - General Directorate of Cadastral Affairs in 2014 - Page 25.

## **2- Archiving the Land Registry:**

Archiving real estate documents is a tradition that began in the late 1960s in the form of microfilming, and staff toured with a camera through the provinces every year to photograph available documents. Due to the emergence of digital documentation, work is now done with digital scanners. Currently, the General Directorate of Cadastral Affairs and a number of directorates in the governorates are working on scanning real estate records with professional scanners, and all real estate documents are archived including records, deeds, observations, survey charts, final plans and identification and recording files. The data is stored on high-volume storage units with multiple copies, one of which is sent to the General Directorate who in turn classifies and stores them in different and secure locations. For example, all the finalized real estate plans have been archived electronically in addition to archiving real estate sheets, which are archived continuously due to entries being added, but the implementation rates for these sheets vary in the provinces depending on circumstances and availability of adequate staff.

## **3- Automation of the Land Registry:**

To implement this, a framework agreement was signed between the Ministry of Local Administration (General Directorate of Cadastral Affairs) and the Technological Industries Corporation (Syrian Information Technology Company) on 21/8/2013, but the project is still in its early stages.

We have only 53% of real estate areas whose plans were finalized and fully archived, while daily entries were delayed in many places, not to mention they had been incomplete to begin with and numerous records were destroyed during the current conflict, exposed to fire and damage. Therefore, these mechanisms to determine rights holders are inadequate, and their rights are subject to loss.

Additionally, many of the rights in rem concerning real estate are not registered in land registries, and are either verbal agreements or sale contracts written or authenticated by a notary, or a court decision ...

Many owners have lost ownership documents because of the current conflict. They are refugees and IDPs, some of whom are wanted for security reasons and can not report to protect their rights.

## **II. Rights of Residents in Irregular Areas:**

Article 43 of Legislative Decree No.66 of 2012, retained by Law No. 10 of 2018, provides as follows:

A- The right of violators who have built on lands of public or private State property shall be limited to receiving the rubble of their constructions, and they shall not be granted any other right; and by decision of the Executive Office, they may be assigned alternative housing from a surplus available to the administrative unit.

... D- Occupants of illegal residential constructions shall not be entitled to any compensation other than compensation for rent provided for in Article 44 of this Legislative Decree.

Which provides (i.e. Article 44) that non-eligible occupants shall be given the equivalent of a two-year rent compensation paid by the Area Fund within a period not exceeding one month from date of delivery of the eviction notice.

This article may appear reasonable to those who do not know the areas of haphazard housing in Syria, the size of this phenomenon and the reasons for it, how it was created under the auspices of the state which tolerated it rather than finding solutions, or how this article will affect the properties of millions of Syrians.

Haphazard housing areas and areas of collective violations are defined as gatherings that originated in places not intended for construction. This is a violation of the law and an infringement of state property and agricultural land. In the absence of planning, it sometimes expands, spreads and becomes a reality.

The phenomenon of haphazard housing began to spread and grow in Syria around the middle of the 20th century.

In 2007, a report was issued by the Public Housing Corporation under the title "Haphazard Housing Areas in Syria and their Links

to the Characteristics of Households and Housing", based on the results of the General Census of Housing and Population completed at the end of 2004. The study included 127 irregular housing areas in Syria, equal to at least 80 -90% of the size of the phenomenon.

#### - Size of the Phenomenon:

Overall, on average haphazard housing areas (population-housing) are around 15-20% of the total in Syria (rural and urban) and around 25-30% for city centers. This percentage rises to more than 30-40% in major city centers .

The estimated number of houses in haphazard housing areas is about 500,000 whose equivalent real estate value is 300 to 400 billion Syrian Pounds. The estimated population of these areas totals 2.5 million people; based on the average rate of population density in these areas, 450 people per hectare, we estimate areas occupied by these houses to be 5555 hectares. From indicators relating to the age of haphazard houses, it can be concluded that 55% of these houses were constructed from 1965 to 1990. Compared to 37% constructed after 1990, which indicates the rapid expansion of these areas in the absence of serious treatment or alternatives.

#### - Characteristics of Haphazard Housing:

As well as the absence of foundations of urban planning, conditions of healthy housing, factors of safety and provision of the bare minimum of basic facilities, distortion of architectural identity and nature, what matters to us from a legal point of view is:

Infringements on agricultural land and state-owned land, and about 60% of haphazard housing has no regular Tapu.

Entanglement of the legal status and real estate situation of properties, and lack of real estate documentation.

Housing activity in haphazard housing areas surpasses the overall rate at the governorate and nationwide levels, illustrated in low vacancy rates and high occupancy rates, higher percentages of housing under preparation, as well as higher percentages of

leasehold holdings in haphazard housing areas. This is a logical reflection of the imbalance in supply and demand in terms of quantity and quality.<sup>3</sup>

#### - Reasons for the Phenomenon:

After the Israeli occupation of Palestine, the Golan, and parts of Arab lands in countries surrounding Palestine, enormous numbers of people and families were displaced to the main Syrian cities, mainly Damascus. Their temporary gathering places gradually became permanent settlements such as Yarmouk and Palestine camps. With time, these changed into haphazard and irregular housing areas.

The reasons can be summed up in the increase in population, economic and social reasons, and organizational and legislative reasons.

#### **Population increase:**

Data indicates that the population developed significantly between 1947-2010 due to the rise of natural population growth rate as a result of increased birth rate, reduced mortality, promotion of reproduction and improvement of health conditions, which in turn led to an increase in the population of cities to reach 66.94% of the population of Syria. The population in 1947 was around 3 million and in 1960 4,565,000, an increase of 33.33% for the reasons mentioned above. In 1970 the population of Syria was 6,305,000 with a population increase of 27.59%. Between 1970 and 1981 the natural population growth rate was 33 per thousand, resulting in a population increase of 33.30% and a population of 9,446,000. In 1994, the increase was 34% and the population reached 13,782,000, due to the accumulation of this population increase over 13 years, although the natural growth rate had dropped to 27 per thousand. The population growth rate continued to increase significantly, reaching 17,793,000 in 2004, and the population growth rate decreasing to 24 per thousand at an 8.2% increase to what it had been in 2000; while in 2010 this increased to 24.66% and a population of 23,695,000 at a growth rate of 27 per

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<sup>3</sup> Eyyas al-Dairi, Haphazard Housing Areas in Syria and their Connection to Characteristics of Households and Housing - Public Institution for Housing 2007.

thousand. The reason for this huge population increase is the high natural population growth rate since 2004 on one hand, and on the other the adoption of civil status records to determine the population for 2010-2011.

The central cities of the Syrian governorates grew in population between 1981-2010. In 1981 they had a population of 3.3 million, or 40.1% of the total population of Syria, then 9.046 million, due to population growth and migration to those cities. In 1990 the population of these central cities rose to 5.5 million, an increase of 2.2 million people and by 40.28% compared to 1981. In 2004, their population increased to 6.2 million and in 2010 to 60.77%.<sup>4</sup>

### **Economic and Social Reasons:**

Push factors, resulting from the imbalance between development in rural and urban areas which increased the rates of internal migration to major cities; such as poor public services compared to major cities; poor educational, cultural, recreational and health institutions in small towns and rural areas; high birth rates, and an increase in population density and rural population growth rate; and lack of employment opportunities.

Pull factors, arising from the concentration of main economic, educational, cultural and tourism activities in a number of major cities, and the resulting concentration of various opportunities and jobs in these cities.

A lack of real housing policies and programs, the absence of a social dimension to the housing issue, and the absence of tools for implementing these programs if they exist. The results are evident in the weak supply of public housing that meets the needs of the majority of urban dwellers, especially mid- and low-income groups faced with rising prices and regular housing rents compared to their average income, as well as a trend with essential housing sectors (public and cooperative) of building luxury housing and neglecting their essential role of building economic housing for low-income people.

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<sup>4</sup> Dr. Qassem al-Ridawi, Population Growth and the Problem of Haphazard Housing in the Cities of Syrian Governorate Centers between 1981-2010; Page 382

### **Organizational reasons (legislative and technical), including:**

- Suspension of Act No. 9 of 1974 in both sections (organization and division) in the central cities of governorates.
- Issuance of Law No. 60 of 1979 and not ensuring the requirements for implementing its provisions in such a way as to ensure the achievement of its objectives, which led to significant negative results.
- The movement by a number of land owners covered by Law No. 60 of 1979 to evade the secession of their lands, contrary to the approved plan, and to proceed to sell and vacate using the stock method.
- Delays in the completion of organizational and detailed plans for urban expansion areas, thus not providing for the real need for land intended for construction.

Despite the Government's initiative to amend Law No. 60 of 1969 with a view to overcoming and addressing its negative consequences, and promulgating Law No. 26 of 2000, the length of executive procedures of Law 26, as well as the different levels of interaction with this law and its application by various administrative units, minimized the positive implications of this law.<sup>5</sup>

In addition to the problem of haphazard housing, there is the problem of joint ownership. There are a number of causes for joint ownership, but the bulk of this problem in Syria is in haphazard and irregular housing areas. These areas are adjacent to major cities and built on land not intended for construction or on agricultural land, although some parts were included in organizational plans of the cities; however, they were not sorted or organized, and for decades ownership was sold in the form of shares, resulting in hundreds of owners for each property in unspecified and unorganized shares. In Aleppo, for example, Jebel Badro or the eastern section of Hanano, the size of a piece of property is 20,000 - 40,000 m<sup>2</sup>; these properties were sold in shares, each share approximately 140 m<sup>2</sup>, and a large portion of

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<sup>5</sup> Previous reference.

them sold in half-shares, which means that each property has 280 - 500 owners, and so forth.

Thus, the seriousness of the text becomes clear, as owners of irregular property built on state-owned land are not entitled to any more than the rubble of their homes, or owners of irregular buildings are granted only a two-year lease. The size of this phenomenon accounts for 40% of the major cities in Syria (Damascus, Aleppo, and Homs) and 20% in the rest of the provinces, mostly the areas that have suffered destruction and displacement, keeping in mind that the reason these areas were formed is due in large part to the state, who did not address this problem but decided to tolerate it. A political decision was issued to the Central Committee of the Arab Baath Socialist Party in 1982 to provide basic services necessary for the irregular areas.

### **III- Appropriation and the Prerogative of the Administrative Unit:**

We will not expand on this section as it will be detailed when explaining Law No. 10. However, this appropriation is one of the economic reasons behind the emergence of this law; it grants the administrative unit the prerogative to appropriate free of charge sections of the real estate area subject to regulation, restricted only by the minimum that must remain to an owner, the floor area of not less than 80% m<sup>2</sup> per 1m<sup>2</sup> of the land. Thus, the administrative unit will seize most of the regulatory area and then sell it to companies or individuals. The gains of reconstructing and regulating these areas will benefit the state and the companies, at the expense of owners and original inhabitants, with no consequences for the state.

# Chapter One

## Syrian Legislation and Real Estate Ownership

Legislations are supposed to ensure justice, security for a society and stability of its transactions. It is assumed that the legislations of real estate ownership must protect and organize property rights, anticipate problems before they occur and seek solutions to existing problems, within regulations that guarantee the stability and security of society.

Did real estate and property rights legislation achieve these issues? Did it preserve the right of individual ownership, anticipate problems before they occurred, and secure ways to avoid them? Did it find solutions to existing problems and seek to solve them? Or were these laws part of the problem and contributed to its aggravation?

Therefore, it is necessary to identify real estate laws governing property rights and laws affecting them within the reality of real estate in Syria, which helps to understand real estate problems and the extent to which laws respond to them.

We will divide this chapter into the following:

- The concept of real estate and its types, reasons for ownership, and real estate rights.
- History of the origin of real estate laws and property rights in the Syrian constitutions.
- Real estate and urbanism legislation and its role in the real estate problem.
- Other laws affecting private property rights.

## Topic 1:

### **The concept of property, its types, reasons for ownership, and real estate rights.**

#### **I: The concept, types and rights of real estate according to the provisions of civil law.**

The Syrian Civil Code issued by Legislative Decree No. 84 of 1949, on the concept of real estate, considers that real estate is of three types:

- Real property.
- Personal property.
- Real estate rights in rem.

Article 84 of the Syrian Civil Code defines real property as everything that is immovable in its fixed space and can not be transferred without damage, and everything else is movable. Personal property is movable property placed by the owner in a property he owns to serve or exploit this property.

Real property is not limited to land, but also includes everything on the land; plants, buildings, mines and quarries.

Article 85 then mentions the third type, considering every right in rem that falls on property to be property, as well as any claim to property relating to rights in rem.

The following rights in rem may be applied to property:

Ownership, alienation, surface rights, usufruct, right of preference over vacant mubah [permitted] property, real estate easements, mortgage and real estate insurance, concession, waqf [endowment], 2-phase lease of waqf property, surface rights to waqf property, right to choose as a result of a sale promise.

The Civil Code in Article (86) divides real property into five categories:

1- **Mulk property**: Property susceptible to full ownership lying within the perimeter of administratively determined built-up areas.

2- **Miri property**: Property owned by the State; alienation rights may be exercised.

3- **Matruka murfaka property**: Land owned by the State but subject to a right of use in favor of a collectivity of people, usually governed by local customs or administrative regulations.

4- **Matruka mehmi property**: Land that belongs to the State at the governorate or municipality level, and which is part of the public domain.

5- **Khalia mubah property**: Mawat land; miri land belonging to the State, that has not been inventoried and delimited, and on which the first occupant with the State's permission acquires a right of preference within the conditions specified in State property regulations.

## **II: State funds according to the provisions of the Civil Code and other laws:**

The Civil Code considers public funds to be property and movables belonging to the State or public legal persons, allocated for public benefit either through action or by law or decree. And that such funds may not be disposed of, seized or acquired by prescription (Article 90 of the Civil Code).

These public funds are not subject to registration in the Land Registry unless they have in rem rights to be registered. When a property registered in the Land Registry becomes public property, its registration is removed from the Land Registry.

State public property was regulated by resolutions 144 of 1925 and 320 of 1926.<sup>6</sup>

Jurisprudence in public law defines public funds through the criterion of allocation for public benefit, either by nature as in rivers, or by the will of the State as in public roads. The money can also be allocated to serve a public facility such as government buildings (ministries, directorates, courts, hospitals, public schools, etc.) Or by assigning property to individuals for public benefit, after following a legal method for transferring ownership such as purchase, endowment or acquisition. The concept of public property also includes funds belonging to cooperatives, public institutions and companies, and people's organizations, so they may benefit from the concession and legal protection granted to public property. The funds are allocated for public benefit by law or decree, thereby acquiring the character of public property, such as the Antiquities Act, the Maritime Public Property Act or the Mines Act. On the other hand, public funds lose this character with the purpose of allocation for public benefit comes to an end, and allocation is terminated by law or decree or by cessation of purpose.

The nature of the State's right over public funds is a matter of public policy. Consequently, it is not permissible to dispose of public State funds, and any act such as sale or endowment is null and void; funds may not be seized, and are not subject to prescription.<sup>7</sup>

In addition to public property, there is State private property; property privately owned by the State or other legal persons, not allocated for public benefit, and subject to the same ownership provisions applicable to individuals. For example, miri land owned by the State, matruka murfaqa property, mawat and khalia land, real estate which is the property of the State by law, or when the law provides that the State owns private property.

Several laws have been issued to protect state funds, including:

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<sup>6</sup> Dr. Muhammad Wahid al-Din Sawar, Primary Rights in Rem, University of Damascus publications, Ninth Edition.

<sup>7</sup> Research entitled "The Reality of Public Property in Syria and ways of Protecting it" published on the Syrian Legal Forum website with the link: [www.syrianlegalforum.net/publications/view/65](http://www.syrianlegalforum.net/publications/view/65)

Legislative Decree No. 135 of 1952

State Property Law No. 252 of 1959

In addition to the provisions of the Civil Code, Penal Code and the Economic Criminal Law.

### **III: Registration and protection of real property:**

The Land Registry is considered the primary reference for protecting real estate ownership, recording complete information about a property, owners and rights owners. The Land Registry was established by Resolution 188 of 1926.

Later on, however, authorities increased with the increase of laws and entities permitted to keep cadastral records, as follows:

- The Land Registry
- The Temporary Cadaster
- Cooperative Housing Union.
- General Establishment for Housing.
- Military Housing Establishment

Although these entities are numerous, many property sales have not been registered in official records as rights holders were unable to do so, due to the differences between description of a property in the Land Registry and its reality; this will become clear when considering the problems of haphazard housing and co-ownership.

Rights holders have therefore resorted to several methods in order to try to preserve their property rights, including notaries or unenforceable judicial rulings.

## Topic 2:

### History of the origin of real estate laws and property rights in the Syrian constitutions.

#### I: History of the origin of real estate laws:

##### 1- Real estate laws under Ottoman rule:

The Ottoman Empire introduced the Land Code in 1858, followed by the issuance of several subsequent laws; a list of instructions concerning Tapus in 1859, the Tapu system in the same year, the promulgation of the Tapu Law in 1861, Appendix to the Tapu system in 1867; and under this law: Ottoman lands were classified under five categories:

**A- Mulk lands:** Land which was privately owned and which the owner could dispose of as he wished; he could sell or mortgage it, and bequeath it to his legal heirs; it did not revert to Bayt al-Mal [Treasury House] after his death, unless he had no heirs.

**B- Miri lands:** These are lands owned by Bayt Al-Mal and include: Agricultural lands, groves, pastures, forests, and similar useful lands. Disposal needed the permission and authorization of Ziamet and Timar leaders; sometimes the lands were utilized with the permission and authorization of collectors and multezims. However, this right was later ended, and disposal was only possible with the permission of the Memur [government official], i.e. the state became the sole authority to determine the disposition of these lands, selling what it willed under a Tabu bond.

**C- Waqf lands:** Most of the waqf lands in the Ottoman period (in the 16th century, during the reign of Sultan Suleiman the Magnificent) were initially composed of miri lands marked by Sultan Suleiman and subsequent sultans, in addition to lands allocated by the wealthy or lands endowed by peasants (after the Tanzimat [reforms] were issued) to evade taxes and fees.

**D- Matruka lands:** These lands were subject to public easements in common; the general public, or people of a village or a group of villages. There are two types: land left to the general public, such

as roads and squares; and lands left to the people of a number of villages as pastures and groves.

**E- Mawat lands:** Lands which are uninhabited and undeveloped, inalienable, not allocated to villagers, and not belonging to anyone by Tapu, such as mountains. Mawat lands are a mile and a half away from the nearest urban areas, or a half hour on foot.

The Ottoman Land Code allowed people to cultivate these lands, on condition of government approval, over a period not exceeding three years; if not cultivated during this period, the land was taken away and given to someone else; if a person cultivates a mawat land with the government's approval, he must pay its Tapu lease.<sup>8</sup>

During this period, the Shari'a courts were responsible for organizing legal affirmations relating to real estate and recording them in their registers without taking into account the accuracy of a property's boundaries and location, and the owner received the legal affirmation to prove his right to this property.

In 1912, the Land Disposal Act was promulgated and the department of "Defter [or Defterhane] Hakani" [Imperial Registry] was established. All land transactions were restricted to that department, and the Judicial Provisions Code did not require any declaration or registration to conclude the contract and acquire ownership.

## **2- Real estate laws under the French mandate:**

Following the end of the First World War and the demarcation of the border between Turkey and Syria, in an artificial manner inconsistent with the reality of the population, there began a real estate problem in Syria with the formation of the Syrian state; these borders separated landowners residing in Syria from their land in Turkey, and vice versa.

Those who chose Syrian nationality had their land in Turkey confiscated, and Turkish ownership of property in the Syrian state

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<sup>8</sup> Research entitled "The Land Ownership System in the Ottoman Era", published on the Palestinian News Agency Wafa website with the link: [http://info.wafa.ps/ar\\_page.aspx?id=5161](http://info.wafa.ps/ar_page.aspx?id=5161)

was frozen. Although the Treaty of Lausanne in 1923 and subsequent agreements between the Turkish state and the Mandatory authority established regulations over property rights across the two sides of the border, they were not applied and this problem has not been solved to this day.

