The Day After
Supporting a Democratic Transition in Syria

The Day After

Papers on Decree N.10/2018

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Introduction

On April 2, 2011, Bashar al-Assad issued decree No. 10 of 2018 to establish one or more urban planning zones, within the general site plans of the administrative units based on proposal from the Minister of Local Administration and the Environment in addition to amending some articles of Legislative Decree No. 66 of 2012.

The law has raised fears among the forcibly displaced persons inside and outside of Syria about the possibility of expropriation of properties in the areas they were displaced from during the conflict.

Such legislation could be an obstacle for the return of IDPs and an additional challenge to the efforts to reach a political solution for the Syrian conflict.

Memo on Law 10 of 2018

Hussein al-Bakri

Law 10 was issued to complement a series of legislations enacted by the regime since 2011. Observers of these legislations, especially real estate ones, note that they come in parallel with military operations launched by the regime against cities and residential neighborhoods, for obvious objectives and goals.

It is important to point out to the most prominent risks of this law on real estate rights of individuals, particularly for the displaced persons and those wanted by the regime. These risks are mainly the following:

First: inability of many people to meet the obligations and measures stipulated in this law, through which they can claim their rights, starting with submitting documents that prove their estate ownership, to the selection of specialists, the ability to object to the decision of the property value assessment committee, as well as appeal to the decision of the distribution committee… etc.

This is due to the displacement of millions of Syrians from their areas, as well as killing and detaining hundreds of thousands. Those are the ones who are primarily targeted by this law, as it is expected to be implemented in areas whose residents have been displaced. Those areas constitute a belt around revolting cities.

Paragraph b of article 2/6 doesn't change that:

"Relatives of rights holders, up to the forth degree, or by virtue of a legal power of attorney, can practice duties and rights stipulated in paragraph /a/ of the same article". Since it is public knowledge that the regime required issuing a security clearance prior to setting up power of attorney to lawyers, any person wanted by the regime will not be able to give the power of attorney to a lawyer.

Additionally, the security control of the regime makes it illogical to deputize their relatives, as it is almost certain that they would be prosecuted.

Second: allowing institutions, corporations and legal persons, without defining their nationalities, to own lots resulting from zoning.

Article 19 of Legislative Decree 66 of 2012 stipulates the following:

“Municipality of Damascus Governorate, with the participation of specialized institutions and corporations, shall implement public utilities and infrastructures”.

Article /20/ stipulates the following:

“A fund shall be established at the Municipality of Damascus to cover the expenses of the work conducted by the governorate, in accordance with the aforementioned article 19”.

This article defined the funding resources of the fund, including revenues generated by swap contracts or deeds of partnerships concluded by the governorate of Damascus, with the aim to link the fund with specialized institutions and corporations, in exchange of owning shares in the newly zoned lots located under its jurisdiction.

This will open a wide door for foreign corporations and institutions to possess a land lots for both financial and political investments, where it is easy to change the indigenous inhabitants with other people, to complete the demographic change.

In light of the above, it becomes clear that the application of this law, and the creation of zoned areas, in areas whose indigenous people were displaced from, especially the surroundings and countryside of Damascus, the surroundings of Aleppo and Homs as well as all areas destroyed by the regime, will absolutely lead to estate rights holders losing their rights there, and plundering their property and giving them away for regime’s supporters and proponents.

This legislation and other laws enacted during the revolution are a continuation of the demographic change the regime is seeking. Such laws are similar to the Israeli laws on the absentees' property.

What are the possible solutions that may alleviate the harm of such laws?

- Urging real estate rights holders who are displaced, as much as possible, to give power of attorney to a lawyer or deputize a relative to undertake the procedures imposed in Law 10.
- A clear position against such laws shall be declared by the National Coalition and the Syrian Negotiations Commission (SNC), warning against the possibility of future prosecution against any individual proven to have occupied other people's' property, as they would be considered partners in the crime committed by the regime.
- A committee shall be created by the National Coalition to conduct a comprehensive study about laws passed since 2011 and what may be enacted later, explaining their dangers and adverse effects on the political solution.
- Submit an official document attached to such study to the UN, clarifying the risks of these legislations on the future of Syrians, and the impact of this on the possibility of their return to their original homes. This would be negatively reflected on refugees host countries.
- To learn from the experiences of countries that went through similar conditions, such as Bosnia and Herzegovina, especially from annex 7 of the Dayton Agreement, articles 9 and 12.

A Study about Law 10 of 2018

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(This paper was prepared for a joint workshop between TDA and Syrian coalition)

To thoroughly understand this law and interpret its provisions, it should be compared with other relevant laws, such as Law 9 of 1974, Law 66 of 2012, Law 107 of 2011, Law 15 of 2008 on Real Estate Development and Investment, and Law of the Land Registry (Law 188L.R of 1926), as the aforementioned laws are complementary to each other.

Therefore, I would like to clarify the following:

1. Article 1 of Decree 10 states that upon the proposal of the Minister of Local Administration and Environment, the establishment of one or more zoned areas within the general zoning plan of the administrative units defined in the Legislative Decree 107 of 2011 shall be issued in a decree. Zoned area, from a legal perspective, refers to what has been mentioned in chapter one of the Law of Zoning and Urbanizing Cities Number 9 of 1974, under the title (Establishing Zoned Areas).

Article 9: administrative authorities may apply zoning in the following two cases:

a. On areas hit by natural disasters, including earthquakes and floods, or areas destroyed due to wars or fires.

b. On areas the administrative party desires to implement the relevant general zoning plan in.

Article 12 states that property included within the zoned area constitute a common undivided ownership shared by all rights holders therein by shares equal to the assessed value of the estate owned by each one of them or the real right they own.

Analyzing Legislative Decree 10 of 2018, Decree 9 of 1974 and Legislative Decree 66 of 2012, in regards to the creation of a zoned area in: the zoned area of the south east of Mezzeh of the two real estate areas of Mezzeh – Kafr Sousseh

The second area: the zoned area south of the southern highway of the ral estate areas of Mezzeh – Kafr Sousseh – Kanawat Basateen – Daraya – Qadam

And its amendments in Decree 10 of 2018, shows the following:

- Decree 10 of 2018 is in line with the provisions of Decree 9 of 1973 with some non-substantial amendments. A specialized legal expert (through objective analysis of the law) will not find any political aspects that aim at affecting a demographic change in areas where zoned areas will be established, because the issue of the displaced persons hadn't been a problem then.
- It is clear that those who drafted the law made an effort not to have any provision in the law inconsistent with the general legal approach, lest challenging the constitutionality of the law in the future, with any legal repercussions resulting thereof.
- Clearly enough, it is put forward preemptively before the reconstruction of areas destroyed in the Syrian war and before reaching the desired political transition. It also aims at putting the international community (which refuses to fund reconstruction efforts before reaching a political solution) before a de facto situation and new legal statuses that it will have no other option but to deal with.

- It is also an attempt to ensure certain rights for parties, states and corporations that the regime is seeking to give the lion's share in the reconstruction as a reward for their assistance in the regime's war against its people.
- This is evident in article 10/20:
    1. A special fund for each zoned area shall be established to cover and fund the expenses detailed in article 19 of Legislative Decree 66 of 2012, to construct social residential housing and alternative housing as well as all costs of the zoned area. The fund shall be funded by loans, accredited banks and revenues generated from swaps or deeds of partnership concluded by the administrative unit council in exchange for funding the fund with the specialized legal persons who shall be granted, in return, to own shares in the zoned area under the jurisdiction of the administrative unit, and the value of whatever lots sold in public auctions.

Risks of Law 10 of 2018

According to the above, I believe that the real risks of this law are not in the operational articles or provisions therein, because any legal expert wishing to enact a law for real estate beautification will follow suit and may adopt the same articles and mechanism. The main problem, which the regime wanted to make, is rather in the timing of issuing this law, with all losses of rights entailed. The following is a brief summary of these problems:

1. The current law covers all Syrian territories, whereas in the old law was only concerned with two zoned areas in Damascus city. Hence, the regime may choose a specific area in accordance with the plan it will draw, which most

likely will be one of the destroyed areas or whose people are displaced. There are rumors about contracts signed in secret between the regime and the Iranians on Eastern Aleppo – Eastern Ghouta – Baba Amr. At the same time, some areas will be excluded from reconstruction if the international community responded and funded such efforts before reaching a political solution.