In the early 1920s, with the start of the mandate over Syria, the French Mandatory was interested in reforming the real estate system in Syria and establishing a judicial land survey system that gave ownership greater confidence than the Defterhane registry of the Ottoman period. To this end, draft resolutions for the establishment of a real estate system were prepared and presented to the heads of the Syrian and Lebanese states who made observations thereon. A committee consisting of representatives of the two countries was formed in 1925, under which the French High Commissioner issued Resolution 186 dated March 15, 1926, establishing the system of real estate delimitation and registration.

The mechanisms for delimitation of property were determined by Decree No.187 of 1926. Decree No.188 of 1926 established the Land Registry and issued its executive regulations by virtue of Resolution 189 of 1926.

These four decrees are the legal basis for the delimitation and registration processes, and the Land Registry in Syria to this day.<sup>9</sup>

On 30 November 1930, the High Commissioner issued Decree No. 3339, known as the "Complementary Property Law for the Establishment of the Land Registry Law". At the same time, the French Military Geography Department began to create topographic maps to serve as a basis for the development of cadastral plans.

There was a Syrian General Manager of real estate departments supervising real estate registration in accordance with the provisions of Resolutions 188 and 189, and the work of delimitation and registration, and cadastral surveying, was

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<sup>9</sup> First Annual Report of the General Directorate of Cadastral Affairs, 2014, published on the General Directorate's website at the following link:  
<http://gdca.gov.sy/sites/all/modules/gdca/gdcacontent/files/Annual%20Report%202014%20dec.pdf>

entrusted to a French contractor (Derafour) in accordance with the provisions of Resolution 186.

In 1943, Legislative Decree No. 94 was issued creating the Department for Cadastral Surveying and Real Estate Improvement, concerned with the appointment technicians for delimitation and registration work, and cadastral surveying.

The fairest and most important real estate legislation was issued during this period, which established the legal framework for real estate in Syria, based on Resolutions 186 to 189 of 1926.

Resolutions 186 and 187 set forth the principles for delimitation and registration in Syria, and this included all procedures for delimitation and registration such as conducting surveys, determining boundaries of lands, putting up borders, and identifying the presumed owner. Records for the delimitation and registration of each property must include:

- A- Description of the property (its location, size, legal category and authorized limits).
- B- Name, surname, age, occupation and nationality of the authorized owners and partners of the property and, where applicable, specifies common shares.
- C- Mentions rights in rem and rights of easement and the usufruct applicable to the property. If the property is subject to waqf, the type of waqf (endowment or charity) must be mentioned as well as the name of the waqf, the institution, the assignee and the beneficiaries appointed in the waqf deed, and reasons behind ownership (registry number in the Defterhane; whether it was obtained for a price or not; inheritance; if occupied for a long time, and in this case the duration must be noted).
- D- Indicate objections to borders or to existence and extent of property rights or other rights in rem.
- E- Enumeration of documents and bonds presented by the concerned parties.

F- Specifies chosen residence of owners and deed partners, objectors and claimants of rights in real estate area, or in district, or in province.

Records of the provisional delimitation conclude with the signature of the engineer, the presumed owners or the partners of the property, neighbors, objectors or their representatives who attended the provisional delimitation, and the real estate developer or his representative.

Delimitation and registration work has continued to this day; perhaps the delay in its completion is one of the reasons that brought the real estate problem to the reality that we live through today.

Under Resolution 188 and its executive instructions issued in Resolution 189, the Land Registry was created, still in force to this day after the issuance of some amendments under several laws.

The Land Registry Law defines this record in its first article as "the collection of documents that show the descriptions of each property, specifies its legal status, provides for rights and obligations, and related transactions and modifications".

This record consists of a property ledger and supplementary documents (journal entries, delimitation and registration records, cadastral survey maps, real estate aerial photographs, survey plans, and documentary proof).

### **3- Real estate laws in the beginning of the Independence and Union periods:**

At the time of Independence, Legislative Decree No. 81 of 1947 established the functions and framework of the General Directorate of Cadastral Affairs and provided for its subordination to the Ministry of Justice, with the Central Administration composed of a General Manager of Cadastral Affairs, a Directorate of Real Estate Registration, a Directorate of Cadastral Surveying and

Improvement, an Inspection Authority, a Directorate of Administrative Affairs, and an Accounting Department.

Its branches in the governorates consisted of a Land Registry Secretariat and the Authority of Technical Work for Cadastral Surveying and Real Estate Improvement, and responsibilities were the management and organization of work in surveying departments and land registry departments in all governorates, in addition to other organizational activities such as preparation of legislative and regulatory projects.

When the Syrian Civil Code was promulgated by Legislative Decree No. 84 of May 18, 1949, the legislator abolished the Code of Justice and Resolution 3339 of 1930, after most of its provisions were incorporated into the Civil Code.<sup>10</sup>

In the period of the Union and after the enactment of the Agrarian Reform Law, the President of the Republic issued Resolution 945 of 1959, under which the subordination of the General Directorate of Cadastral Affairs was transferred from the Ministry of Justice to the Ministry of Agriculture and Agrarian Reform, in order to facilitate land grabs with the help of its surveyors.

The General Directorate of Cadastral Affairs remained affiliated to the Ministry of Agriculture and Agrarian Reform until 2010, when Law No.7 was issued disengaging the General Directorate of Cadastral Affairs from the Ministry of Agriculture and Agrarian Reform and linking it to the Ministry of Local Administration.<sup>11</sup>

This is a historical overview of the history of the Land Registry and real estate laws in Syria; additionally, during the period of military coups, during or following the Union, and during Baath Party rule, numerous laws were passed relating to, placing restrictions on or limiting ownership.

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<sup>10</sup> Previous reference.

<sup>11</sup> Previous reference.

## **II: Right of ownership in the Syrian constitutions**

The Syrian constitutions have always mentioned the protection of individual property and inadmissibility of confiscation except for public benefit and for fair compensation; and constitutional texts on individual property have often been violated by laws in the absence of institutions to uphold and protect the Constitution.

In reviewing the most important Syrian constitutions, we find they all mention the protection of individual property, with differences between their texts due to the nature of the existing regime and the political, economic and social conditions under which the constitutions were issued.

We review these texts based on what appears in the most important Syrian constitutions.

### **1- Protection of private property in the Constitution of 1920.**

This is the constitution which lasted 15 days before the declaration of the mandate for Syria. It stated in Article 18 that funds of individuals and government persons are ensured by the law, and the government may not take an owner's property except for public benefit after paying compensation in accordance with its own laws.

Thus, the Constitution established two conditions for the expropriation of individual property: the purpose of expropriation was the public good, and expropriation must be compensated in accordance with the law.

One criticism is that the text of this constitution considers individual property is under the protection of the law, not the constitution. Moreover, it mentions compensation without stating the compensation must be fair and equal to the [property's] real value, but merely referring the matter to the laws.

### **2- Protection of private property in the Constitution of 1930.**

The constitution issued under the French Mandate, stipulating that ownership rights are under the protection of the law and private property may be expropriated only for public interest and for fair

compensation, and that public confiscation of funds is prohibited (Articles 13 and 14 of the Constitution).

This constitution added to the previous one the condition that the compensation be fair, and provided that public funds can not be confiscated.

### **3- Protection of private property in the Constitution of 1950.**

This was the first constitution after the end of the French Mandate for Syria, and was drafted by an elected General Assembly. It considered private property to be safeguarded, and the law defined how it was acquired and disposed of in order to perform its social function. It stipulated that expropriation may be made on two conditions; with the purpose of public benefit and for fair compensation. (Article 21 of the Constitution)

For the first time, this Constitution mentions a cap on land tenure, the amount to be determined by law; but set a condition that this provision should not have retroactive effect (Article 22 of the Constitution).

It prevented public confiscation of funds and allowed for private confiscation under a court order or by law due to necessities of war and disaster. (Article 23 of the Constitution)

This constitution added a new concept to individual property, considering it has a social function and neglecting to make use of the land forfeits rights to alienation. Additionally, for the first time the constitution provided for an upper ceiling for land tenure.

Like its predecessor, it stated that expropriation is not permissible except for public benefit and in return for fair compensation.

### **4- Protection of private property in the Constitution of 1973.**

This was the constitution issued after the arrival of Hafez Assad to power, and remained in force until after the outbreak of the conflict in Syria. This constitution is an embodiment of the one-party rule of

the Baath Arab Socialist Party, and its texts indicate the nationalist and socialist dimensions of the state.

The second chapter, entitled Economic Principles, states that the economy in the country is a planned socialist economy aimed at eliminating all forms of exploitation, and that economic planning in the country takes into account economic integration in the Arab world. (Article 13 of the Constitution)

The Constitution then laid out the types of property:

**a- Public ownership:** This includes natural resources, public utilities, establishments and institutions that are nationalized, or established by the state and which the state invests in and supervises for the benefit of the general public, and it is the duty of citizens to protect them.

**b- Collective ownership:** Includes property belonging to grass-roots and occupational organizations, productive units, cooperative societies and other social institutions, the care and support of such property being guaranteed by law.

**c- Individual ownership:** Includes the property of individuals. The law defines its social function as serving the national economy within the framework of the development plan, and such property may not be used in ways that conflict with the interests of the people. (Article 14 of the Constitution)

It also mentions the protection of private property, prohibiting expropriation except when in the public interest and for fair compensation; and provided for the prevention of public confiscation, and for private confiscation only by a court order or by law for fair compensation. (Article 15 of the Constitution)

Like its predecessors, this constitution deals with the prohibition of expropriation of individual property except when in public interest and for fair compensation; and permitted private confiscation only by law and for fair compensation, but the condition of being in public interest was not required.

## **5- Protection of private property in the Constitution of 2012.**

This is the constitution which was issued after the conflict in Syria broke out, and it is still in force to date. This constitution abandoned nationalist and socialist terminology, and this was reflected on what is stated concerning property rights.

It speaks about the maintenance of private property and laid the groundwork for it; public confiscation of funds is prohibited, private property is not expropriated except in public interest and for fair compensation, and private confiscation is imposed only by a court order or the necessities of war and disasters, and for fair compensation. (Article 15 of the Constitution)

There was an addition in this constitution which did not stop at fair compensation, but added a text requiring compensation to be equivalent to the real value of the property.

This constitution also abandoned the concept of a social function for individual property.

In general, although all the constitutional texts spoke of the protection of private property and prohibited expropriation except for public benefit and fair compensation, its practice and the laws promulgated under these constitutions did not comply with the constitutional provision, so private property was vulnerable to seizure and expropriation, sometimes without compensation and sometimes for small and unfair compensation.

### **Topic 3:**

#### **Real estate and urban legislation and its role in the real estate problem.**

Property legislation was often issued after the problem occurred, seeking solutions to mitigate it. Often, this legislation was part of the problem rather than part of the solution, due to either failure of the law, or its implementation contrary to the purposes of the legislator, or even its exploitation.

The political and social environment in Syria has contributed to the exacerbation of the real estate problem and the inability of laws to limit it, especially the accompanying corruption and favoritism, and the close ties between holders of wealth and power at the expense of the citizen seeking shelter.

Dozens of real estate and property rights laws have been issued, their explanatory statements declaring they would address property problems while simultaneously including texts which aggravated the problem; despite the multiplicity of these laws and their amendments, their common denominator is disregard for the constitutionality of these laws, and considering that all solutions begin with the expropriation of private property.

In this Topic, we will review some of the legislations related to real estate.

#### **I: Laws relating to Urban Regulation:**

##### **1- Law for zoning and developing cities, issued by Law No. 9 of 1974:**

The first law concerned with regulating and developing cities came into effect on 22/1/1933 under the French mandate, until it was abolished by Law No. 9 of 1974. (Later repealed by Law 23 of 2015)

Law No. 9/1974 defined the general urban regulatory plan as one that represents the current status of a city, town or village and the urban development that is planned for any future in all fields.

The detailed urban regulatory plan is the plan that includes necessary physical details in accordance with the general regulatory plan.

This law provides for the appropriation of up to half of a private owner's land, free of charge and with no compensation to the owner. This law also gave the administrative body the authority to appropriate more than a half, not setting an upper limit, on condition the owner is paid the value of everything over the half, this value to be determined according to the provisions of the law of acquisition.

Additionally, this law requires owners of sectors resulting from the zoning process to pay all costs incurred in the establishment of public utilities.

The law stipulates that administrative bodies shall be entitled to apply regulation in the following two cases:

A- In areas affected by natural disasters such as earthquakes and floods, or destroyed by wars or fires.

B- In areas where the administrative body wishes to implement its general regulatory plan. (Article 9 of the Constitution)

The law also considered property within the regulatory area to be common property jointly owned by all rights holders in shares, each equal to the estimated value of each holder's property or rights in rem. (Article 12 of the Constitution)

Consequently, all owners lost their original property and become co-owners of shares equal to the estimated value of their properties.

On the regulation of areas destroyed by disasters and wars, the law set regulatory mechanisms as follows:

The administrative body shall, within one month of issuance of a decree creating a zone, via announcement published in at least one local newspaper, or in their absence one of the capital's newspapers, call upon owners of property and rights in rem in the zone to declare their rights. Anyone concerned with property in the area, personally or by guardianship or mandate, must submit to the relevant administrative body within thirty days of the

announcement date, a statement identifying his selected place of residence within the city where the area is located, accompanied by documents and deeds in support of his rights, or copies (if available). If unavailable, he must mention in his statement the locations, boundaries, shares, and legal category of the property or the rights he claims to.

Relatives (of any degree) of rights holders in the regulatory area may exercise the duties and rights provided for in the preceding paragraph on behalf of their owners. (Article 9 of the Law)

This text intersects with the provisions of Law No. 10 of 2018, as we will explain later.

This law also speaks about a dispute resolution committee in case of disputes and at the request of the administrative body, headed by a judge appointed by the Minister of Justice and two members representing the General Directorate of Cadastral Affairs and the administrative body.

The decisions of the committee are subject to appeal before the Court of Appeals in the governorate in accordance with deadlines and due process followed in appealing decisions of the interim relief judge. The Court of Appeals adjudicates the appeal in the Chamber of Appeals. The injured party, who was not a party to the dispute before the committee, shall have the right to sue the injuring party before ordinary courts.

The law then speaks of compulsory distribution, considering the regulatory area a legal entity that supersedes all owners and rights holders therein. The administrative body represents this legal entity and exercises the authority to ensure all property and rights in the area are settled after the deduction of consequent expenses, fees, taxes and other.

The administrative body then organizes schedules for compulsory distribution, and regulation work ends with distribution of its property to right holders according to their shares.

Compulsory distribution is carried out by a committee headed by a judge appointed by the Minister of Justice and two experts designated by the administrative body and two experts representing the owners.

Before commencing work, the Compulsory Distribution Committee evaluates each designated sector on its division map. If the total value of the sectors is higher or lower than the total value of all property and rights in the evaluated area, the Distribution Committee shall modify the rights of each rights holder accordingly.

The law stipulates that the Compulsory Distribution Committee shall endeavor to give each rights holder his share on or close to the site of his old property, and may allocate to each rights holder one or more sectors equal to his share, and may also assign to a number of rights holders one sector they own jointly, while specifying the shares of each.

If the value of the allocated sector(s) is different from the amount of his share, the Compulsory Distribution Committee shall determine the amount of monetary compensation to be paid in the event of an increase, or the amount due in the event of a decrease. Such compensation shall be payable immediately.

The articles of this law have been reviewed in detail to see how they intersect with articles of Law No. 10 of 2018, which infringes on individual property, whether for expropriation without compensation or for expropriation with unfair compensation according to provisions of the Acquisition Law, and relies on committees that rights owners have no say in, as well as many other problems we find recurring. This will all be discussed when we talk about Law No. 10.

Bearing in mind that this law has to some extent preserved the ability of owners to return to their property areas through the text of the law, and to restore their shares on the site of their old property whenever possible.

## **2- Urban Expansion Law No. 60 of 1970 (amended by Law No. 26 of 2000)**

This law provides for the right of the administrative body to decide within six months from the date the detailed regulatory plan is ratified or from the date this law enters into force, whichever comes later, on regulating these areas. If the administrative body does not decide during the specified period, owners in this residential area are entitled to divide their properties according to the provisions of Law No. 9/1974, within a period of three years from the expiration date of the six-month period set out above.

In the event the above-mentioned period expires, properties not regulated by the administrative body or divided by the owners are considered areas of urban expansion subject to the provisions of Article 2 of this Law. This provides for the expropriation, regulation and zoning of urban expansion areas in Damascus and provincial centers, solely by the administrative body, in favor of itself or of other public bodies listed in Article 2 of the Acquisition Law, issued by Legislative Decree No. 20 of 1983. This acquisition is considered a public benefit project and may be considered urgent. None of the bodies mentioned in Article 2 of Law 20 of 1983 may directly acquire property in their favor.

Thus, this law gives the administrative body the right to acquire, in favor of itself or of other administrative bodies, all properties whose owners have not initiated their division and distribution within a period of three years. Obviously, there are sometimes administrative and legal problems that prevent property owners from taking such action during the specified period, thus exposing their property to expropriation.

After the administrative units have acquired these properties, the law gives them the right to sell them at cost price after they have been sorted, whether to the public or joint sectors, housing associations, or to individuals whose properties have been appropriated.

This provision is a departure from the concept of expropriation in favor of public benefit, established by the Constitution as a condition for the expropriation of individual property.

Legislative Decree No. 5 of 1982 was issued during this time, known as the Urban Planning Law, which laid the foundations for urban planning and the steps and stages to be followed in preparing regulatory plans and supervising bodies.

### **3- Law for real estate development and investment, issued by Law No. 15 of 2008:**

This law provides for creating a public administrative body enjoying legal personality and financial and administrative independence. This body is called the General Authority for Investment and Real Estate Development, and is affiliated with the Ministry of Housing and Construction, with its headquarters in Damascus.

The Authority aims to regulate real estate development and encourage investment in this field, so it may contribute to the construction process, activate the role of the national private sector, and attract Arab and foreign investments to participate in real estate development, in order to achieve the following objectives:

- a- Provide the housing and construction sector with necessary land for buildings, services and required facilities.
- b- Establish integrated cities and residential suburbs, new urban communities.
- c- Solve the problem of haphazard housing areas.
- d- Provide housing on concessional terms for low-income persons (Articles 2 & 3 of the Law)

The Law then deals with the creation of real estate development areas in a manner unlike any effective text: the development area is created inside or outside the regulatory area with the aim of providing and preparing land for constructing residential areas, as

well as the demolition, reconstruction or rehabilitation and renewal of existing residential areas. (Article 10 of the Constitution)

Article 11 talks about how to secure the real estate required for the development areas, including property expropriated for the purpose of creating development areas.

This article also provides for expropriation of real estate belonging to individuals and lying within development areas in favor of the administrative body, and recording these in its name in the Land Registry in accordance with the provisions of the Acquisition Law. The administrative body is committed to allocate 40% of the resulting residential floor area as residential sectors for sale to the owners whose property was expropriated in the development area. The owners of expropriated land assigned housing sectors shall commit to constructing their sectors according to [regulatory] plans, and provisions of Law 14 of 1974 shall apply to these sectors.

The Law then talks about establishing real estate development companies and allows foreign companies to establish branches in Syria to carry out their activities, and states that the relationship between the administrative body and the real estate developer is governed by the contractual conditions between them.

Interestingly, the provisions of Clause (g) of Article 20 stipulate that the real estate developer is obliged to provide alternative and suitable accommodation for occupants of the project area, in accordance with the social survey prepared by the administrative body, or to compensate those who wish it.

Finally, the law speaks about facilities and benefits for the real estate developer. Article 32 declares the jurisdiction of the Civil Court of First Instance to deal with disputes between the real estate developer and individuals. In the case of such disputes, the court applies the principles applied in urgent cases, and the decision of the Court of Appeals is final.

A drawback of this law is the same for most real estate and regulatory legislation: it pays more attention to giving facilities to the developer and ignores the reality of population and

demographics; it also gives a new dimension to expropriation, presenting commercial benefit as public benefit; additionally, it uses social surveying as a basis to identify rights holders in haphazard housing areas, and while such surveying is normally quite fair, in the current Syrian situation it is a way of seizing unregistered individual property.