2. The law doesn't take into account Syrians living abroad. In case a property owned by a displaced person and is located within the boundaries of a new zoned area, that person has only a period of one month to prove ownership of that property. The law also states that announcing news on zoning areas shall be solely broadcasted on local media means that displaced persons may have no access to, which will prevent them from the right to prove their ownership.
3. Even if the real right holders learn about the establishment of a new zoned area where their property is located, they are most likely unable to reach the designated committees to object or register, either for being wanted by security apparatuses, being unable to come in person, or due to the much complicated routine imposed by security agencies on endorsing power of attorney made abroad to be effective within the grace period. That means that the one month period stipulated in the law will end before concluding the required procedures. Or, otherwise, because relatives of the owner who is wanted by security apparatus, living under regime controlled areas, will be too afraid to approach authorities on behalf of that person or for his/her benefit. (Note: the leaks about names wanted by the security apparatuses show a number that goes over one and a half million people.)
4. One of the main problems of implementing the law at this time is that it changes the legal status of people from being independent owners in the

land registry to co-proprietors of a common property in a new zoned area represented by experts of property owners, in accordance with article 3/8. Those experts are people based in areas under the regime security control, and are most likely subject to harassment by security authorities that will influence their decisions to be against the interests of the share owners.

5. The law dealt with property on the basis of ownership registered in the land registry, whereas in reality, as shown from the application of Law 66 of 2012, there are illegal settlement housing built on estates owned by owners different from the owners of the buildings and they are not registered neither in the permanent nor temporary land registry. Additionally, owners of these buildings keep personal contracts from the construction dealer and electricity or water services subscription documents only (most of the neighborhoods of Eastern Aleppo). Those people will not be able, in such circumstances and short periods, to object in order to prove their right to property.
6. One of the problems shown in applying law 66 of 2012 is that most individual property when transferred to shares in collective ownership couldn't cover the share of an entire estate (statistics show that 25% of individual property couldn't cover more than 1/7 of the entire value of the new estate. This required the former owner of the estate to buy six shares out of seven in order to keep a new estate within the area included in the zoning. In most cases, this is not affordable and it will only be in the best interest of the big real estate corporations, involved as partners and funders, which buy shares from shareholders. Therefore, a large number of people will be forced to leave the area they used to live in (forced demographic change).
7. In light of the above, the implementation of this law or any other law before reaching a political solution, releasing detainees and putting an end to all

security prosecutions will be a stark aggression against the rights of the displaced and will put their legal status at risk. The Syrian Negotiations Commission and civil platforms shall present this issue during the rounds of negotiations and urge the international community to refrain from funding reconstruction efforts before reaching a political transition.

One last important point

There is fear that the increased exaggeration of the repercussions of this law at the popular level, could cause harm to people who will be influenced by this exaggeration and rush to sell their property for a cheap price to avoid what could affect him, according to the rumors they hear about the mentioned law.

Law 10 of 2018

A Constitutional perspective

By Dr. Abdul Hameed Akeel al-Awak

(This paper was prepared for a joint workshop between TDA and Syrian coalition)

Introduction

Despite the deterioration of its legitimacy, if not the complete lack thereof, the Syrian regime is still enacting suspicious laws in an attempt to legitimize its practice of assaulting people and their property.

Since the repercussions of such legislations will affect all Syrians regardless of their political orientations, we cannot overlook studying the law under the pretext of lack of illegitimacy for being issued by an authority that we do not consider it to be legitimate.

Based on this understanding, not for giving legitimacy to any of the acts of the regime, we analyze Law 10 of 2018, and weigh it against the constitutional rules of the regime, which it claims to be the rules that govern its measures, although the constitution, the circumstances under which it was issued and its provisions are surrounded with doubt, stripping it of any legitimacy in the conscience of Syrians before it was even issued.

However, the real challenge for us is to explore the defaults in legislations in light of the legal system recognized by the regime itself, not in light of our perception which delegitimizes the regime, not allowing it to issue anything in the Syrian state.

Real property is a source and factor for wealth and a title for families' social status. This explains the primary bond between man and land, something that will always be found as long as there is life on earth.