Finally, it prevents rights holders from pursuing the usual judiciary route, and limits them to reviewing the Court of First Instance as a Court of Urgent Matters. As is well known, in such a case a court can not give litigants their full rights nor look into the origin of the dispute.

#### **4- Law for planning and developing cities, issued by Law No. 23 of 2015:**

All previous legislation has not been able to reduce the phenomenon of haphazard housing; in fact, it has ignored and even contributed to its aggravation through texts that do not take into consideration the nature of the land on which haphazard structures are built, and with disregard for common property, giving owners the limited options of either expropriation or sorting, which the reality of the situation does not really allow.

In 2015, with the issuance of Law No.23, laws No.9 of 1974, No.60 of 1979 and No.26 of 2000 were repealed.

This law provides that if there are areas of collective building violations, the administrative body may:

- 1- Apply the provisions of this law.
- 2- Apply the provisions of Real Estate Development and Investment Law No.15 of 2008 and its amendments, based on an agreement between the real estate developer and the owners, or between the real estate developer and the administrative body.
- 3- Apply the provisions of the current Acquisition Law to implement the regulatory plan for this area in a way that does not contradict the provisions of Article 15, Clause 2, of the Constitution.

In other words, this law gives the administrative body, in areas of collective violations, the choice to apply the provisions of this law, or to refer to a real estate developer in accordance with the provisions of Law 15/2008, or to implement the provisions of the Acquisition Law.

Thus, under this law, individual property is liable to be expropriated in the event of existing irregularities. (Article 3 of the Law)

The law defines the cases in which regulation is applied:

- Areas affected by natural disasters such as earthquakes and floods, or destroyed by wars or fires.
- Areas of urban expansion that were attached to the general regulatory plan for provincial centers after 11/12/2000 (when Law No. 26 of 2000 became effective).
- Areas subject to the general regulatory plans for towns and cities after the date this law became effective.
- Areas where the administrative body wishes to implement its general and detailed regulatory plan.

This law gave the administrative body the right to apply the provisions of this law in any region where it wishes to implement its general and detailed regulatory plan, as well as areas affected by disasters or wars. (Article 5 of the Law)

The Law then speaks about “free appropriation”, stipulating that administrative units may appropriate, for free, the equivalent of the material and moral gain for the property owner as a result of his property entering the regulatory or zoning area, and what will be allocated to provide basic services for the area such as roads, squares, gardens, parking lots, public buildings, popular housing units, special service units, and the property’s increased purchasing value. Appropriated property shall not exceed 40% of the areas outside the provincial centers, and 50% of areas in the provincial centers.

In the event that the appropriated area exceeds the specified percentage, the administrative body shall pay the value of the excess area, based on its real value as estimated by the Preliminary Assessment Committee referred to in Article 21 of this Law, once it has been finalized. (Article 4 of the Law)

Accordingly, this Law continued, as did all the laws preceding it, to appropriate individual property.

The Law then deals with the procedures of zoning by the owner, and regulation by the administrative body. As this Law was issued after Decree No.66 of 2012, amended by Law No. 10 of 2018, which will be detailed later, it came in line with the provisions of Legislative Decree 66/2012, in terms of deadlines, committees and methods for assessing value. The difference is that it chose compulsory distribution rather than offering owners options.

## **II: Land Reform and Expropriation Laws**

### **1- Land Reform Law:**

Only a few months after declaring the Union between Syria and Egypt, the Land Reform Law was passed with Law No. 161 of 1958. This law provided for an upper ceiling to agricultural land ownership.

It stipulated that the State would take over, in the ten years following the date this Law came into force, anything exceeding the upper ceiling set out in Articles 1 & 2. The State would be the owner of land seized as determined by the final Decision of Seizure, as of the date of the initial Decision of Seizure. The property would thus be settled of all rights in rem, notices, freezing, tenants' rights, and any dispute between concerned parties transferred to due compensation for the seized land, decided by the relevant authorities. The owner would have surface use and any fruit borne of the trees until the end of the agricultural year during which the seizure took place. The owner must make good use of the agricultural land until the seizure is completed. (Article 5 of the Law)

The Law then speaks about compensation, and methods of assessment and payment.

As is known, this Law set, with retroactive effect, an upper ceiling for ownership and appropriated excess property for unfair compensation. The Law took the land's rent as the criterion for determining compensation, rather than its actual value. Compensation was far removed from justice and paid much later on.

## **2- Land Reform Law No. 3 of 1984**

This Law gave the Minister of Irrigation the authority to issue a decree, in agreement with the Minister of Agriculture and Agrarian Reform and after consulting the Farmers' General Union, to declare public benefit of reforming land in any area of Syrian territory.

The lands covered by the decree shall be common property to all rights holders therein. The common property of each shall be calculated as the percentage of his property's area, in accordance with the provisions of this Law . (Article 1 of the Law)

This is one of the many cases where the owner finds himself transformed into a joint owner of shares. The Law then speaks about land reclamation and free partial appropriation, and then returning to rights holders up to a ceiling of 16 hectares, anything exceeding which is transferred to the State and registered in its name in the Land Registry.

## **3- Acquisition Law No. 20 of 1983:**

Acquisition meaning the seizure of property for public benefit by means of an administrative procedure intended to forcefully remove property from its owner through the administration, in order to allocate it to public benefit in return for paid compensation.

Acquisition, therefore, is based on four elements:

- To allocate a property for acquisition.
- To seize the property forcefully.
- The purpose of the acquisition is public benefit.
- The acquisition shall be for fair compensation.

Syria has known many acquisition laws; the common feature among them being confiscating private property rights, sometimes without compensation, often for unfair compensation.

The laws of expropriation were a tool for the state to seize private property, sometimes in violation of the provisions of the Constitution, often contrary to the rules of justice and equity.

Acquisition laws began with the independence of Syria, when Law 272 of 1946 was issued. It was followed by several laws, most notably Law No. 20 of 1974 and Law No. 60 of 1979 (Urban Expansion Law), and the most recent is Law 20 of 1983, which is still in force, and which we will review here .

This Law gave an important new dimension to the concept of public benefit, adding to 'projects of public benefit' establishments belonging to the Baath Party, public organizations, and all projects falling under the jurisdiction of any public bodies and the public sector or responsibilities specified in laws and regulations in force, in accordance with the plans of the State. (Article 3 of the Law)

The Law also expands on acquisition, allowing administrative bodies and authorities overseeing or specializing in housing to acquire property, plan and divide it into building sectors with the purpose of building popular housing, or selling it to anyone wishing to build such housing.

It also authorized the Ministry of Defense to acquire property in order to establish military housing compounds, or to construct houses to sell to the military and to families of martyrs and employees of the Ministry of Defense, or other bodies determined by decree.

It also authorized administrative bodies to acquire property in order to establish industrial zones, and to plan and section them, and invest in or sell the resulting plots. (Article 4 of the Law)

It also permits the administrative body to take possession of property or parts of a property not suitable for construction under the existing building system, or for other technical reasons such as area or geometric shape, with a view to merging or unifying (sorting) property so it can be built according to regulations and technical considerations.

Consequently, under this Law personal ownership is exposed to acquisition by public authorities in accordance with the broad discretions provided in this law under the concept of public benefit, in addition to the other reasons for acquisition mentioned in this Law.

In order to block the judiciary from examining the legality of expropriation rules, this Law provided that

the Acquisition Decree does not allow for any means of appeal or review. (Article 7 of the Law)

This violates the Constitution, which guarantees the right of litigation and appeal against administrative decisions.

The Law then establishes procedures for assessing value. The rules for the estimating compensation are referred to Law No.3 of 1976 which regulates the sale of land. Article 6 provides the bases for assessing value in accordance with the following:

A- The price of shares defined in Article 2 of Law No. 14 of 1974 are estimated by a percentage determined by the Executive Office of the governorate, not exceeding 30% of the cost of building on the structure for the permitted floor space, in accordance with the provisions of building regulations.

B- The cost is calculated based on costs of buildings constructed by public authorities supervising housing in the governorate.

C- The Executive Office in each governorate issues a resolution specifying the percentages indicated in paragraph (a) of this Article, taking into account the bases determined by the issued Decree, in

accordance with the provisions of paragraph (e) of this Article. The provisions of this Decree shall apply from the date of its ratification by the Minister of Local Administration.

**D-** The price of the rest of the land is estimated at a rate no more than ten times its annual production. The lands under the application of this paragraph are deemed agricultural, whether cultivated or not, without violating provisions of the Civil Code and the State Property Law and other laws and regulations in force concerning the cultivation and use of agricultural land.

**E-** The approved terms for determining these percentages and values shall be issued by decree, taking into account the category of the land, the location of the property, the type of agricultural land and existing agricultural activities, and so forth.

The committee responsible for assessing the value according to principles set forth in Law No.3 is explained in the Law: compensation is estimated by an initial committee formed by the acquiring party (Article 12), it assesses the value of the properties on the basis of their value immediately prior to the Acquisition Decree, and eliminates any increase in prices resulting from the acquisition project or commercial speculation, if this increase in value is not justified by a similar increase in neighboring areas (Article 13).

The decisions of the above-mentioned initial assessment committee regarding value of compensation may be appealed before a reconsideration committee, formed by official decree issued by the Head of the Executive Office of the Governorate Council where the property is located (Article 23 Clause 2), as follows:

A judge appointed by the Minister of Justice, a representative of the acquiring body, a representative of the property owners, a representative of the Farmers' Union named by the Executive Office of the Farmers' Union, a representative of the Governorate appointed by the Mayor.

The decisions of this Committee are irrevocable and not subject to any means of appeal or review (Article 24 Clause 2).

The practice is that if the administration delays in assessing acquisition compensation for several years, the value is estimated at the date of acquisition, not the date of evaluation. For instance, if the administration seizes a property in 1970 then neglects to evaluate its compensation until 2000, it is estimated at 1970 prices. The same applies for interest, which is calculated on the basis of the acquisition compensation.

Often, the acquisition compensation is not commensurate with the real value of the property, a violation of the constitutional rule that provides for fair compensation, which makes this law in practice an unconstitutional law.

Accordingly, the Syrian Acquisition Law is described as an unjust law that infringes upon the rights and properties of citizens, and deviates from the objective of expropriation, which is public good.

It is safe to say that in Syria acquisition was more like a land-grab, where compensation was never fair and many of those affected by the acquisition decrees prefer not to take the crumbs given to them in compensation for taking over their property.

### **III: Real estate laws that limit or affect private ownership**

#### **1- Regulation of Land Sale Law No.3 of 1976**

The right to ownership gives an owner three rights: the right to use, exploit and dispose. However, this Law is a restriction on the owner's right to dispose of his property, and was therefore called the prohibition of land sale law.

This Law prevents anyone from buying land that falls within the limits of any general regulatory scheme or within vacationing areas, and from selling them, in whole or in part, except after their construction. Any action taken in contravention of this Law shall be null and void. However, such lands may be sold to public bodies. The State is also entitled to expropriate this type of land.

Although the purpose of this Law is to prevent land trafficking and curb rising prices, in practice it has not contributed to lowering prices of land intended for construction, but has done the exact

opposite. Vast areas have been held in abeyance, and there have begun attempts to evade the provisions of the Law in different ways.

## **2- Land Development Law:**

Law No. 14 dated 23/3/1974, amended by Law No. 59 of 15/7/1979, which was repealed by Legislative Decree No. 82 of 2010.

Under this law, 'land' means all land intended for construction or similar, not owned by public bodies or public sector entities, and lying within construction boundaries of administrative bodies.

Under this Law, building licensees may contract ownership of the sections to be built before construction actually begins or before its completion, provided the contracted sections are delivered to the buyers ready to be inhabited or used for their intended purpose. The text was then modified to require only a certain proportion of the construction to be ready. All of which shall be recorded in a new temporary cadaster for this purpose in each administrative unit.

The Law imposed on land whose owners had not obtained building permits an annual fee of 10% of the value of the land. The administrative body is entitled to decide to sell the land at the expense of its owners if four years have passed since announcing its attachment to public utilities and the owner has not yet obtained relevant building permits. The administrative body is entitled to decide to sell the land with immediate effect if a period of five years has passed without obtaining a building permit or without completing construction.

This Law, while having a positive element in creating a temporary cadaster and permitting the sale of sections of real estate before its construction, still includes negative elements in that the buyer of these sections can not sell his rights before the completion of the building or relevant sections. It also imposes a high annual fee on

unbuilt land. Additionally, there is the right to sell it under certain conditions if 4/5 years have passed and the property is not yet licensed or built. Moreover, the Law exempts lands owned by public bodies or the public sector from its provisions, which means that it applies exclusively to land owned by the private sector. In any case, this law did not bring down prices of land intended for construction, and did not contribute to solving housing problems.

### **3- Restrictions on ownership in border areas:**

In 2004, Law No. 41 (amended by Legislative Decree No. 49 of 2008 and by Legislative Decree No. 43 of 2011) was promulgated, stipulating that no real property rights may be constructed, transferred, modified or acquired on land located in a border area, except with prior license issued by the Minister of the Interior, upon the proposal of the Ministry of Agriculture and Agrarian Reform, and after the approval of the Minister of Defense; and that the refusal of the Minister of the Interior to license is categorical and not subject to any method of review.

Border areas are determined by decree issued on the proposal of the Ministry of Defense.

This law restricts ownership rights by imposing restrictions on the rights to disposal and exploitation, and also protects the decision of the Minister of Interior from any appeal. As such, it violates the provisions of the Constitution which guarantee the rights of litigation.

Most serious of all is the fact that the Law does not allow the registration of cases requesting confirmation of any rights, unless they are accompanied by a license; and all existing suits on the date the provisions of this Law came into force are rejected if the license is not presented in the case file. (Article 4 of the Law)

In so doing, this Law places a barrier between a rights holder and the judiciary, and prevents him from resorting to the judiciary, even to register a case. It also imposes a restriction on the judicial authority, forbidding it not only to consider the case, but even to register it before approval has been received.

This issue has a significant impact on rights; for rights in rem, preference is given to those who register the case, but in this case preference is given to those who obtain a license first.

It is well-known that this Law was issued for undeclared reasons, namely, restrictions on ownership for Syrian Kurds.

#### **4- Legislative Decree No. 12 of 2016, establishing a digital version of property rights:**

Although almost a century has passed since the enactment of the Land Registry Law, it remained paper-based and was not automated until after the outbreak of the conflict. Intermittently, these records were filmed and saved, but not automated.

In 2013, the General Directorate of Cadastral Affairs decided to work on automating the Land Registry and an agreement was signed for this purpose with the Syrian Company for Information Technology. The project is still in its early stages, with no relevant legislative framework.

In 2016, Legislative Decree No. 12 was issued to create digital copies of real property rights data, transferred from cadastral certificates in the public body entrusted by law with keeping records of documented real property. This would be the basis for establishing a paper copy of cadastral certification.

The Law provides for the public body to announce the creation of a hard copy from the digital version, and gives affected parties four months to object. If an objection is not submitted, rights claimants may resort to the civil judiciary, and this right is abrogated five years after the end of the objection period.

The danger in this decree is it considers the digital version to be the reference in establishing a paper version, and it sets specific deadlines while half the Syrian population is absent.

## Topic 4:

### Other laws affecting private property rights

#### I: Emergency Law promulgated by Legislative Decree No. 51 of 1962:

Following the Baath party's coup in Syria on 6/3/1963, a state of emergency was declared, continuing until after the conflict broke out. Under the state of emergency, public freedoms and civil and political rights were infringed upon, including property rights.

The Emergency Law provides for the right of the Military Governor to seize any movable or immovable property, and to impose provisional guardianship on corporations and institutions, and to defer debts and obligations due and payable on what is being seized. (Article 4 of the Law)

Under this text, many properties owned by political opponents were confiscated without any compensation.

#### II: Lease Laws:

There is no doubt that legislation on leasing is closely related to real estate legislation, and is also related to the real estate and housing problems and their impacts. Just as suitable lease laws help solve housing problems, unsuitable lease laws exacerbate them.

To consider the nature of lease laws and their impact on housing and the real estate problem, it is necessary to review the laws governing the issue of rentals.

#### 1- Leaseholds in the Syrian Civil Code:

The Syrian Civil Law regulated the provisions for leasing in Articles 526 - 601, adopting the following principles:

**A-** Respecting the wishes of contractors: This ethical principle in modern rights governs civil relations in general, including lease relations.

**B-** Determining lease in agreement and making payments: This principle is primarily provided for in Articles 529, 530 and 554 of the Civil Code.

**C-** Termination of the lease contract on the agreed date: This is essentially provided for in Article 565, Civil Code.

There is no doubt that the provisions of the Civil Code, on the grounds mentioned therein, would achieve a great deal of justice between the parties to a rental agreement.

However, in several legislative stages and in exceptional circumstances, it was found that public interest and economic and social conditions necessitated abandoning lease provisions in the Civil Code and replacing them with provisions contained in independent and private civil legislation that dealt solely with rents, and that is what happened.

## **2- Private Lease Laws:**

Despite the existence of previous lease legislation, the most important of these is the lease law issued by Legislative Decree No.111 of 11/2/1952, whose provisions remained in force (with some amendments) for about half a century. In its explanatory statement it mentions:

"The varying interests of the lessor and the lessee make the drafting of a legislative provision guaranteeing all interests impossible; the legislator can only bring closer the views of the two parties and work to reduce damages as much as possible, and to some extent uphold the principles of justice that are in the Syrian society's social and economic interests."

Most importantly in this Law is that it provided for obligatory extension of the term of lease contracts, and determination of rent in percentage of property value, in addition to restricting evictions. These rules formed the ground from which stemmed the Law's negative aspects.

On 30/7/1987, Legislative Decree No. 3, called the Seasonal Lease Law, was issued. Under this Law, leases can be made up for vacationing, tourism or recreation for a limited period of up to six

months, wherever the property is located, whether the tenant is Syrian or any other nationality. Seasonal lease contracts are subject to the provisions contained therein exclusively regarding rent, payment terms and duration of the lease. It is not subject to the terms of obligatory extension of contract or rent value. Contracts duly registered with the relevant administrative body are considered an executory title, filed directly with the enforcement division. The lessor may recover ownership of his leased property if it is not delivered voluntarily at the end of the period specified in the seasonal lease.

After the escalation of rental problems, Lease Law No. 6 dated 15/2/2001 was issued, with the following in its explanatory statement:

“Lease regulations are part of civil rights, and these regulations have special merit and are closely linked to economic and social life. Lease Law No.111 of 1952 and its amendments have been applied for a long period of time, in the course of which many disadvantages reflected in the economic, social and urban reality have emerged.”

Legislators of this explanatory statement affirm that the previous lease law, which lasted for half a century, is fraught with many flaws, affecting ownership and civil rights, and that the disadvantages of this law reflected negatively on the economic, social and urban reality.

Lease Law No. 111 restricted ownership rights. The owner was prevented from exploiting and using his property, contrary to the rights of real estate ownership. It contravened general regulations and the principle of *pacta sunt servanda*, as well as many other disadvantages.

The Lease Law may have been a direct cause of the real estate problem. Most landlords avoided renting their properties for fear of being unable to recover them, and preferred to keep them shut rather than lease them. This has led to thousands of houses left uninhabited, prompting many to seek a solution for accommodation through haphazard housing.

### **III: Foreign Ownership Law:**

It is normal for any country to place restrictions on foreign ownership and to require reciprocity, but there is a loophole in Syrian legislation that must be clarified by returning to the Foreign Ownership Law and Nationality Law.

The Foreign Ownership Law was issued by Law No. 11 of 2008, ending Legislative Decree No. 189 of 1952.

It states that if a property located inside or outside the regulatory plans of the administrative units and municipalities is transferred to a non-Syrian through inheritance, transition or will, his right is forfeited and he must transfer ownership to a Syrian national within one year from the date it was transferred to him, otherwise it shall be transferred to State Property Management in return for its estimated monetary value in accordance with the Acquisition Law. (Article 3 of the Law)

This Article places a time limit of one year, not from the date the person is notified but from the date of transition. If he is a general successor, i.e. heir, the property is transferred to him at the moment of death. If he does not know or does not transfer the property within one year, he finds that his property has been expropriated according to the Acquisition Law.

It should be noted here that the Syrian Nationality Law promulgated by Legislative Decree No. 276 of 1969 does not grant Syrian nationality to children of a Syrian woman married to a foreigner; therefore, their children are treated as foreigners, meaning that inheritance from their mother is subject to the Foreign Ownership Law. Most likely, they will find their property has been expropriated.

### **IV: Counter-Terrorism Law:**

Issued by Law No. 19 of 2012 and defines terrorist acts, terrorist organizations and financing terrorism. This law sets broad criteria for a terrorist act and penalties for all those associated with it. The

Counter-Terrorism Court was established by Law No. 22 of 2012, an exceptional court to replace the State Security Court, abolished prior to the establishment of this court, which the law creating it stipulates does not comply with the rules of legislation in force.

With reference to Law No.19 of 2012 and its impact on property rights, it provides for the right of the Attorney General or his authorized representative to order the freezing of movable and immovable property of any person who commits any of the offenses related to financing terrorist acts, or who commits any of the offenses provided for in this law, if there is sufficient evidence, thereby guaranteeing the rights of the State and those affected.

It also provides that in all offenses provided for in this Law, the Court shall judge by conviction the confiscation of movable and immovable property and its proceeds, and objects used or intended for use in committing the offense. (Articles 11 and 12 of the Law)

Thus, this Law unleashes state confiscation of private property, which can be a tool to seize the funds of political opponents under the pretext of terrorism.

## Chapter Two

### Law No. 10 of 2018 amending Decree No. 66 of 2012 and its Ramifications

Law No. 10 issued on 2/4/2018, which is an amendment to Decree 66 of 2012, raised fears among Syrians, at home and abroad, about the possibility of the Syrian regime deliberately confiscating their properties and lands in the name of the law, becoming an obstacle to the return of refugees and displaced persons to their homes. For that reason, it would be a stumbling block in efforts to reach a political agreement ending the conflict in Syria, as the law allows the creation of one or more regulatory areas under the administrative units' general regulatory plans.

After dedicating the first chapter of this research to study laws and legislations relating to real estate, we will devote this chapter to a study of Law No. 10 above-mentioned, to clarify the most important points mentioned therein, and to indicate how right Syrians and the international community are to fear such a law, and its implications on the desired political solution, as well as the return of refugees and displaced persons to their homes.

#### Topic 1

##### Law No. 10 of 2018 amended by decree 66 for the year 2012

Before going into criticism of Law No. 10 of 2018, which is an amendment and expansion of Decree No. 66 of 2012, we will begin with a description and explanation of the most important points mentioned in said law, keeping in mind that Law No. 10 can not be examined in isolation from Decree 66 of 2012 and Law No. 23 of 2015<sup>12</sup> the most important points being:

**I: Time frames provided for:** Article 2 of Clause 1, Law 10 stipulates that the administrative unit, within one week from date of issuing the decree creating the regulatory area, shall request the

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<sup>12</sup> Article 2 of Clause 29, Law 10 stipulates that "in all cases where no provision is made in Legislative Decree No.66 of 2012 and this Law (No.10), the provisions of Law No. 23 of 2015 shall apply". Article 5 of Law 10 stipulates that "Legislative Decree No.66 of 2012 and its amendments stipulated in this Law apply to regulatory areas created in accordance with the provisions of Article 1 of this Law".

Directorate of Cadastral Affairs, the Directorate of the Temporary Cadaster, or any public body authorized to keep property records, to prepare a list of real estate owners conforming to real estate registers or digital records, including notes recorded on their documents; the concerned parties must secure the required lists within a maximum of 45 days from the date of registering the request from the administrative unit. The administrative unit shall within one month from date of issuance of the decree creating the regulatory area, form one or more committees to limit and describe property in the area, and organize a detailed description of its contents including buildings, trees, plants and other, while conducting a social survey of the population in the area. The committee, and other committees, may be assisted in its work by satellite and space imagery; and the decision for its formation must provide for the period required to complete work.

Article 2, Clause 1 of Law 10 stipulates that within one month of issuing a decree establishing the zone, the administrative unit shall, in an announcement published in at least one local newspaper, in one of the visual and audio media, and its website, in its bulletin boards and notice boards in the area, call on owners and rights in rem owners to declare their rights; and together with anyone concerned with property in the regulatory area, personally or by guardianship or mandate, they must apply to the administrative unit within one calendar year from date of the announcement,<sup>13</sup> with a request to appoint his chosen residence within the administrative unit, accompanied by documents and deeds proving his rights, or photographs (if available). In the case they are unavailable, he must specify in his request the locations, limits, shares, and legal category of the property or rights he claims to, and all lawsuits filed by or against him.

Article 2, Clause 6 of Law 10 stipulates that the Civil Court of Appeal in the governorate shall decide on appeals against the final decisions of the Committee assessing property value in the regulatory area, provided for in Article 7 of Decree 66 of 2012, in-

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<sup>13</sup> The period was amended to one year instead of thirty days by Decree No. 42 dated 11/11/2018, due to frequent criticisms against the Syrian regime due to the short duration.

chamber <sup>14</sup> by a conclusive decision, within a period not exceeding thirty days from date of registration of the appeal. The appeal does not stop implementation procedures in the area.

Article 2, Clause 7 states that the administrative unit shall, within one week from date of receipt of the decision of the Assessment Committee, announce in its bulletin boards, in notice boards of the area and in the local newspaper, or if unavailable in one of the newspapers of the capital, completion of the work of the Committee.

Article 14 of Decree No. 66 of 2012 provides for the formation of the administrative unit<sup>15</sup>, and within one month of the expiry of the period specified in Article 6 (one month) for submission of claim to ownership or rights in rem, one or more committees with jurisdiction over all objections and claims to ownership or disputes in rem concerning property within the regulatory area, and all similar court cases relating to the area, which have not been decided by a final judgment, and in accordance with Article 2, Clause 8, of Law 10; the decisions of said Committee are subject to appeal before the Civil Court of Appeal, in accordance with due dates and procedures followed in appealing decisions of the interim relief judge. The Court of Appeal in-chamber shall rule by final decision. The time limit for appeal of judgments rendered by an interim relief judge is five days following the date of notification of the judgment.<sup>16</sup>

In accordance with Article 23 of Decree 66, within one month of the date the Dispute Resolution Committees work is completed, the administrative unit shall organize lists of rights holders' claims to each of the properties in the area, and another alphabetical list of rights holders' name, including the full value of their respective rights in the area; under Article 2, Clause 14 of Law 10, the distribution committee shall submit the lists to the administrative unit within one week from the date its work is completed. The

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<sup>14</sup> What is meant by 'in-chamber' is that the court adjudicates the case based on documents in the file, and without inviting the litigants and hearing their statements or statements of their representatives.

<sup>15</sup> Article 66 mentioned that the Governorate of Damascus constitutes the Committee stipulated in this article, but as Decree No.66 became part of Law No.10, the term "administrative unit" replaced the term "Governorate" wherever it was found in Decree 66 (Article 4 of Law 10).

<sup>16</sup> Article 230 of the Civil Procedure Code issued by Law No.1 of 2016.

decisions of said committee shall be subject to appeal before the governorate's Civil Court of Appeal within thirty days from the date of announcement. The Court of Appeal shall rule in-chamber by final decision within thirty days from date the appeal is registered.

In accordance with Clause 15 of the same Article, the administrative unit shall regulate share-ownership records in paper-based and digital forms, in order to protect equity and rights in rem; and shall issue nominal bonds on shares in jointly-owned regulatory sectors, and deliver them to their owners within six months from the date the Distribution Committee's ruling becomes absolute, due to expiry of the period for appeal or a decision on appeals, if they occur.

According to Clause 16 of the same Article, shareholders in jointly-owned regulatory sectors, are entitled, within one year from date of announcement of the final distribution lists, to equity trading, in whole or in part, amongst themselves or with third parties, whilst documenting this information in the Registry.

According to Article 18, Clause 2, of Law 10, shareholders in jointly-owned regulatory sectors whose share value equals the nominal value of one of the sectors, shall have the right to submit an application to the administrative unit to subscribe to the sector they wish. The administrative unit shall review the subscription applications within a period not exceeding fifteen days from the date the application is submitted.

As shareholders in jointly-owned regulatory sectors are entitled to submit applications to the administrative unit to establish a joint-stock company (second option) in order to complete the construction and investment of the sectors, the administrative unit must open a Registry to register these applications, and to verify stock certificates enclosed in applications against the Share Register, and to check for any notices or seizures preventing shareholders from transferring their shares in jointly-owned regulatory sectors, within a period not exceeding fifteen days, during which unacceptable applications are rejected (Article 19, Clause 2).

The administrative unit shall form a special committee in accordance with provisions of the Contract Law issued by Legislative Decree No.51 of 2004 and its amendments, to sell at auction regulatory sectors specified in the previous Clause (C), within a period not exceeding one year from the date a ruling is issued by the Executive Office, including the numbers of the sectors to be auctioned, to shareholders who did not benefit from the first and second options (Article 32 of Decree 66).

The administrative unit is committed to handing over empty sectors of land to their owners within a period not exceeding ninety days after the date they obtain building permits for them (Article 40 of Decree No. 66).

Occupants who are not eligible for alternative housing are granted the equivalent of a two-year lease paid from the Zone Treasury within a period not exceeding one month from receiving an eviction notice. Occupants who are eligible for alternative housing are granted the equivalent of an annual lease until they are handed over their alternative housing, paid annually by the Zone Treasury within one month from receiving an eviction notice (Article 2, Clause 24, Law 10). Concerning the regulatory sectors established after Law 10 was issued, the administrative unit is responsible for providing alternative housing for eligible occupants within a period not exceeding four years from the date of actual eviction (Article 25, Clause 2, Act 10).

## **II: Established Committees:**

A- Assessment Committee to assess value of property in regulatory area: The head of the administrative unit<sup>17</sup> forms this committee<sup>18</sup> which consists of: Consultant judge appointed as president by the Minister of Justice, two experts in property assessment appointed as members by the Minister of Public Works and Housing, two experts as members representing the owners, experts on behalf of property owners, elected in the regulatory area at the invitation of the

<sup>17</sup> The words of the Head of the Administrative Unit replaced the words of the Mayor under Article 4 of Law 10.

<sup>18</sup> As for Law No.23 of 2015, the task of forming this committee was assigned to the Minister of Justice, not the Mayor or the Head of the Administrative Unit (Article 21).

administrative unit in a daily newspaper for persons who have identified their chosen home to elect their representatives (Article 7 of Decree 66). If property owners of a regulatory area do not answer the call to elect their representatives in the Assessment Committee, the head of the Civil Court of First Instance in the governorate shall appoint the above-mentioned experts (Article 2, Clause 3, Law 10).

It is required that the Chairman and members of the Committee .. except for the owners' representatives .. shall not be related to, by birth or by marriage, up to the fourth degree, nor have any legal or financial relationships or interests with rights holders, in accordance with the provisions of Articles 175-176 of Proceedings Law No.1 of 2016. Members of the Committee shall take the following legal oath before the Chairman of the Committee before commencing their work: "I swear by Almighty God to perform my duty faithfully and honestly, and not to reveal any counsel secrets". Committee meetings shall be legal in the presence of the President and three members, and decisions shall be taken by unanimous or majority vote. In the absence of one or both of the owners' representatives for two consecutive meetings, the President of the Civil Court of First Instance shall appoint a substitute (Article 2, Clause 4, Law 10).

The Committee's task is to assess the value of properties of the area according to their current status. The Committee considers the value of properties equal to their real value directly before the date of issuing the decree creating the regulatory area, disregarding any rise in prices as a result of establishment or commercial speculation, if this rise is not justified with a similar rise in neighboring areas. Assessment takes into account descriptions set by the Committee formed by the Head of the administrative unit to be responsible for inventory and characterization of property, location of the land, buildings and constructions thereon, proximity to the center of the administrative unit, availability of public facilities, organizational structure and construction control system, category of agricultural land, its trees and crops and their location and nature, characteristics and produce, and proximity to roads, public facilities and irrigation sources therein (Article 2, Clause 5, Law 10).

After the Committee issues a decision, any oversights in assessing equity or errors in calculation shall be corrected upon the owner's objection. The Committee shall issue the required decision to determine resulting accrual and report it to the administrative unit. Final decisions by the Committee are subject to appeal before the governorate's Civil Court of Appeal, and are ruled in-chamber by final decision within a period not exceeding thirty days from date appeal is registered. The appeal shall not interrupt implementation procedures in the area (Article 2, Clause 6, Law 10).

B- Dispute Resolution Committee: This Committee is formed by decision of the Head of the administrative unit.<sup>19</sup> It comprises a consultant judge appointed by the Minister of Justice as president, a representative of the governorate General Directorate of Cadastral Affairs who must hold a degree in Law and is appointed a member by General Manager, and a representative of the administrative unit who holds a degree in Law and is appointed member by the Head of the administrative unit. Representatives of the General Directorate of Cadastral Affairs and the governorate must each have served the State for at least ten years after obtaining their degrees in Law. Both these members shall take the following oath before the Committee Chairman: "I swear by Almighty God to perform my duty faithfully and honestly, and not to reveal any counsel secrets" (Article 15, Decree 66).

The committee(s) has jurisdiction and handles objections and ownership claims or disputes in rem concerning property in the regulatory area. All similar cases relating to the area, currently before courts and not yet ruled by final decision, will be referred to this Committee (Article 14, Decree 66). The Committee also hears cases involving building and occupancy violations of private property in the area; it shall determine ownership of irregular buildings and constructions amongst owners, determine how each of them is affected in ownership of property land, and determine the tenant's entitlement under Law 111 of 1952 to a share equaling 30% of speculative value for residential occupants and 40% for commercial occupants (Article 43, Decree 66). In order to settle allegations or disputes submitted or referred to it, the Committee

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<sup>19</sup> Law No.23 of 2015 entrusted the Minister of Justice with the task of establishing this Committee (Article 28).

shall enjoy the same specialties as the relevant Court for hearing disputes (Article 16, Decree 66). The Committee is exempt from observing due procedures and deadlines established in the Proceedings Law<sup>20</sup>, and may act as arbitration committee based on an agreement between litigants to delegate conciliation (Article 18, Decree 66).

The decisions of the Committee are subject to appeal before the governorate Civil Court of Appeal in accordance with due process and deadlines in appealing decisions of the interim relief judge. The Court of Appeal shall rule in-chamber by final decision. The injured party who was not a party to the dispute has the right to claim damages before the ordinary courts, to be compensated by the damaging party. The Committee's decisions shall be carried out when the ruling becomes absolute, either because the appeal was not received within the legal period, or the appeal decision has been issued (Article 2, Clause 8, Law 10). Under Decree No.42 of 2018, rights holders who have not appealed before the Dispute Resolution Committee, may file with the ordinary courts when the Committees' judicial work stipulated in Law No.66 has ended.

C- Committee for Distribution and Assessment of Regulatory Sector Value: This Committee shall also be constituted by decision of the Head of administrative unit<sup>21</sup>. It comprises a consultant judge appointed by the Minister of Justice as president, two experts in property appraisal appointed members by the Minister of Public Works and Housing<sup>22</sup> and two member experts representing the owners. Committee members shall be sworn in before the Chairman with the above-mentioned oath. Regarding members of the aforementioned Dispute Resolution Committee, the owners' experts shall be selected in accordance with procedures followed when selecting owners' experts for the Property Assessment Committee mentioned in paragraph (A), and the same conditions

<sup>20</sup> Also the case for the Dispute Resolution Committee as set forth in Law No. 23 of 2015 (Article 31).

<sup>21</sup> This committee was formed by decision of the Minister of Justice under Law 23 of 2015 (Article 35).

<sup>22</sup> The phrase 'Minister of Public Works and Housing' replaced 'Minister of Housing and Urban Development' under Article 4 of Law 10 of 2018.

and requirements are applicable for the Head and members (Article 24, Decree 66).

The Distribution Committee has the task of evaluating each of the area's sectors specified in the zoning chart, after excluding appropriated sectors, which we will discuss later, and comparing the total value of all property in the regulatory area assessed by the Assessment Committee, with the total value of all the regulatory sectors also assessed by the Assessment Committee, and calculating the differences between them, whether increase or decrease and at what proportion. Following which, it redistributes shares to rights holders in the entire regulatory area, based on the rate of increase or decrease, and determines the shares of each owner equivalent to the nominal value per share of 1 Syrian Lira (Article 2, Clause13, Law 10).

When the Committee has completed its work, the lists are handed over to the administrative unit. The latter invites rights holders to view them via announcement in a local newspaper, or the capital's newspapers if local is unavailable, on the administrative unit's bulletin board and website, if available, and the regulatory area's notice board. The Committee's decisions are subject to appeal before the governorate Civil Court of Appeal within 30 days from date of announcement. The Court of Appeal shall rule in-chamber by final decision within thirty days from the date an appeal is registered (Article 2, Clause 14, Law 10). When the Distribution Committee's ruling becomes absolute, either by expiry of the period for appeal or by ruling on appeals if they occur, the administrative unit shall, within a period of six months, organize equity holdings records in paper-based and digital forms that preserve equity and rights in rem, and shall issue nominal bonds for the shares of jointly-owned regulatory sectors, to deliver to owners during the above-mentioned period of 6 months (Article 2, Clause15, Law 10).

**D- Committee for Resolving Sub-Issues:** This Committee is headed by the Minister of Local Administration and Environment and its members include the Minister of Public Works and Housing, the Mayor, the Head of the administrative unit, and a legal expert appointed by the Chairman of the Committee. Its task is to deal

with all sub-issues not provided for by Legislative Decree No. 66 of 2012 and provisions of Law No. 10, and to take all measures necessary to execute them in a manner consistent with both their provisions (Article 2 Clause 23 Law 10).

It is worth mentioning that in addition to the above three committees, the administrative unit may form a special committee in accordance with provisions of the Contract System issued by Legislative Decree No. 51 of 2004 and its amendments, to sell regulatory sectors specified in a decision by the Executive Office of the Administrative Unit Council, by public auction within a period not exceeding one year (Article 32, Decree 66). In case of necessity, the Mayor may, if proposed by the administrative unit, form full-time committees to carry out required work (Article 2, Clause 21, Law 10).<sup>23</sup>

**III: Appropriation in favor of Administrative Units:** The “free appropriation”, in accordance with the general regulatory plan and the detailed plan, of all lands needed to achieve and implement the following:

- Parks, squares, parking spaces, and public buildings including public centers, schools, police stations, hospitals, clinics, health centers, fire stations, places of worship (mosques and churches), public libraries, cultural centers, places for public monuments, sports fields, social welfare centers, electricity switching stations, sewage treatment plants, drinking water pumping stations, and community support centers. Public buildings sectors are handed over to public bodies without compensation, and it is the responsibility of those bodies to erect them.
- Sectors allocated to the administrative unit to construct buildings for people evicted due to demolition warning, low-income people,

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<sup>23</sup> It should be noted that forming such committees and granting them powers of the judiciary is not new to the Syrian regime; similar committees have previously been formed, for example, dispute resolution committees stipulated in Article 18 of Acquisition Act No. 20 of 1983, who were given the power to consider all ownership claims or disputes in rem over property in the expropriation zone, referring to it all similar cases relating to the area, currently before courts and pending final judgment. Additionally, its decisions may be appealed to the Court of Appeal with due process and deadlines followed in appealing decisions by the interim relief judge. The Court of Appeal rules in-chamber by final decision. Article 12 of said law also provides for the formation of a preliminary committee to assess the value of acquired property. Article 23 provides for the formation of a committee to reconsider the preliminary estimate.

and social housing; to cover the expenses of regulation, and studies and implementation of infrastructure and public utilities; compensation for eviction and destruction of plantations; all due rent compensation to occupants; fees and expenses of auctions, compensation for committees, and wages of experts and contractors; value of contracts concluded for the implementation of cadastral and technical work; bonuses and bank interests; and all expenses necessary to complete and maintain the regulatory area and develop the administrative unit.

The above appropriations should not result in the floor area allocated to owners in the regulatory area dropping below 80% for every square meter of land, according to the economic feasibility study, the regulatory plan, and the approved building system (Article 2, Clause 11, Law 10).