That is why laws of real property enacted by the regime are a hopeless attempt to uproot Syrians from their land. But the aggressor will not manage to legitimize his aggression by issuing laws, utilizing them as an umbrella to protect himself. Our analysis of the faults the Syrian legislator has made in violation of certain constitutional rules would be through the following points:

1. Constitutionality of the primary committee to evaluate the value of the real estate
2. A law that legitimize confiscation
3. Expropriation without compensation (material aggression)

1. The constitutionality of the primary committee of evaluating the value of real estate

Article 7 of Decree 66 of 2012, along with articles 8 and 9 of Law 11 of 2018 stipulate that a committee to evaluate the value of real estates shall be formed consisting a judge, of a counselor degree, named by the minister of justice and four experts as members, two of whom shall be appointed by the minister of housing, and the other two to be elected by owners. This committee shall make decisions by consensus or majority vote.

This committee is considered one of the exceptional judicial bodies, since most of its members are not members of the judiciary and its creation is not stated in the constitution, although the constitution tasks the judiciary with dispute resolution. Equality among members of the committee is clear evidence of the injustice by which the judiciary is dealt with, as the vote of those who represent it is equal to other members who are non-specialists in dispute resolution.

The constitutional jurisprudence concluded that it may not be permitted to form extraordinary judicial bodies, because this derogates the judiciary which shall have full jurisdiction to solve all disputes. Furthermore, we can say that the executive authority resort to establishing exceptional courts or forming committees only to

avoid the guarantees provided by the constitution for those who come under the judiciary jurisdiction.

Such committee is nothing but an expression of violating citizens' right to litigation before ordinary judges, because there is no distinction amongst people in their right to litigation before ordinary judges. Such committees are exceptional courts whose very existence is contradictory to the rules of the constitution, which guaranteed the right to litigation including the right of citizens to be tried before ordinary judges.

The constitutional judiciary followed suit. Most countries recognized the legal rules regulating the establishment of such committees, mandated to resolve disputes, are unconstitutional rules. One of such decisions, for example, is the decision of the Egyptian Constitutional Court in case No. 2 of the 22nd judicial year in its session held on Sunday, April 14, 2012, concluding that the legal rule regulating the establishment of the judicial agricultural committee, which looks into agricultural property ownership, is not constitutional.

So, in conclusion, the committee formed by virtue of Law 10 of 2018 is an unconstitutional committee, based on the judicial and legal jurisprudence conclusions.

- **The right to litigation constitutionally and legally**

Article 51 of the Syrian constitution provides for the right to litigation and the means of appeal, as one of the enshrined rights. However, article 12 of Law 10 of 2018, stipulates that the committee's decisions may be appealed before the court of appeal, which considers appeals in the review chamber, and gives final rulings.

It is noteworthy that the legislator considered the committee as the first degree of litigation, and provided that its rulings may be appealed before the court of appeal, which looks into such rulings in its capacity as a judge of urgent cases, and reaches final rulings. The legislator deprived right holders from the first degree of litigation,

as mentioned above, and deprived citizens from their right of one of the degrees of litigation, which is challenging the rulings through cessation.

2. A law that legitimizes confiscation

Heavenly laws give private ownership great importance and utmost protection, then human rights norms, especially the Universal Declaration of Human Rights issued in 10/1/1948, followed suit in article 17 thereof. Previous Syrian constitutions followed suit as well, and none of them has failed to provide such protection, including the current constitution of 2012, which stipulates so in article 51. This constitutional text shows that the constitution prohibits confiscation, which means the transition of the possession of one kind of money or more to the state.

Confiscation has two types:

General: This refers to removing all the money belonging to a sentenced person to the benefit of the state without anything in return. That is absolutely prohibited.

Special: when it targets one specific kind or more of the money of the sentenced, be it movable money or an estate. This may only be conducted by virtue of a judicial ruling or a law, for a fair compensation.

Under this concept of confiscation, isn't Law 10 of 2018 legitimizing confiscation? Doesn't confiscation mean taking money coercively without compensation for the benefit of the state? It doesn't matter if the term is missing or the means is different; what matters is describing the act according to its outcome.

Most of provisions of this law, eventually leads to the coercive transition of citizens' properties to the state. It is so especially in article 6/2 which gives the administrative unit the right to invite the owners or their representatives to submit the required documents within thirty days as of the date of the announcement.