**IV: Prohibitions provided for:** Legislative Decree No. 66 of 2012 and subsequent Law No. 10 of 2018 prohibited any natural or legal person from owning and disposing of any shares in jointly-owned regulatory sectors through trade, purchase or concession, that enables the allocation of more than one regulatory sector. This prohibition applies from the establishment of the regulatory area, and the sale, donation, loan, replacement of membership, concession, transfer of right, or any insurance, mortgage or authorization contract, whatever its wording, that leads to ownership amounting to disposal, such disposal is an absolute nullity.<sup>24</sup> (Article 2 Clause 18 Law 10).

**V: Solutions available to equity holders:** Sectors are distributed and their ownership transferred and registered in the Land Registry under one of three options, according to the wishes and choice of the shareholders in jointly-owned regulatory sectors. They must present to the administrative unit to request one of the available options, which are as follows:

**Option 1:** The allocation of sectors; shareholders in jointly-owned regulatory sectors whose shares are equal in value to the nominal

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<sup>24</sup> Absolute nullity is invalidity relating to public policy, approved in public interest and ruled by the judge spontaneously. Disposal which is an absolute nullity may not be legitimized by subsequent permission; however, relative nullity is that in favor of an individual, it is not ruled by the judge spontaneously and it is permitted for an individual in whose favor the nullity was placed to accept and authorize the disposal.

value of one of the sectors, may apply to the administrative unit to subscribe to the sector they want. The administrative unit studies the applications for subscription and either rejects it for violating the terms of subscription or accepts it and consequently the Executive Office issues a decision to allocate the sector. In the event more than one subscription application is submitted for allocation of the same sector, preference is given to applicant(s) in order of application registration date with the administrative unit. In case a number of applications are registered on the same date, selection is made by drawing lots. The allocation decision is announced on the administrative unit's bulletin board, its website, if any, and in the regulatory area's notice board. The administrative unit must send a copy of the allocation decision to the real estate departments to carry out registration procedures for the property. (Article 2 Clause 18, Law 10).

**Option 2:** To contribute to the establishment of a joint stock company. When the allocation of all the first option sectors is complete, the administrative unit calculates the total shares of all applications to acquire shares in the company, and specifies the numbers of the corresponding sectors and numbers of the remaining sectors for a third option (auction sale). This is to achieve integration and harmony throughout the company project it is going to implement, and to reflect "positively" on the remaining sectors which will be sold by auction by decision of the Executive Office, and the allocation of an integer number of sectors for the second option. In order to do so, the Company may decide to transfer shares in the regulatory sectors from the second to the third option or vice versa, based on principles determined by the Executive Office in the interests of shareholders. The administrative unit shall announce the decision to allocate company shares on the administrative unit's bulletin board and website, if available, and in the regulatory area's notice board. The decision of the Executive Office of the Administrative Unit Council is considered a legal power of attorney<sup>25</sup> for all regulatory sector shareholders of the second option to submit an application for establishment to the

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<sup>25</sup> This is strange and contravenes the most basic legal rules. How can this description be given to the administrative unit's decision, a litigant against the shareholders in this case? It is unreasonable to consider the decision of the administrative unit a legal proxy on behalf of the owners, because power of attorney is authorized to the agent to perform an act, and for it to be valid it must be issued by the free will of the client.

Internal Trade and Consumer Protection Ministry on behalf of the Establishment Committee. A joint stock company is established in accordance with the provisions of the Companies Law.

The administrative unit then sends a copy of the allocation decision to real estate departments to register ownership in the company's name within 30 days from date of ratification of the company's Company Charter in a manner that does not contradict provisions of the Companies Law. The value of the sectors equivalent to shares of shareholders in the regulatory divisions are in rem, forming part of the company's capital and evaluated in accordance with provisions of the Companies Law. The company may offer its shares directly through IPO, or a stock market, or one or more contractors, in accordance with the provisions of the Companies Law.

The Minister of Public Works and Housing may, at the proposal of the Executive Office of the Administrative Unit Council, decide to discontinue this option and apply the provisions of Option 3 (auction sale) if the company can not be established, or the second option can not be achieved for social, cultural or economic reasons (Article 2, Clause 19, Law 10).

**Option 3:** To sell by auction. Shareholders of jointly-owned regulatory sectors can apply to the administrative unit with requests to sell their shares by auction. Their applications must be accompanied with documentation proving ownership of shares. All shareholders whose applications were not accepted under options 1 and 2 are subject to the provisions of the option to auction, as well as anyone who did not apply for any of the three above-mentioned options. A decision is issued by the Executive Office of the Provincial Council which includes numbers of sectors up for auction, and the allocation ruling is announced in the governorate's bulletin board and website, if any, and in the regulatory area's notice board. A special committee is formed by the governorate to sell the above-mentioned sectors.

The governorate shall announce the sale of said sectors in a manner that takes into account the interests of the owners, in terms of quantity and numbers of sectors offered for sale and the timing of

the announcement. Additional announcements should be spread widely in all available means including the internet, public or private television stations, local radio stations, weekly newspapers specializing in real estate advertisements and roadside boards. The governorate shall pay all publishing and advertising costs as well as expenses arising from the sale, and this shall be counted among the regulatory area's expenses.

The value of the sold sectors is deposited in the governorate's account with the Central Bank of Syria. This is a Special Trust account, and the governorate may not dispose of shareholders' funds from regulatory sectors that have been sold. The value of sectors sold by auction shall be paid to shareholders in regulatory sectors every six months, proportionate to their shares and total amounts from the sold sectors, after settling all prohibitions against disposition, in rem rights, and mortgages applicable to their shares of regulatory area property.

With the approval of the Executive Office, the governorate may purchase sectors (which are subject to auction) at 5% higher than the referral rate. The governorate shall comply with the payment deadline specified in the public auction announcement. The governorate may also sell in auction one or more of the regulatory sectors it is allocated, to fund the regulatory area Fund.

## Topic 2

### Legitimacy of the above-mentioned law and its future ramifications

#### I: Compatibility of the above with Syrian Constitution and laws:

Not much scrutiny or research is needed to confirm violations of Law No. 10, Decree No. 66 of the Syrian Constitution and Syrian laws in force. The 'free allocation' of sectors in favor of public buildings and facilities is in clear contravention of Article 15 of the Syrian Constitution of 2012, which affirms that private ownership, collective or individual, is safeguarded and may not be seized except for public benefit and for compensation equivalent to the real value of the property. Law No. 10 did not mention the compensation, and this and similar laws can therefore be challenged as unconstitutional before the Supreme Constitutional Court, provided that this Court is independent and free of the hegemony of executive power represented by the Head of State. The Court can then annul such laws because of their flagrant violation of the constitution.

This free appropriation also targets some owners but not others, which contradicts the principle of equality enshrined in the Preamble to the Syrian Constitution and Articles 18, 19 and 33 of the Constitution, as well as Article 771 of the Syrian Civil Code promulgated by Legislative Decree No.84 of 1949, which affirms that no one may be deprived of his property except in cases determined by law, and in return for fair compensation.

Additionally, the procedures provided for in said laws, particularly those relating to the Dispute Resolution Committee's consideration of property claims and rental rights, deprives owners of the right to litigation provided for in the Constitution, as that committee is not a judicial body and besides the Head, none of its members are judges. Giving owners the right to challenge the Committee's appeal decisions will not add much because the Court of Appeal will consider the decisions of this Committee in-chamber without inviting the litigants; that is to say, owners will not have the opportunity to defend their ownership rights before the Court of

Appeal, and they are therefore deprived of the right to litigation, which should be safeguarded by the Constitution.<sup>26</sup>

The amendment by Decree No. 42 of 2018, concerning the right of owners who have not objected before the Dispute Resolution Committee to bring a claim before ordinary courts, does not change much; this is because anyone who objects or is a party to a case before the Committee may not review the ordinary judiciary, even if the decision is unfair. Let us suppose a decision is made by the Committee regarding ownership of a property and the decision becomes enforceable, and is implemented based on Article 17 of Decree 66. Then later on, someone else claims ownership of the property in question before the ordinary court, and he was not a party to the case before the Committee. This person does not gain anything, even if his claim is rightful; the ordinary courts would reject his claim as there is a judicial ruling concluded in this lawsuit, in support of Article 88 of the Syrian Evidence Act of 2014, especially as the person in whose favor the Dispute Resolution Committee ruled would push the issue forward, being an interested party.

Restricting owners' rights to the above three options - sector allocation, establishment of a joint-stock company with other owners, or sale by public auction - whilst giving the administrative unit the right to accept or reject applications for allocation under the pretext they do not meet the terms of subscription, without specifying what these terms are and leaving it to the discretion of the administrative unit; granting the administrative unit the right to transfer shares in regulatory divisions from Option 2 (establishment of company) to Option 3 (auction) or vice versa, based on criteria set by the Executive Office by absolute decision; granting the Minister of Public Works and Housing, at the proposal of the Executive Office of the Administrative Unit Council, the right to suspend Option 2 and apply the provisions of Option 3 in case the company cannot be established, or the objectives of Option 2

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<sup>26</sup> Article 51 of the 2012 Constitution stipulates that: "The right to litigation, contest, review and defense before the judiciary are protected by law. The State shall guarantee judicial assistance to those who are unable according to the law. The law prohibits the immunity of any work or administrative decision from judicial oversight"

cannot be accomplished for social, cultural or economic reasons<sup>27</sup>; as well as preventing an owner from disposing of his property through sale, donation, loan, transfer of rights, or any other form of disposal after the regulatory area is established, and considering the act an absolute nullity; all of the above violates the provisions of Article 768 of the Syrian Civil Code, which affirms that the owner has sole right, within the limits of the law, to use, exploit and dispose of his property.

The formation of extraordinary committees by the executive authority (administrative unit or Mayor), granting them jurisdiction to evaluate properties in the area and to consider objections and ownership claims or disputes in rem and rental property rights within the regulatory area, and other previously mentioned jurisdictions, contradicts the principle of independence of the judiciary provided for in Articles 132 and 134 of the Constitution, and also contradicts the provisions of Judicial Authority Law No. 98 of 1961 because none of the members of these committees,<sup>28</sup> besides the Head, are judges or have practiced legal work before. Some of them are not even required to have a Law degree. This also violates provisions of Article 63 of the Syrian Proceedings Law No. 16 of 2016 which affirms that the Civil Court of First Instance has universal jurisdiction over real estate and property lawsuits. In fact, these committees have priority over ordinary courts. The latter must refer all real estate cases relating to the area and which have not been settled by final judgment to the Dispute Resolution Committee (Article 14, Decree 66).

Furthermore, we believe that assigning the task of forming committees stipulated in the above-mentioned laws to the administrative unit, which could be a province, city, town or

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<sup>27</sup> We note here that the matter is left to the Minister of Public Works and Housing and the Executive Office of the Administrative Unit. The law did not specify the meaning of the inability to establish the company or to achieve the goals of Option 2 for social, cultural or economic reasons. These words are fluid and open to more than one interpretation. It is very easy for the decision-maker to move to the auction option with excuses that are not even clear.

<sup>28</sup> Article 67 of the Judicial Authority Law affirmed that the High Judicial Council is the authority to appoint, promote, discipline and dismiss judges. Not the Mayor or the administrative unit?

municipality, because the heads of is an insult to the judiciary,<sup>29</sup> the administrative units are pillars of the executive branch.

The provision that said committees shall decide on disputes presented before them, in accordance with rules and time limits followed before the interim relief judge, and that the Court of Appeal shall decide on appeals on its decisions in-chamber and without inviting the litigants, contradicts the text of Article 79 of the Proceedings Law, as the interim relief judge's authority is limited to hearing issues that may be short on time, but without imposing on the matter. This is not the case here, as these committees will decide on issues relating to the origin of right (establishing ownership, rental rights, etc.), and this is forbidden to emergency jurisdiction. Besides, why is there a fear of running out of time in such matters? We should not forget that the time to appear before the interim relief judge is 24 hours, and in case of extreme necessity, this time may be reduced to one hour provided that the same notice is given to the litigant himself.<sup>30</sup> We are all aware that the circumstances of war have made refugees and IDPs of more than a third of Syrians. This certainly prevents them from appearing before the aforementioned committees and from challenging their decisions before courts of appeals within specified deadlines and time limits. If emergency jurisdiction does not have the power to decide the origin of right, even though emergency jurisdiction is an old judiciary rooted in Syrian law, how can this power be granted to a non-judicial body, the vast majority of whose members do not have the legal knowledge or judicial expertise?

Furthermore, supposing that a decision by one of the above-mentioned committees and subsequent decision by the Court of Appeal were based on papers later proven to be forged or testimony proven to be fraudulent, or deceit on the part of a litigant that affected the ruling, or any other of the cases provided for in Article 242 of the Proceedings Law which justify the injured party's request for retrial; would the injured party be given this right? The answer is definitely negative, since the possibility of retrial is not provided for in Law 10 or in Decree 66, and because retrial only

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<sup>29</sup> Article 1 of the Local Administration Law promulgated by Legislative Decree No. 107 of 2011:

<sup>30</sup> Article 103 Proceedings Law.

occurs before the court that issued the ruling;<sup>31</sup> as we know, these committees are temporary committees and their mission ends with the expiry of their specified period (Article 2, Clause 21, Law 10), and so there would be no committee for the injured party to seek retrial before.

Finally, assigning the task of executing the Dispute Resolution Committee's rulings to administrative units in accordance with Article 2, Clause 8 of Law 10 contradicts the provisions of Article 276 of the Proceedings Law, which states that the authorized executive body is the body located in the district of the court issuing the judgment or the body in whose district the deeds were created; therefore, whether the decision of the Committee, or Court of Appeal if the Committee's decision is appealed, is considered, loosely, a "judicial decision" or whether it is considered an executive bill, it must be implemented through the localized relevant executive body and not through the administrative unit .

## **II: Compatibility of Law No. 10 and Decree 66 with international covenants:**

Ownership right is a fundamental right enshrined in international covenants and conventions; it is closely linked to the right to a decent and safe life, and can not be denied. It is therefore not permissible to deprive a person of the right to own property, and in no case is it acceptable to deprive a person of his property unlawfully. The right to ownership and the prohibition of arbitrary deprivation of one's own property were recognized in Article 17 of the Universal Declaration of Human Rights of 1948, as well as in the 1969 American Convention on Human Rights, which affirmed that everyone has the right to use and enjoy his property, and that no one may be deprived of his property except after fair compensation. Article 8 of the European Convention on Human Rights of 1950, recognizes every person's right to respect for his private and family life and abode. Article 31 of the Arab Charter on Human Rights of 2004 also affirms that the right to private property is guaranteed to every person, and prohibits in all cases the confiscation of all or some of his property arbitrarily or illegally.

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<sup>31</sup> Article 244 Proceedings Law.

The right to ownership is also guaranteed and inviolable other than for public necessity or interest, in accordance with article 14 of the African Charter on Human and Peoples' Rights of 1981.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 emphasized the need to guarantee the right of everyone, without distinction as to race, color, national or ethnic origin, to the right to own property alone or in association with others and the right to housing.

In the Guiding Principles on Internal Displacement, it was emphasized that in all circumstances, protection must be provided for the funds and property of internally displaced persons, in particular against looting, direct and indiscriminate attacks and other acts of violence, use as a shield for military operations or targets, or as the object of reprisal, and destruction or seizure as a form of collective punishment. Funds and property left behind by internally displaced persons must also be protected from arbitrary and unlawful destruction and seizure, and occupation or use.<sup>32</sup>

Thus, the provisions of Law No. 10, and before it, Decree 66, contravene all of this legal arsenal, which gave great importance to the right to property and housing. There has been a clear confiscation of the properties of many Syrians during the war, especially refugees and displaced persons, many of whom are wanted by the security authorities because of their political views and so will not risk appearing before the committees mentioned in those laws, as naturally, anyone would prefer their own life to their property. To say that relatives up to fourth-degree or legal agents of owners may appear on their behalf to prove ownership is a form of useless heresy; Syrians have tried this system for decades, and no relatives or agents will dare to do such a thing, not to mention many families have been displaced in whole and no relatives remain in many areas that may be the target of the so-called estate regulation. This contravenes Article 12-13 of the Pinheiro Principles which stressed that States must ensure no person is

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<sup>32</sup> From the Guiding Principles on Internal Displacement, adopted in Austria in January 1998, at the 54th session of the Commission on Human Rights (E/CN.4/1998/53/Add.2).

subjected to persecution or punishment for filing a restitution claim.<sup>33</sup>

Given the importance of housing and property in human's lives, international humanitarian law provided special protection for buildings and considered them among the civilian objects<sup>34</sup> that may not be attacked by parties to a conflict, whose attacks must be limited to military targets and objects. Article 48 of Additional Protocol I of 1977 to the four Geneva Conventions of 1949 stresses that parties to a conflict must distinguish between the civilian population, combatants, civilian objects and military targets, and its operations must be directed towards military targets only. Furthermore, Article 52 of Protocol I considers that if there is any doubt as to whether an object is usually dedicated to civilian purposes such as a place of worship, house or other dwelling, or school, but in use for effective contribution to military action, it is assumed that they are not being used as such. In other words, doubt is concluded in favor of civilian objects and it is assumed they are not being used for military purposes unless proven otherwise. Before that, Article 25 of the Hague Convention on the Laws and Customs of War of 1907 forbade the attack or bombardment of cities, villages, dwellings, and buildings. Distinguishing between military targets and civilian objects and not attacking civilian objects is a customary rule in accordance with customary international humanitarian law,<sup>35</sup> which requires parties to a conflict to respect private property and not to confiscate it.<sup>36</sup>

Article 8, Clause 2, of the Rome Statute of the International Criminal Court of 1998, which entered into force in 2001, affirmed that the destruction and seizure of property without military necessity is a war crime, especially when committed in the context of a large-scale operation, and this applies both to international armed conflict and to armed conflict not of an international

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<sup>33</sup> Principles of the United Nations Special Rapporteur, Paulo Pinheiro, adopted at the 56th session of the United Nations Commission on Human Rights on 28 July 2005, E/CN.4/Sub.2/2005/17.

<sup>34</sup> Article 52, Clause 3, of Additional Protocol I of 1977.

<sup>35</sup> See Rules 7, 8, 9 and 10 of the ICRC's customary rules of international humanitarian law, "Customary International Humanitarian Law: Volume 1: Rules", published on the Committee's website at the link:

<https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

<sup>36</sup> Customary Rule 51 from the previous source .

character.<sup>37</sup> What the Syrian regime has done regarding the alleged re-organization of areas, in any real estate area of Syria, is nothing but a systematic confiscation process carried out under the umbrella of a so-called law or decree. It is also extensive because it can be applied in all of Syria, as confirmed in Law 10.

It is worth mentioning that since 2012 the International Committee of the Red Cross (ICRC) has described the conflict in Syria as an armed conflict not of an international character.<sup>38</sup> Additionally, most of the Security Council resolutions on Syria described the situation in Syria as a conflict, and called on its parties to abide by the rules of international humanitarian law.<sup>39</sup> As is known, a conflict can only either be international (between two or more States) or not of an international character (between State(s) and armed groups openly bearing arms), as is the case in Syria. International humanitarian law, represented by the four Geneva Conventions of 1949 and its two Additional Protocols of 1977, applies only in the case of armed conflicts (international and non-international), not to mention the repeated demands from the Security Council to refer the Syrian file to the International Criminal Court, which remained futile due to Russian and Chinese vetoes.<sup>40</sup>

The need for a fair trial, the need for trial before an independent, impartial and properly constituted court, and the right to defend oneself and challenge a decision against him by a higher judicial authority, are all principles that have been affirmed in many international covenants and conventions. The Universal Declaration of Human Rights of 1948 states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the

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<sup>37</sup> See Article 8, Item 2, Paragraph E of the Rome Statute of the International Criminal Court.

<sup>38</sup> For more details see the following link: <https://www.bbc.com/news/world-middle-east-18849362>

<sup>39</sup> Including, but not limited to, Resolution No. 2139 of 2014 and Resolution 2254 of 2015.

<sup>40</sup> For example, in May 2014, Russia obstructed a draft resolution on referring the Syrian war file to the International Criminal Court, which would have paved the way for the prosecution of officials in the Syrian regime for committing war crimes. In February 2017, a Russian-Chinese veto was issued against a draft resolution imposing sanctions against the Syrian regime after it was accused of using chemical weapons three times between 2014 and 2015. In April of the same year, the two countries blocked another draft resolution supported by Washington, London and Paris seeking to strengthen efforts to investigate the chemical attack on Khan Sheikhoun in Idlib, which resulted in the deaths of about 70 people (report entitled 'Russian Veto and the Suffering of the Syrians .. Highlights', published on Al Hurra Channel's website on the link: <https://www.alhurra.com/a/russian-veto/425181.html>)

constitution or by law. Additionally, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him (Articles 8 and 10). Without doubt the right to property is a basic human right and no one can be arbitrarily deprived of his property in accordance with Article 17 of the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights of 1966 affirmed that people are equal before the judiciary, and everyone is entitled, in the determination of any criminal charge against him or his rights and obligations in any civil action, to a fair and public hearing by an independent and impartial tribunal previously established by law (Article 14). These principles are provided for in other international instruments.<sup>41</sup>

The Basic Principles on the Independence of the Judiciary, adopted by the United Nations General Assembly by Resolutions 40/32 and 40/146 of 1985, obliged States to ensure the independence of the judiciary and required the judiciary to have jurisdiction over all matters of a judicial nature, and that everyone has the right to trial before ordinary courts or tribunals that apply due process. Judicial bodies which do not apply duly established legal procedures for judicial proceedings, can not be established to override the jurisdiction of ordinary courts or tribunals, and those selected for judicial posts should be individuals of integrity and competence, who have the appropriate training or qualifications in Law.

Clearly, the formation of committees as stipulated in the laws in question contravenes what is stated in international covenants and conventions as seen in the above details, because these committees are not courts at all, since the majority of their members are not judges as previously explained. As a result, owners have been denied access to a competent court to hear their cases. As affirmed in the international instruments mentioned above, the Court of Appeal will not hear their cases publicly but in-chamber without inviting the litigants, i.e. the owner is not given the chance to defend and prove his rights; a violation of the right to defense, the

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<sup>41</sup> These rules and principles are affirmed in Article 6 of the European Convention on Human Rights of 1950, Article 8 of the American Convention on Human Rights of 1969, Article 7 of the African Charter on Human and Peoples' Rights of 1981, Article 13 of the Arab Charter on Human Rights of 2004.

cornerstone of fair trial and an inherent human right which can not be violated by one, not even waived by the accused himself, a rule formed not only for the individual's benefit but for the benefit of society as a whole. Emphasis has been placed on this right in many international covenants and conventions.<sup>42</sup>

These committees will not be independent or impartial because they will be established by administrative units affiliated with the executive authority. Its members are appointed by the Head of the administrative unit, based on nominations by the Minister of Justice or the Minister of Public Works and Housing or the Director General of Cadastral Affairs, as applicable. All of these are considered part of the executive authority. The executive authority is therefore interfering in the judiciary's work, which contradicts the independence and impartiality of the judiciary. Everyone's right to have their case brought before an independent, impartial and competent court is an absolute right not open to any exceptions. It is a general principle of customary international law and binding on all States, including those that have not ratified international treaties, and at all times even during emergencies and armed conflicts.<sup>43</sup>

The provision obligating ordinary courts to refer all property claims and disputes relating to the regulatory area pending final decision by a dispute resolution committee (Article 14, Decree 66), and the granting of power to this committee not to adhere to due process (Article 18, Decree 66), contravenes the principle of inadmissibility of establishing judicial bodies that do not apply due process of law, and the inadmissibility of seizing jurisdiction from ordinary courts, as stated in the Principles of the Independence of the Judiciary.

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<sup>42</sup> 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 European Convention on Human Rights of 1950, Article 8 of the American Convention on Human Rights of 1969, Article 7 of the African Charter on Human and People's Rights of 1981 and Article 13 of the Arab Charter on Human Rights of 2004.

<sup>43</sup> Fair Trial Manual, Amnesty International publications, second edition 2014, p.108.

### **III: Reflection of these laws on the course of the political process: (Return of refugees and IDPs)**

We can not be sure that if a refugee or IDP is assured that his property rights will be safeguarded and his property lost as a result of the conflict will be returned to him, that this necessarily means he will return to his country. Some have settled in a new country and integrated with their new society, and may not be able to return. Still, preserving ownership rights will remove many obstacles in the way of those wishing to return. However, if one is certain he can not recover his property, he will not return whether he wants to or not, because returning automatically brings to mind the need for a roof to shelter him and his family, and land to make a living from in the case of agricultural land owners. The International Independent Investigation Commission concluded that the illegal conduct of the belligerents caused people to flee their homes, and this will also have a devastating impact on the future demography of Syrian society, a society that is now seriously torn apart. In many cases, the Commission received accounts from individuals who are afraid to return to areas recently taken over by government forces, including Eastern Ghouta (Damascus countryside), northern Homs countryside and Yarmouk camp (Damascus), and in other cases, including in Afrin (Aleppo), members of armed groups carried out large-scale looting of civilian homes, leaving those fleeing to avoid clashes little to return to.<sup>44</sup>

Thus, the appropriation and confiscation of the property of displaced persons, refugees and detainees constitutes a violation of human rights, and leads to continued displacement and migration, complicates the process of reconciliation and peace-building, and undermines the safe and neutral environment desired in order to achieve a smooth and secure transition from a state with a totalitarian regime to a state of rights, justice and law.

Hence, the issue of housing and property restitution is an important and sensitive issue in the political process in Syria. The success of this file will automatically affect the success of the political process as a whole. This success will encourage Syrians to participate in

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<sup>44</sup> Report by the International Independent Investigation Commission on the Syrian Arab Republic, Paragraph 65, 39th Session of the Human Rights Council of the UN General Assembly, Sept. 2018, op. Cit..

public life, especially in elections supposed to take place in the future, one of the four issues adopted by the United Nations; and will also inspire the confidence of Syrian citizens in the political process and the constitution that can be put in place soon.

Therefore, the continued application of these laws (10, 66, 23 and others) which deny property rights, and continuing to issue similar laws and legislation, will impede and even prevent the return of many displaced persons to their homeland. It is unreasonable to urge the displaced to return, while simultaneously confiscating and destroying their property in the name of laws and regulations that violate all international covenants and conventions.

Doubtlessly, the issue of refugees and displaced persons returning to their homes is not only linked to restitution of their property, but also to the issue of a safe environment, which is the basis for the success of any political, economic or social process. No one can think of returning as long as the political and military forces that silenced people and took away their freedoms and lives are the same ones managing the files of return and reconstruction and resolving issues of property and restitution. It is impossible to imagine that the issue of property restitution can be resolved without solving and dealing with other issues. It is no secret that it was the political and military powers who planned and managed forced displacement and confiscation of property, especially those affiliated with the Syrian regime as well as Syrian and foreign militias that fought and still fight on its side. Many powerful figures benefited and thrived from these operations, whether by taking over property of displaced persons, or by living in them, or seizing and selling them to other people.

These forces will become a source of concern and terror for refugees and displaced persons, and the biggest obstacle to returning home and recovering property; they will fight this return and the accompanying restitution procedures, and we know that if power and influence remain in their hands, they will triumph at the expense of the displaced who are powerless. The United Nations confirmed in 2017 that the return of Syrians to their homes remains

precarious because the requirements for full safe return have not yet been achieved on the ground.<sup>45</sup>

Perhaps the most important and difficult challenge facing action towards restitution in the future will be that both militias loyal to the Syrian regime and opposing it retain their arms. Disarmament will not be as easy as some expect; as we mentioned, these militias together with the Syrian regime bear a large part of the responsibility for violations committed in Syria, including violations of property rights. The fact that weapons are scattered all over Syria threatens all steps aimed at a resolution, and keeps the conflict going. This was one of the main challenges facing property restitution in Colombia, where the ongoing conflict kept the vast majority of owners from returning to their homes, and many who returned and demanded the restitution of their property were threatened and killed. Human rights defenders and state officials mandated to consider these issues have become the target of such attacks.<sup>46</sup>

We must not forget that current steps towards a political solution taking place in Geneva are based on a partnership between the Syrian regime and the opposition and civil society. It seems that the biggest role in managing the next phase will be the Syrian regime's, and we do not imagine that it will seek to return properties to their owners - the same party to confiscate and destroy their property, and to issue laws that infringe on the property rights under discussion.

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<sup>45</sup> For more information, see the BBC News website <http://www.bbc.com/arabic/middleeast-40460340> Date viewed 30/12/2018.

<sup>46</sup> "A Land Title is not enough, Ensuring Sustainable Land Restitution in Colombia" Report issued by AMNESTY INTERNATIONAL, Published in 2014, page66.

### Topic 3:

#### Housing and property restitution rights and available solutions

##### I- Rights of refugees and displaced persons to housing and property restitution:

Normally, refugees and displaced persons are eager to return to the homes and lands they were forced to flee because of conflict and misery, so many of them will seriously consider returning once this conflict is over. Usually, they decide to return to their habitual residence because the threat that led them to leave has largely disappeared. However, in order to return, conditions must be suitable and the environment safe, and there are many conditions that must be met for circumstances to be right and safe to return. We will focus on one of these conditions: housing, as this is the subject of our research.

Before going into housing conditions required for the return of displaced persons, it is necessary to identify the categories to be targeted by the voluntary return and reintegration program, which includes refugees and IDPs.

IDPs are persons or groups who were forced or compelled to flee or leave their homes or places of habitual residence, in particular as a result of, or in an effort to avoid the effects of, armed conflict, generalized violence, human rights violations, natural disasters or man-made disasters, and did not cross recognized international borders of the State.<sup>47</sup>

Involuntary departure while remaining in one's own country together determine that a person is internally displaced. The definition mentions some of the most important causes of internal displacement, including armed conflict, violence, human rights violations and disasters, and this is not a comprehensive list. The term "in particular" means not excluding the possibility of other

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<sup>47</sup> Guiding Principles on Internal Displacement, issued at the 54th session of the United Nations Commission on Human Rights, E/CN.4/1998/53/Add.2 27 September 2002, known as Deng's Principles.

situations that may meet the two main criteria for involuntary departure within one's own country.<sup>48</sup>

Although there are no legally binding international instruments dedicated to IDPs, and they do not have any special status in international law, they enjoy the rights and freedoms guaranteed to all individuals under international human rights law and international humanitarian law, which are included in the Guiding Principles on Internal Displacement, which are closely related to the protection of displaced persons. These principles did not establish a new law, but reaffirmed the rights and freedoms in binding instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, and customary international law, and interpreted them in the context of protecting and meeting the needs of displaced persons.<sup>49</sup>

Principle 21 of the Guiding Principles on Internal Displacement stressed that no one may be arbitrarily deprived of his possessions and properties. Principle 28 affirmed that it was the primary responsibility of competent authorities to create conditions and provide means to enable internally displaced persons to return voluntarily and safely to their homes, places of habitual residence, or voluntary settlement elsewhere in the country. These authorities facilitate the reintegration of returning or resettled IDPs, and competent authorities have a duty and responsibility to assist returning and/or resettled IDPs to recover their possessions and properties left behind and seized when they were displaced, to the extent possible. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.<sup>50</sup>

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<sup>48</sup> Amnesty International's Handbook for the Protection of Internally Displaced Persons, published in its e-newsletter, No. 21, on its official website,:

<http://www.amnestymena.org/ar/Magazine/Issue21/HandbookfortProtectionofInternallyDisplacedPersons.aspx?articleID=1136>

<sup>49</sup> Forced Displacement and Housing, Land, and property Ownership Challenges in Post-Conflict and Reconstruction, issued by international network to promote the rule of law. February 2009. P11

<sup>50</sup> Guiding Principles on Internal Displacement, Op. Cit.

Principle No. 10 of Special Rapporteur Paulo Pinheiro's Principles stressed the right of all refugees and displaced persons to return voluntarily to their former homes, lands or places of habitual residence in safety and dignity. Voluntary and safe return must be based on a free, informed and individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin. States should allow refugees and displaced persons who so wish to return voluntarily to their former homes, lands or places of habitual residence.

Refugees and displaced persons may not be forced or coerced, directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property. States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.<sup>51</sup>

Some States have already incorporated the guiding principles into their national legislation. Angola took precedence in 2000, when the Council of Ministers of Angola was guided by the Guiding Principles in drafting legislation on the resettlement of internally displaced persons, followed by Burundi in 2001 who set up a high committee to protect IDPs. The constitutional courts of some States included provisions with reference to the guiding principles; for example, the judgment issued by the Constitutional Court of Colombia in 2000, stating that the Guiding Principles did not constitute an international treaty requiring ratification, but guiding and explanatory rules for the national law on forced displacement of 1997).<sup>52</sup>

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<sup>51</sup> Final report of the Special Rapporteur, Paulo Sergio Pinheiro, on housing and property restitution in the context of the return of refugees and internally displaced persons, and at the 57th session of the UN Commission of Human Rights of the Economic and Social Council, on 28 January 2005.

<sup>52</sup> Ghaida Jamal, article entitled Legal Protection of the Rights of Displaced Persons, Informatics Network website, dated 11/10/2017 at the following link: <https://annabaa.org/arabic/rights/12769>

The 1951 UN Refugee Convention, as amended by the Additional Protocol Relating to the Status of Refugees of 1966, defines a refugee as a person who, due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of nationality and cannot or will not, owing to that fear, remain under the protection of that country; or a person who has no nationality and is outside his previous country of habitual residence, and cannot or will not, owing to that fear, return to that country. Article 45, Clause 4, of the Fourth Geneva Convention of 1949 defined a refugee as a person who fled his home for fear of being tortured and persecuted by his State Government for opposing its domestic policies, or for persecution because of his religious beliefs.

It is worth noting that what distinguishes a refugee from a displaced person is that the former crosses the recognized borders of his state to another state. Having refugee status does not require persecution to occur resulting from events, but is the term employed even if it is likely that persecution may occur. This encompasses within its meaning various forms and practices that violate human rights as stated in the Universal Declaration of Human Rights of 1948, including torture, cruel inhuman treatment, servitude, arbitrary arrest and detention..<sup>53</sup>

Whereas the Convention Relating to the Status of Refugees guarantees refugees' enjoyment of fundamental rights and freedoms<sup>54</sup> in countries of asylum, including ownership rights, it is even more relevant that refugees have the right to return to their country voluntarily after the reasons for fleeing have ended, and the right to restitution of property lost due to the conditions that prompted them to seek refuge. These rights are affirmed in the Principles of UN Special Rapporteur Paulo Sergio Pinheiro, referred to as the Pinheiro Principles; all refugees and displaced persons have the right to recover any housing, land and/or property they have been deprived of, arbitrarily or illegally; or to receive compensation for any housing, land and/or property that can not be

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<sup>53</sup> Mr. Blemdyouni Mohamed, Refugee Status in International Humanitarian Law, Journal of the Academy of Social and Human Studies, Department of Economic and Legal Sciences, No. 17 of 2017, pp. 162 and 163

<sup>54</sup> Preamble to the Refugee Convention of 1951.

effectively returned to them, as determined by an independent and impartial court. States give priority to the right to restitution as the preferred remedy for displacement and an essential element of compensatory justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.<sup>55</sup>

It should be noted that the Pinheiro Principles have generally used the term 'displaced persons' to include displaced persons both internally and in countries not bound by the Refugee Convention. This applies to Syrians who have fled to neighboring countries such as Turkey, Jordan, Lebanon, Iraq and other countries such as the Gulf States and African countries. According to a report by the Pew Research Center on 5/10/2016, six Syrians out of ten have left their homes, and according to the Center, this rate of displacement has never been witnessed by any country in recent decades. The Center estimated the number of Syrians (refugees, internally and externally displaced persons) at 12,500,000, twelve million and five hundred thousand Syrians.<sup>56</sup> No doubt the number has increased significantly since the dates of the report and writing this research, especially taking into account the waves of displacement that took place in 2018 in Eastern Ghouta, Afrin and Daraa. The Independent International Commission of Inquiry on Syria confirmed that after seven years of war, more than five and a half million refugees have fled the country and more than six and a half million civilians live displaced within the Syrian Arab Republic.<sup>57</sup>

According to the Pinheiro Principles, Syrian refugees and internally and externally displaced persons are entitled to return voluntarily to their homes as soon as the reasons that forced them to leave their properties and homes have ended. The Syrian State, in cooperation

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<sup>55</sup> Principles of the United Nations Special Rapporteur, Paulo Pinheiro, adopted at the 56th session of the United Nations Commission on Human Rights on 28 July 2005, E/CN.4/Sub.2/2005/17.

<sup>56</sup> Report in English by the Pew Research Center, 5/10/2016, Facts about the World's Refugees, published on the Center's website: <http://www.pewresearch.org/fact-tank/2016/10/05/key-facts-about-the-worlds-refugees/>

<sup>57</sup> Report by the International Independent Investigation Commission on the Syrian Arab Republic, Paragraph 64, 39th Session of the Human Rights Council of the UN General Assembly, published on the UN Office of the High Commissioner for Human Rights website, at the link: <https://www.ohchr.org/AR/hrbodies/hrc/iicisyrria/pages/independentinternationalcommission.aspx> visited on 18/12/2018.

with the United Nations and sponsors of the peace process, must enable them to recover their properties and homes lost in the conflict.

It should be noted that the Pinheiro Principles focused on the issue of equality between women and men with regard to voluntary return and housing and property restitution, stressing the need for States to ensure equality between men and women, boys and girls in the right to housing, land and property restitution. States guarantee, *inter alia*, rights such as equality between men and women, boys and girls, as well as the right to voluntary and safe return, to legal security of tenure, to ownership, equality in inheritance, and to use, control and obtain housing, land and property. States must ensure that housing, land and property restitution programs, policies and practices recognize joint property rights, male and female heads of household alike, as an important element of the restitution process. These programs, policies and practices must follow a gender-sensitive approach, and ensure that housing, land and property restitution programs, policies and practices are not unfair to women and girls, and should adopt measures to ensure gender equality in this regard.<sup>58</sup>

There is no doubt that time limits and procedures included in the provisions of Law No. 10 will only result in the illegal seizure of the properties and houses of many Syrians, especially refugees and displaced persons. Consequently, this contradicts as what is included in international covenants and conventions on basic human rights, including property rights.

## **II: Housing Restitution Problems:**

It is true that international and domestic laws and charters guarantee the right of refugees and displaced persons to return safely and voluntarily to their country, and recover their lost

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<sup>58</sup> Paragraphs 4.1 - 4.2 - 4.3 of the Pinheiro Principles, *op. Cit.*

property as a result of war, as anyone who wishes to apply the rules of justice and equity would demand. However, exercising this right to housing and property restitution will not be as easy and smooth as stipulated in the charters. There will be many obstacles and challenges that may hinder this process for a long while, even at times make it impossible to carry out, and they will vary from state to state. The most important challenges that Syrians may face in housing and property restitution are the following:

1- Massive damage to infrastructure and housing in Syria: The conflict has severely damaged Syria's physical infrastructure, causing partial or complete collapse of systems and networks in many cities, through the destruction of homes and infrastructure for public services such as roads, schools and hospitals. It has also led to an economic collapse in many areas, since bridges, water resources, grain silos and other assets of economic importance have become strategic targets, exacerbating the economic situation. 27% of housing has been affected; 7% completely destroyed and 20% partially damaged. This percentage varies from region to region. The damage was particularly high in the health sector with medical facilities specifically targeted, similar to the education sector.<sup>59</sup> Of course, this scale of destruction requires huge effort and capabilities to overcome or at least mitigate the effects. The reconstruction project, which presumably will be carried out by the State in cooperation with the United Nations, may take a very long time, especially since reconstruction is always linked to political and economic agendas of donor countries.

2- Owner losing official documents that prove ownership: Either because he does not have such documents, as his property was built in an irregular area, common in Syria; or because it came into his possession under contracts between him and the original owner made in good faith and without formal procedures for transferring property; or because he lost those documents, as many real estate

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<sup>59</sup> Report by the World Bank Group in the beginning of 2017, entitled 'The Toll of War: The Economic and Social Consequences of the Conflict in Syria' published on the World Bank website at : <https://www.albankaldawli.org/ar/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria> . Bearing in mind that the report was limited to ten cities of Syria: Aleppo, Raqqa, Daraa, Duma, Deir al-Zour, Homs, Hama, Idlib, Kobani/Ain El-Arab and Palmyra, which, according to the World Bank's vision, were selected on the basis of several criteria, including conflict severity and geographic representation and being an important source or destination for internally displaced persons.

departments and court buildings were completely destroyed or looted by the conflicting parties, or records were burned. Many owners were even forcibly evicted from their homes by the fighting parties, particularly the Syrian regime, who systematically followed a policy of evacuating Syrians from several areas in Homs, Damascus, Daraa and others, to send to Idlib province. In this manner, many Syrians were deprived of their properties and houses, while other people were illegally housed in the ones that were still habitable, as a sort of reward. Without a doubt, those people housed in the homes and properties of others will not easily accept the return of this property to their rightful owners.

In addition to this, there is the new old problem of successive and multiple owners of one piece of property, whether by inheritance, grant or sale and purchase; and because the descriptions of properties have not been corrected and included in the town's regulatory plans, the property remains recorded in land registries as agricultural land, for instance, whereas in fact, an apartment building has been built there, and owners can only buy equity shares under a court ruling which is not executable in the land registry. Additionally, there are the many prisoners of conscience who died in detention, the Syrian regime refusing to give their relatives death certificates; therefore, heirs use the deceased's property as investments and sometimes dispose of it, while it is still registered to the deceased or the detainee.

3- Mines and unexploded ordnance usually left behind by wars, preventing owners from returning to and investing in their land, especially landowners who rely heavily on exploiting the land and selling their produce. Demining and detonating these devices is life-threatening and can not be undertaken individually by owners. It needs to be done by specialized engineering teams and under government supervision, and this will require a lot of time, work and technical and material capabilities, not often available to the extent required in countries emerging from a state of war. In the city of Raqqa, for example, the Independent International Commission of Inquiry on Syria noted that booby traps and

landmines planted by ISIS and explosives left behind by air strikes prevent the return of civilians.<sup>60</sup>

4- Illegal sale and purchase of real estate, whether forcible, fraudulent or forged. The circumstances of the war resulted in a group of warlords exploiting the tragic circumstances, and who drew power either from the Syrian government or from faction leaders in areas beyond regime's control. They forced owners to sign contracts selling them their properties for small payments, inconsistent with current prices, or even for nothing at all. Some took advantage of the absence of owners - dead, detained, missing or displaced - and obtained judicial rulings registering forged sales contracts; taking advantage of the corruption of judiciary in regime areas, and the corruption and inefficiency of those who took over the judiciary in areas beyond the regime's control; submission of the judiciary to pressures of the executive authority in regime areas, especially during armed conflict, and subordination of "courts" in areas beyond the regime's control to the authority of military factions. Indeed, many of the "judges" of these courts are appointed by faction leaders and follow their orders, and it may be difficult in the future or even impossible to return those properties to their owners, especially if a third person or more have obtained ownership in good faith, unaware that the seller is not the real owner. Some maintain it is possible not to recognize the principle of good faith, as the sale and purchase of abandoned property was made in circumstances of war and the terrible consequences of displacement.<sup>61</sup>

Colombia addressed this issue by providing in Act No.1448 of 2011 (The Victims and Land Restitution Law) that the claimant to the property opposing the original owner, is either a good faith or bad faith opponent. Good faith opponents must prove that they acquired the property legally and for a fair price, and that they did not know the seller was not the legal owner of the property. If an opponent can prove that they acted in good faith, he will be

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<sup>60</sup> Report by the International Independent Investigation Commission on the Syrian Arab Republic, 37th Session of the Human Rights Council of the UN General Assembly, March 2018, published on the UN Office of the High Commissioner for Human Rights website, at the link:

<https://www.ohchr.org/AR/hrbodies/hrc/iicisyrria/pages/independentinternationalcommission.aspx> visited on 19/12/2018.

<sup>61</sup> See Principle 17/4 of the Pinheiro Principles.

compensated if the property is restored to its original owner of before the conflict. If an opponent cannot prove that they acted in good faith, then they are defined as bad faith opponents and have no right to compensation if the property is returned to the original owner.<sup>62</sup>

Of course, coercion and fraud are considered grounds for annulment of the contract (Articles 126 and 128 of the Syrian Civil Code). In accordance with the principles set forth by the Special Rapporteur, Paulo Pinheiro, no transaction involving housing, land or property, including any transfer of ownership, should be recognized if performed forcibly or under any form of coercion, whether directly or indirectly, in contravention of international human rights standards (principle 15/8 of Pinheiro's Principles).

5- Absence or Loss of Civil Documents: The war in Syria led to its division into several areas of influence. In areas outside regime control, the problem of civil documentation arose; the Syrian regime had cut off government services including the Civil Registry (Nufus) from areas beyond its control, as a form of punishment for residents and locals of these areas. These people could no longer obtain the necessary civil documents to prove their identity and legal existence. Thus, a whole generation emerged in these areas without a single official document proving their legal existence. Many Syrians in these areas who were under the age of 15 before 2011 need the identification cards they were deprived of. If they return to their country, they will not be able to claim their property rights, as they do not even enjoy the legal status provided by civil registry documents.

A report by the Norwegian Refugee Council<sup>63</sup> confirmed that 51% of children under five years of age in the north-western regions of Syria were not included in their family books, and 13% of children under the age of five had no documentation of their birth, while those who turned 14 during the conflict - usually the age for application for a national ID card - are particularly at risk from the

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<sup>62</sup> "A Land Title is not enough, Ensuring Sustainable Land Restitution in Colombia" Report issued by AMNESTY INTERNATIONAL, Published in 2014, page 27.

<sup>63</sup> Report issued by the Norwegian Refugee Council in July 2017 entitled "Displacement, Housing Land and Property and Access to Civil Documentation in the North West of the Syrian Arab Republic", available on the official website of the Council.

lack of a national identity document. The same study showed that many people living in areas outside government control have little access to civil registration and official documents with the Syrian government. These facilities simply do not exist in the areas where they live, and they are unable to reach areas under the control of the Syrian government to obtain these documents, nor can they pay intermediaries for them. It was discovered that a quarter of those over the age of 14 have no ID cards. The study reported that only 6% of those surveyed were able to obtain Syrian government documents. This appears to be done by paying brokers; people have to pay a great deal from their generally limited resources to obtain such documents, and they can not be sure whether the documents they are receiving are actually issued by the Syrian government or not.

This contravenes the provisions of Article 24 of the International Covenant on Civil and Political Rights that every child must be registered immediately after birth, and that every child has the right to acquire nationality; as well as Article 7 of the 1990 Convention on the Rights of the Child, which stresses that a child must be registered immediately after birth and affirms its right to acquire nationality. The denial of these civil documents will result in the denial of ownership rights.

6- [Confiscation operations carried out in the name of the law](#); the Syrian regime continuously resorted to seizing and confiscating properties of many Syrians, especially those opposing its rule. This method existed before 2011, but increased at a significant pace after this date. These confiscations are carried out in the name of the law, custom-made by the regime; the Syrian regime's Ministry of Justice issued to the Ministry of Finance's "Directorate of Confiscated and Seized Funds" a letter that was leaked, with peremptory provisions to confiscate movable and immovable property of a group of the regime's opponents, on charges of proven involvement in "terrorist acts against the country". This letter No. 2071 added it was necessary to account for the movable and immovable assets of the aforementioned opponents until they are transferred under the name of the Syrian Arab Republic. The Ministry of Finance had previously ruled a precautionary attachment of the funds of most opposition leaders in the National

Council and the Coalition, including former leader of the coalition, Ahmad Moath al-Khatib, George Sabra, Riad Seif, Suheir al-Atassi, former Political Association member Michel Kilo, and others. The accusation, according to the text of the attachment ruling, was “joining terrorist organizations aimed at regime change, destroying the nation's entity and destabilizing it”, as well as “supporting terrorist acts and scheming with a hostile foreign state with the intention of aggression against the country and threatening its security and territorial integrity”.<sup>64</sup>.

Article 12 of Counter-Terrorism Law No.19 of 2012 stipulates that in all the offenses provided for in this Law, the court rules by conviction to seize movable and immovable property and proceeds, and objects used or intended for use in committing the crime, and to dissolve the terrorist organization, if existing. Thus, the Assad regime tried to legitimize the confiscation and seizure of property through the provision of this measure by law. Moreover, Legislative Decree No.63 of 2012 gives judicial police, during investigations into crimes against the internal or external security of the State, as well as crimes in the above-mentioned Counter-Terrorism Law No. 19, the right to address the Ministry of Finance in writing and request necessary precautionary attachment of the accused's movable and immovable property. This right was also granted to the public prosecution and investigating judge during the hearing of the case, to take such action against the accused or the defendant, including a travel ban, until the case is decided by a peremptory court decision. This means the Decree gives police and security forces the right to request attachment of funds of the person being investigated, who can not even be called a defendant as no public action has yet been initiated by the public prosecution.

In order to ensure the restitution of properties and houses to their owners, the Syrian State must, in the transitional period, and immediately upon reaching a political agreement, end the state of

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<sup>64</sup> Report entitled "The Syrian regime confiscates all the property of the opposition and transfers its ownership under the name of the Syrian Arab Republic", published in Watan newspaper, on 30/08/2017 at the link: <https://www.watanserb.com/2017/08/30/%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85-%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A-%D9%8A%D8%B5%D8%A7%D8%AF%D8%B1-%D8%AC%D9%85%D9%8A%D8%B9-%D8%A3%D9%85%D9%84%D8%A7%D9%83-%D8%A7%D9%84%D9%85%D8%B9%D8%A7%D8%B1/>

war, refrain from adopting or applying any laws that harm the property restitution process, and take immediate steps to repeal unfair or arbitrary laws, as well as laws that have discriminatory effects on the right to housing, land and property; and must guarantee remedies for those who have been unjustly affected by the application of these laws in the past, and fully guarantee women's rights to protection against discrimination and to equality, in both law and practice (principle 19/1, 2 and 3 of Pinheiro's Principles).

7- Syrians deprived of Syrian nationality: Many Syrian Kurds were stripped of their nationality, through the so-called 1962 census, which was carried out in the province of Hasaka only, not in the rest of the Syrian provinces, based on Decree No. 93 dated 23/8/1962, which was actually implemented on 5/10/1962. The Decree stated in its first Article that a general census of the population would be carried out in the province of Hasaka in one day, on a date determined by a decision of the Minister of Planning upon the proposal of the Minister of Interior. The result of the census was that those who managed to register and complete their documents obtained Syrian nationality; those who registered their names but did not complete their documents were included under a category called "Foreigners of Hasaka"; and those who were not able to register with the civil registry were categorized as Maktoumi [undeclared registry].

According to sources inside the Directorate of the Civil Registry (Nufus) in the province of Hasaka, by the beginning of 2011 the number of Hasaka Foreigners had reached 346,242 individuals; by the end of May 2018, the number of Syrians of the same category who had obtained citizenship was 326,489 while the remaining 19,753 had not yet obtained the Syrian nationality. As for the category of Maktoumi, the Syrian government was aware of their numbers through the records of the Mukhtars, who gave members of this category a so-called "identification certificate." The number of Maktoumi individuals had reached more than 171,300 by 2011, and around 50,400 of them obtained Syrian nationality after their legal status has been corrected from Maktoumi to Foreigners and

then to the category of Citizens. The rest were unable to correct their status and remained deprived of Syrian nationality.<sup>65</sup>

Hence, many Syrian Kurds who have not been able to obtain Syrian citizenship as per the above-mentioned details are deprived of legal existence (legal personality) and consequently denied many, maybe all, of their rights, including ownership rights provided for in international covenants and conventions, as we have already discussed.

8- Cases of enforced disappearance and absence of death certificates: Many Syrians have been forcibly disappeared, on a greater and wider scale by the Syrian government, but also by militias affiliated or working with them, as well as by other military groups on Syrian soil. A report issued by the Syrian Network for Human Rights on 8/11/2018, "Report on the most prominent cases of arbitrary detention and enforced disappearance in Syria", asserted that the number of Syrian citizens who are still under enforced disappearance is at least 95,056, occurring in the period from March 2011 to August 2018. The report stated that the Syrian regime is responsible for more than 85% and the rest is borne by the other groups, namely hardline Islamic organizations and factions in the armed opposition and the AA (PYD).<sup>66</sup> This is confirmed in a report by the Independent International Commission of Inquiry on Syria dated 27/11/2018, which states that "all parties on the ground continue to carry out arbitrary detentions throughout the Syrian Arab Republic. This phenomenon has been more common in government-controlled areas than in any other. The Commission has already documented the widespread and systematic pattern of the Government's security and armed forces, or militias acting on its behalf, of arbitrarily arresting and detaining men over 15 years of age within the context of mass arrests at checkpoints or during house searches. Often detainees were beaten

<sup>65</sup> For more details, see the Syrians for Truth and Justice report entitled "Lost Syrian Citizenship: How the 1962 census destroyed the lives and identity of Syrian Kurds", published on Etihad Press website at the following link:

<http://aletihadpress.com/2018/09/17/%D8%A7%D9%84%D9%85%D9%88%D8%A7%D8%B7%D9%86%D8%A9-%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D9%81%D9%82%D9%88%D8%AF%D8%A9-%D9%83%D9%8A%D9%81-%D8%AF%D9%85%D8%B1-%D8%A5%D8%AD%D8%B5/>

<sup>66</sup> Report published on the Network's official website: <http://sn4hr.org/arabic/2018/11/08/10572/> visited on 18/12/2018.

after being taken to a Government-run detention facility, and many were subsequently killed under torture or inhumane living conditions, lack of adequate medical assistance or deliberate neglect, and in several cases families were forced to pay bribes to determine the whereabouts of their detained relatives and, in other cases, the locations of these relatives were never revealed and they were never seen again".<sup>67</sup>

Many of these persons who died in circumstances of enforced disappearance left behind property and real estate, and as the authority responsible for their detention often does not declare death, their relatives, especially heirs, are denied the right to know the fate of their missing relatives and receive death certificates. The absence of an official death certificate has potentially harmful effects on the human rights of relatives of the deceased, including their rights to housing, land and property.<sup>68</sup>

### **III: The role of the judiciary in housing and property restitution during the transitional phase:**

Before examining the role of the judiciary in housing and property restitution, we must briefly describe the current situation of the judiciary in Syria, which has many flaws and shortcomings that can be a hindrance to its carrying out tasks required of it in the post-conflict phase, including the task of hearing property claims and the issue of housing restitution. The most important flaw is the judiciary's lack of independence and the interference of the executive branch in its work and structure. This interference is, unfortunately, enshrined in the Syrian Constitution; Article 133 of the Constitution states that the President of the Republic is Head of the High Judicial Council, deputized by the Minister of Justice, both of whom are pillars of the executive branch. The President of the Republic appoints members of the Supreme Constitutional Court, which is supposed to consider the constitutionality of Syrian laws,

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<sup>67</sup> Report of the Independent International Commission of Inquiry on Syria entitled "Death Notices in the Syrian Arab Republic", published on the United Nations Human Rights Council website, at: <https://www.ohchr.org/AR/hrbodies/hrc/iicisyrria/pages/independentinternationalcommission.aspx> visited on 18/12/2018.

<sup>68</sup> Previous reference, Paragraph 7.

appeals concerning the election of the President of the Republic, and to try the President of the Republic in case of high treason!!!<sup>69</sup>

The judicial system is supposed to be unified and have one reference point; however, the reality of the judiciary in Syria is quite the opposite, as there are many bodies that practice judicial work, each of which has a different reference point, which naturally results in one body or other appearing and disappearing at different times, sometimes canceled altogether. For example, military field courts died down for two decades then resumed their bloody activity after the increase of popular protests in Syria in 2011. These courts are accountable to the President and the Minister of Defense. The Supreme State Security Court worked for four decades then was abolished in 2011. It was replaced in 2012 by the Counter-Terrorism Court which, like the State Security Court, is exempt from compliance with procedures laid down in legislation in force, in all roles, and prosecution and trial proceedings.<sup>70</sup> The military judiciary is presided by the Ministry of Defense; administrative courts, in both judicial and advisory branches, by the Presidency of the Council of Ministers; and property courts by the Minister of Justice and the General Directorate of Cadastral Affairs.

Additionally, there are many laws and resolutions that prevent the judiciary from carrying out its assigned tasks, even if we were to suppose that the judiciary in Syria did not have the above-mentioned flaws; for example, the Law for Establishing the State Security Department, Decree No.14 of 1964, which gave immunity to prosecution to Department staff for crimes committed on duty or while performing specific assigned tasks, except by a prosecution order issued by the Director of the Department. There is also Legislative Decree No.69 of 2008, which prohibits the prosecution of officers, non-commissioned officers, internal security forces, political security, and customs officials except where a warrant is issued by the general leadership of the army and military forces. If these officers, non-commissioned officers and individuals were the ones who seized the property and possessions of Syrian refugees

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<sup>69</sup> Articles 117, 141, 146 of the Syrian Constitution.

<sup>70</sup> Article 7, "Counter-Terrorism" Court Establishment Law No. 22 of 2012

and IDPs, the most likely case considering the Syrian context and absolute powers granted to these persons especially in circumstances of war, how can the judiciary hold them accountable and bring lawsuits against them while its hands are tied by this illegitimate immunity that undermines the principle of rule of law we aspire to.

The judicial institution in Syria obviously can not play its role in isolation from other institutions, especially those the judiciary relies on in much of its work, such as civilian police, military police, forensic medicine, prison administration and, in the future, security services, who have lived in a world of their own distanced from the authority of law and control of the judiciary and other institutions. In order to have an impartial, independent and effective judiciary capable of performing its required role in the coming stage, which is to assist in the transition of Syria from a totalitarian regime that has escaped the rule of law to a pluralistic system that respects the law and comes under its authority, these institutions must be reformed in tandem with judicial reform.

But even if the judiciary is reformed, as desired by all those who are hungry for justice, rights and the rule of law, will this body be able to address all the complex real estate issues that will arise in the transitional phase, bearing in mind other issues that will also come before the judiciary, numerous and complex criminal cases, a definite consequence of the long history of violations, war crimes and crimes against humanity committed and still being committed in Syria?

We believe the judiciary will not be able to do so, especially given the length of litigation and procedures that the judiciary will adopt to solve such problems, as well as the time it will take for judicial reform, which may be years if not decades. It is therefore advisable that administrative committees be established to deal with real estate issues as apparent by their circumstances and by available documents and evidence. This is not to say that these committees be a substitute for the judiciary or rob the ordinary judiciary of its judicial mandate; it means these committees should bear part of the burden that will fall to the judiciary regarding real estate issues, especially when there is no great disagreement over ownership.

Additionally, the decisions of these committees must not be final with regard to establishing ownership. The party who feels prejudiced by the decisions of the administrative committee shall have the right to appeal to the judiciary regarding the administrative decision issued by said committee.

However, we believe it is better that the plaintiff cannot first resort to the judiciary in a dispute over ownership, but to first resort to the aforementioned committees. If the committee's decision is unfair, he may refer to the competent court. We also see that a certain time limit must be set for a right holder to claim his right, whether by recourse to the administrative committee or to the competent court in the event he is not satisfied with the decision of the committee; such as a period of two or three years, or more, from the date a potential future political agreement could take effect; he loses the right to claim ownership and may transfer it into a claim for financial, not in-kind, compensation, also within a certain period beginning from the expiry date of the period set to claim restitution. The purpose of restricting restitution claims to a certain period is to ensure the stability of legal transactions and to conclude disputes relating to housing and property. If long periods of time and even years pass before a claimant comes forward, it constitutes the presumption that his application is not eligible, otherwise he would not have waited years to claim his right. Let us not forget that the time-limit begins when the political agreement comes into force, which is also stressed in Principle 13/9 of Special Rapporteur Paulo Pinheiro's Principles.

These committees which we propose are completely different from the special committees set forth in Law No. 10; the latter deprive the ordinary judiciary of its jurisdiction and hear a case as an interim relief judge, yet determines the origin of the right. In the event of appeal, the Court of Appeal considers the decisions of said committees in-chamber, after which the decision shall be final, as we have detailed in the paragraph on compatibility of the above with the Syrian Constitution and laws. As for the committees proposed for the next phase, they are only administrative committees, which rule in real estate claims that may come before it; and if one of the parties is not satisfied with the decision, he can

review the competent court within a specified period, as mentioned above.

We believe that this view is consistent with Mr. Paulo Pinheiro's principles, which affirm that States should establish procedures, institutions and mechanisms, that are fair, timely, independent, transparent and non-discriminatory, and should support them for the purpose of assessing and enforcing claims regarding housing, land and property restitution. Where existing procedures, institutions and mechanisms are able to address these issues effectively, appropriate financial, human and other resources should be made available to facilitate an equitable and timely restitution process. They must also ensure that procedures, institutions and mechanisms relating to housing, land and property are age-sensitive and gender-sensitive, recognize the equal rights of men and women as well as boys and girls, reflect the fundamental principle of "best interests of the child", and nothing prevents the State from including in this process alternative or informal mechanisms to settle disputes, as long as they are consistent with international human rights law, international refugee law, international humanitarian law and relevant standards, including the right to protection against discrimination.<sup>71</sup>

All claimants should have the right to apply for restitution in kind or compensation to an independent and impartial body, and to have their applications decide and to be notified. All aspects of restitution claim procedures must be fair, accessible, free, age-sensitive and gender-sensitive. Positive measures should be adopted to enable women to participate equally in the process, as well as to enable children separated from their families to participate fully and to be fully represented in restitution claim procedures (Pinheiro Principles 13/1, 2 and 3).

It should also be a guarantee that allows refugees and IDPs to engage in the restitution claim process, regardless of where they were living during the period of displacement, including countries of origin or countries of asylum or countries to which they have fled. States should ensure that all persons involved in the process of restitution claims are informed and that information on this process

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<sup>71</sup> Principle 12 of Special Rapporteur Paulo Pinheiro Principles, op. Cit.

is made available to all. Centers and offices to deal with restitution claims should be established in the various affected areas where potential claimants are located. To provide access to as many of those affected as possible, there should be the option to submit restitution claims by email or proxy, and at mobile units, as well as in person; and restitution claim forms must be simple, easy to understand and user-friendly (Principle 13/4, 5 and 6 of the Pinheiro Principles).

There is also the need for the General Directorate of Cadastral Affairs to form committees to resolve outstanding issues relating to haphazard housing, common property and correcting property descriptions. All these procedures should be free of charge and at no cost to owners whether in fees or taxes, to encourage them to help the above-mentioned committees perform their duties, and solve these problems. Solving them will help resolve housing and property issues and achieve a safe and neutral environment conducive to the implementation of a political agreement, thereby encouraging refugees and displaced persons to return to their homes. Reassuring an owner that his property is now legally registered and is his alone and no longer considered state property, will motivate him to return to his home rather than remain in asylum or displacement.

#### **IV: Comparison between Law No. 10 of 2018 and the Absentee Property Law issued by the Israeli Occupation:**

After reviewing the provisions of Law No. 10 of 2018 and the circumstances in which the law was issued and rights of those who do not reside in their areas of ownership, we found that the most comparable law is the Absentee Property Law by the Israeli occupation in 1950 which was a tool to rob the Palestinians. It was also the subject of international outrage at the violations of personal property and human rights. After the Palestinian Nakba and declaration of the Israeli state, and after occupation authorities and affiliated militias had taken control of Palestinians' lands and displaced them, to consolidate the status quo the Israeli occupation

issued the Absentee Property Law in 1950, the most prominent sections of which can be summarized as follows:

(I) Overview of the law:

### 1- Definition of Absentee:

The first article of this law defines 'absentee' as

“(1) A person who - at any time during the period between 29 November 1947 and the day on which the State of Emergency declared by the Provisional Council of State on 19 May 1948 has ceased to exist - was a legal owner of any property situated in the area of Israel, or enjoyed or held it, whether by himself or through another, and who at any time during the said period, (meaning this definition applies to every person outside his ownership areas after the date of November 29, 1947)

(a) was a national or citizen of the Lebanon, Egypt, Syria, Saudi-Arabia, Trans-Jordan, Iraq or the Yemen, or

(b) was in one of these countries or in any part of Palestine outside the area of Israel, or

(c) was a Palestinian citizen and left his ordinary place of residence in Palestine before 1 September 1948 for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment.

(2) a body of persons which, at any time during the period specified in paragraph (1), was a legal owner of any property situated in the area of Israel or enjoyed or held such property, whether by itself or through another, and all the members, partners, shareholders, directors or managers of which are absentees within the meaning of paragraph (1), or the management of the business of which is otherwise decisively controlled by such absentees, or all the capital of which is in the hands of such absentees”

This broad definition of the concept of absentee makes every Palestinian owner an absentee if he has left his village or city to one of the neighboring countries at any time since the date of the decision to partition Palestine. A Palestinian is also absent if he leaves his village and moves to a nearby town and village. As the residents of Palestinian villages did and still do when Israeli forces occupy their areas. Moreover, the law makes a

Palestinian owner absent if he moved from one neighborhood to another in one of the large cities, or if forcibly transferred by the Israeli occupation forces from one place to another.

Therefore, all the Palestinians displaced as a result of acts of war and violence committed by the Israeli occupation forces were considered according to this law absentees even if their place of residence was known.

## 2 - Appointing a Custodian of absentee property:

Article 4 of this law stipulates that the Israeli Occupation's Minister of Finance would appoint a Custodian over properties of those deemed absent subject to the provisions of this law, and every right an absentee had in any property would pass automatically to the Custodian. Property may be taken over by the Custodian wherever he may find it.

Article 8 also provides that the Custodian may also manage any business considered absentee property, liquidate it if it belongs to one person, or wind up a partnership if it belongs to a group of partners.

## 3- Fate of absentee property:

Article 19 of this law restricts the right to buy absentee immovable property to a Development Authority established under a law of the Knesset. A development and construction authority was formed by a law approved by the Knesset five months after the Absentee Property Law was enacted.

## (II) Consequences of applying provisions of the Absentee Property Law:

Not only was the nature of this law arbitrary, but application was even more arbitrary in most cases. In practice, property in Palestinian cities was considered absentee property unless the owner could prove otherwise. The provisions of this law were also carried out for the Islamic Waqf, considered a body to which absentee provisions apply.

Under the provisions of this law, the Custodian appointed by the Minister of Finance seized property belonging to Palestinians and in turn, transferred ownership of absentee property to the Development Authority, established in 1953 by law, under which most of the properties vested in the Custodian were transferred for a nominal price, at the time credited in the bank in favor of the landowners. This [authority] became in turn the owner of these properties, to re-lease them to Jews coming to Palestine.

During this period, a person considered absent shall not be entitled to compensation unless he proves that he was not absent according to the definition of absentee in this law, and his right is limited to a small compensation that was rejected by most Palestinians who have not accepted this compensation to this day.

One of the direct consequences of this law the Custodian's seizure of lands in around 300 abandoned or semi-abandoned Palestinian villages, with an area of over three million dunums, i.e., the vast majority of private property in the occupied territory. In cities, the Custodian seized over 25,000 buildings with more than 57,000 homes and 10,000 commercial or industrial establishments. These buildings were transferred to Amidar to house Jewish immigrants. Under this law, the Israeli authorities seized more than a quarter of a million dunums of land belonging to Palestinians who remained in the occupied territory after 1948.<sup>72</sup>

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<sup>72</sup> Palestinapedia website, link:

<https://www.palestinapedia.net/قانون-الغائبين-أملك/>

### (III) Comparisons between the Absentee Property Law and Law No. 10:

#### 1- The conditions under which both laws were issued:

The Absentee Property Law was issued after the Nakba, following violent acts against the Palestinians that led large numbers to flee their homes. This law was intended to perpetuate a new reality and to prevent their return and house others in their place. These circumstances are similar to the circumstances surrounding Law No. 10, which was issued after bloody incidents that caused half of the Syrian people to flee their homes, whether to a destination outside or inside Syria; it demanded rights holders to be present to defend their rights, knowing full well there is no possibility of safe return, thus allowing this law to be used as a tool to seize property from owners and prevent their return.

#### 2- Consequences of both laws:

The Absentee Property Law resulted in the confiscation of Palestinian property and the required demographic change, as it contributed to preventing the return of Palestinians and the relocation of Jewish immigrants. Owners were unable to recover their property even if they returned, or even to receive fair compensation. Likewise, Law No. 10 completely leads to the same consequences; continuing to work in accordance with the provisions of this law will result in those who left their properties to lose ownership and be unable to retrieve them even if they return in the future. It will also lead to a demographic change by housing those who have access, most of them supporters of the Syrian regime, and it will deny property to those who can not safely return and deny rights holders fair compensation. Just as the Absentee Law contradicts international covenants and conventions, so does in Law No. 10; this is made clear in the paragraph on the compatibility of Law No. 10 with international covenants and conventions.

#### 3- Extensive international condemnation of both laws:

Finally, both laws are similar in that they were subject to wide international condemnation; the majority of countries in the world considered the Absentee Property Law a law that consolidates the

occupation authority and denies rights to its owners, which is contrary to human rights and international covenants and conventions and was widely condemned on United Nations rostrums and other international forums. Additionally, the official positions of most countries (even those who supported the birth of the State of Israel) which condemned this law.

Although Law No. 10 has not received this widescale condemnation, a movement by some countries, especially those that have received large numbers of Syrian refugees, to highlight the dangers of this law and its impact on the return of refugees, has made property rights and housing one of the most important issues that must be addressed to achieve peace. .

In our view, the only difference between the two laws is that the Absentee Property Law was issued by an occupying authority, while Law No. 10 was issued by an authority supposed to represent the Syrians. This difference makes Law No. 10 more dangerous and more painful because it was issued by a Syrian authority with the aim of preventing Syrians returning and denying them access to their property and rights.

#### **V: Highlights of the Bosnia and Herzegovina experience:**

We feel the need to consider the experience of Bosnia and Herzegovina on the issue of housing and property restitution. This is because the war which this country suffered was no less dangerous or bloody than the war in Syria now, and because the effects of the two wars are very similar in many respects; the nature of crimes committed, such as crimes against humanity and war crimes, the large number of victims and missing persons, cases of rape and sexual violence, appropriation and confiscation of property and land, and other violations committed in both countries. As the subject of our research concerns real estate and property, and how far the success of housing and property restitution will impact the success of the political process and peace-building, we will examine the Bosnian experience in this regard only, in an effort to learn from it in the Syrian situation.

An annex was issued on the rights of refugees and displaced persons, Annex 7 to the Dayton Peace Agreement of 1995, called the General Framework Agreement for Peace in Bosnia and

Herzegovina, affirming the right of all refugees and displaced persons to return freely to their homes of origin, and their right to have restored to them property of which they were deprived in the course of hostilities since 1991, and to be compensated for any property that can not be returned to them. The early return of refugees and displaced persons was an important objective of the settlement of the conflict, and the signing Parties (the Federation of Bosnia and Herzegovina, the Republic of Bosnia and Herzegovina and the Republika Srpska) should allow refugees and displaced persons to return safely without the risk of harassment, intimidation, persecution or discrimination, particularly on account of their ethnic origin, religious belief or political opinion (Article 1, Annex 7, of the Dayton Agreement).

The Parties also undertook to create in their territories the political, economic and social conditions to facilitate the voluntary return of refugees and displaced persons and their return to social integration in a consistent manner, without preference for any group over another; and to provide them with all possible assistance and facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with a repatriation plan developed by the United Nations High Commissioner for Refugees (Article 2, Clause 1, Annex 7). The Parties would establish an independent Commission for Displaced Persons and Refugees, based in the capital city of Sarajevo, and may have offices at other locations as deemed appropriate (Article 7 of Annex 7). The Commission would be composed of 9 members (Article 9). Members of the Commission would not be held criminally or civilly liable for any acts carried out within the scope of their duties. Members of the Commission, and their families, who are not citizens of Bosnia and Herzegovina would be accorded the same privileges and immunities enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations of 1961 (Article 10, Clause 3). This meant it would be possible to appoint some or even all members of the Commission who were non-citizens of Bosnia and Herzegovina. We do not see this as sound, because when members of the Commission are citizens of the same state, in this case Bosnia and Herzegovina, it lends greater credibility to the Commission. It is also the citizens of a state who are most able to

understand the historical context of events that plagued their country for the duration of the conflict, and are thus more able and efficient in resolving the challenges returning refugees and displaced persons, including challenges of housing and property restitution.

The Commission would receive and decide any claims for real property in Bosnia and Herzegovina, where the property had not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant did not any longer enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return (Article 11). We see no good reason to prevent a person possessing property from claiming ownership of the property in question, as it is possible he is the owner and in possession of the property, but has lost ownership documents in the course of the war, or that he did not have those documents to begin with. What is the objection for this person's recourse to the Committee to claim ownership?

Upon receipt of a claim, the Commission would determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, would be entitled to have access to any and all property records in Bosnia and Herzegovina, and to any and all real property located in Bosnia and Herzegovina for purposes of inspection, evaluation and assessment related to consideration of a claim. Any person requesting the return of property found by the Commission to be the lawful owner of that property would be awarded its return. Any person requesting compensation in lieu of return found by the Commission to be the lawful owner of that property would be awarded just compensation as determined by the Commission. The Commission would make decisions by a majority of its members. In determining the lawful owner of any property, the Commission would not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was

otherwise in connection with ethnic cleansing.<sup>73</sup> Commission decisions would be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission would be recognized as lawful throughout Bosnia and Herzegovina. (Article 12, Clauses 1,2,3 and 7)

We believe that this Commission was granted absolute judicial powers and its decisions were final and not subject to appeal to any other judicial or non-judicial body. This contradicts the principles of a fair trial, which presupposes that a person who considers himself prejudiced by a judicial decision has the right to challenge this decision before a higher judicial body, or by an administrative decision to file a grievance to a higher administrative body or before the judiciary. The members of the said Commission are human at the end and liable to make mistakes, especially since they do not feel monitored by a higher authority. What would be the solution in the event the Commission made a mistake deciding a property issue? Would the right holder lose his right to the property in question? The fact is Annex 7 of the Dayton Agreement did not address the issue of appeal or reviewing decisions of the above-mentioned Commission before a higher administrative or judicial body.

Certain conditions should have been established regarding members of the Committee, in particular the requirement of academic competence and professional experience, as they would be exercising judicial functions; namely, the professional, fair and equitable determination of property claims by refugees and displaced persons, to facilitate a speedy and safe return. Only one condition was given for members of the Committee: the requirement of moral standing (Annex 7, Article 9, Item 2), without establishing clear and specific criteria for this requirement. This also contradicts what is stated in the Basic Principles of the Independence of the Judiciary adopted by United Nations General Assembly resolutions 40/32 and 40/146 of 1985, which affirm that those selected for employment in judicial functions must be

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<sup>73</sup> This is consistent with Principle No.15/8 of Mr. Paulo Pinheiro's Principles, which stressed the importance of not recognizing as valid any transactions concerning housing, land or property, including any transfer of ownership, made forcibly or under any other form of coercion or duress, whether directly or indirectly, in a manner that contravenes international human rights standards.

individuals of integrity and competence, and have adequate training or qualifications in law. Notably, the Agreement did not mention certain conditions regarding members of the Commission, but it did mention certain conditions regarding Commission staff. Article 10 required that staff be professionally qualified and have experience in administrative, financial, banking and legal matters.

### **Conclusion and Recommendations:**

In summary, a follower of the real estate problems in Syria will realize that they are not new or emergent, but the result of an accumulation of many wrongful practices, unfair laws and robbing of property rights, in addition to the failure and neglect of successive governments to pay sufficient attention to the issue of housing. This is apparent in the lack of allocation of adequate land for housing, the failure to resolve the issue of obligatory extension of leases until 2001, causing landlords to close their doors rather than lease their property, and the multiplicity and complexity of real estate laws. This led to widespread haphazard housing, especially in large cities where housing needs have been steadily increasing proportionately to population growth, and needs are not met, exacerbating the crisis.

The situation is aggravated by the armed conflict that led to the destruction of many buildings and properties in whole or in part, and the Syrian regime's exploitation of this situation, the displacement of much of the original Syrian population, in addition to numerous laws that ostensibly provide for regulation, planning and urban development, but in fact hide the intention of confiscating and looting properties from targeted owners. We could say that Law No. 10 of 2018 and other laws issued after March 2011 merely highlight the truth of the property crisis in Syria. Therefore, we are certain that abolishing them and addressing their consequences will not be sufficient to address the crisis; we need to think of an innovative mechanism to abolish all the laws and decrees, old and new, which were a fundamental part of the disaster, and develop radical and effective solutions to deal with the impact of applying those laws for the past few decades.

Eloquent promises and the manipulation of words and concealment of intentions will not solve problems for Syrian citizens, who need shelter and a roof over their heads; the numerous and successive laws are nothing but glossy texts hiding obscurity in meaning and application, protected by bureaucracy and routine, devoid of substance. This is assuming the law aims to solve the crisis, not to exacerbate it. Add to that the domination that economic and political influential persons have over decision-makers, exploiting

and endorsing these texts for their own interests, and blocking low- and middle-income earners from benefiting from them. The biggest example of this is the Cooperative Housing laws, originally issued to solve or contain the housing problem by providing housing to citizens at cost. However, delays in implementing these projects and the greed of association administrative boards diverted cooperative housing projects from their main objective, turning them into a tool for personal interests.

Having identified and understood the problem, we need a roadmap to overcome it and deal with the effects. We believe the most important steps to take are:

- The serious desire of future Syrian authorities and institutions to solve this problem and deal with its effects. The issue of private property and housing restitution must be closely linked to the political process, peace-building and the return of refugees and displaced persons to their homes. The political agreement must include a special annex that guarantees ownership rights and deals with expropriations that took place during the conflict.
- The need for a comprehensive review of real estate and private ownership laws, to identify risks, and issue comprehensive property legislation that addresses the problems inherent in previous laws and legislation.
- A future Constitution must include rules that safeguard and prevent any assault in any form on private property, and not only general texts. It must state explicitly and clearly the supremacy of international law over domestic law, in particular international human rights law and international humanitarian law; the principle of separation of powers, independence of the judiciary, and prohibition of interference by the executive branch in the work of the judiciary; so that the text on the independence and impartiality of the judiciary and the sanctity of right of defense and other rules may be more than lofty phrases that adorn constitutional papers.
- A future Constitution must include text prohibiting the confiscation of private property by courts and public authorities

under any pretext, unless established by final judicial ruling that such property was the result of an unlawful act.

- The need to reform the Supreme Constitutional Court, in terms of composition, powers, ways to challenge before it the unconstitutionality of laws, enabling it to exercise its role in monitoring the constitutionality of laws, including previous and subsequent monitoring.

- To unify authorities that have the right to register property and to hold and automate land registries.

- To form committees to handle in the coming phase claims related to property ownership and housing restitution, whose decisions may be appealed before the competent court, after freeing the latter from the domination and interference of the executive authority.

- To find solutions to the problems of haphazard housing and common property, through laws that find a balance reconstruction with the rights of occupants and owners.

- Administrative and institutional reform in Syria, so they are able to address the problems mentioned in this research and carry out the tasks they will be assigned in the coming phase.

- Involve civil society in rallying and advocating for property rights and restitution for refugees and displaced persons, and for legislative and institutional reform.

- A map of property violations that specifies affected properties and creates a census of affected persons and in rem property rights, available ownership documents, making use of documentation during the conflict.

- Restitution processes must not be linked to actual return, absentees or their legal representatives must be allowed access to their property rights.

- Restitution processes must be considered part of restorative justice, only resorting to financial compensation in cases where in kind restitution is impossible.

- Restitution laws, programs and policies must take gender into account and remove obstacles preventing women accessing property rights.

## **Research References:**

### **I: International treaties and conventions:**

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Guiding Principles on Internal Displacement, adopted in Austria in January 1998, at the 54th session of the Commission on Human Rights

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The Day After (TDA)  
Office: +90 (212) 252 3812  
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