We understand from this article that those who fail to submit the documents that maintain their rights, even if they are owners or holders of real rights, their

properties shall be transferred to the state which has the discretion to distribute such properties.

Such measure will lead to an outcome where owners will find that part of their properties is being confiscated to the benefit of the state, because the decree did not take into consideration the circumstances of displacement, the ongoing war and the inability of those who were forced out of their lands to submit those documents, in case their circumstances allowed them to learn about an announcement published in a local newspaper, whose fame and readership does not go beyond its editor and employees.

Law 10 of 2018 intentionally continues to complicate the procedures of submitting the documents. Article 6(B) of Decree 66 of 2012 allows relatives of the right holders of any degree to submit the required documents. Law 10 of 2018 amended the previous article limiting that possibility to relatives up to the fourth degree. The only justification of this limitation is that the legislator is willing to confiscate properties of those who fail to submit their documents. This makes the law in contradiction with property law, which must be a guarantee by itself to protect the right to property, because the basic rule is the sanctity of the right to property, as stipulated by the constitution. Therefore, expropriation is only an exception of that rule. Resorting to such exception should be imposed by extraordinary conditions of administration. That should require surrounding such measure with a number of guarantees and constraints that limit resorting to it by the administration to take individuals' estates.

It is also noteworthy that article 6 considers the announcement in a local newspaper or in one of the main audio or video media outlets and on the website a notification for owners. In normal circumstances, such measure is such an exaggeration, needless to say how it looks in such conditions of war, displacement, and the departure of most Syrians from their destroyed areas to settle abroad, in addition to the difficulty, if not the impossibility, of learning about this decree.

The question now is: if a citizen returns and unequivocally proves beyond any doubt that he hasn't been informed, what measures could he take?

From a legal perspective, he can do nothing as the legislator considered the mere publication of the invitation of the administrative unit a legal piece of evidence of informing the concerned parties, which cannot be proved otherwise.

3. Expropriation without compensation

Paragraph 2 of article 51 of the Syrian constitution limits the possibility of removing private property for a public benefit to a decree and conditioned to have a fair compensation in return. However, article 21 of Law 10 of 2018 stipulates that, in accordance with the general zoning plan and the detailed blueprint, all lands necessary for the completion and implementation of all necessary measures to complete the area, including roads, squares, parks, parking lots, schools, police stations, hospitals, firefighting stations, worship places, public libraries, cultural centers, playgrounds and all public facilities.

All lands needed for the abovementioned facilities come under free-of-charge appropriation and are not compensated for. This is a breach of the constitution that requires giving a fair compensation when a private property is appropriated for public benefit. It also contradicts an important constitutional principle, which is equality before public burdens. Non-compensated for appropriation will be unjust for some owners who will lose parts of their lands for the benefit of all owners, who will benefit from these facilities, whether by the using them or by the increase in the value of their properties.

The case as such, there will be loss for some people for the gain of others. It is a clear breach of the principle of equality before public burdens, and a violation of the legal provision of the constitutional text which provides for fair compensation. It is also a case of unjustified enrichment for the state, represented in the zoned area, which becomes a legal personality replacing all owners.

The value of real estate within the zoned area will increase, but this increase will not be included in the compensation paid to owners, because article 10 of Law10 of 2018 states: 'when estimating the real estate value in the zoned area, the committee shall take into consideration in its estimation the value of the estates at the time immediately preceding the issuance of the decree creating the zoned area, disregarding any increase on prices as a result of its creation'.

The final conclusion is that the state has appropriated a land for free where the value of real estates has increased as a result of this free-of-charge appropriation. The state compensated the owner with the value of the property before the increase. This represents a practical application of the theory of unjustified enrichment of the state, represented by the organizational unit.

Conclusion

The absence of monitoring the constitutionality of laws is Syria, for several reasons, including reasons related to the text (beforehand-political monitoring, those who have the right to review have no interest in challenging the law); some other reasons are related to reality, for the constitution is nothing but a facade for a despotic authority, will only lead to having further laws that violate human rights and freedoms. Law 10 of 2018 is another testimony on that violation, whether in terms of the creation of the committee or the procedures stipulated for the submission of documentation, or even flagrantly stating, in violation of the constitution, the free-of-charge appropriation.

Law 10: An international law perspective

A paper for The Day After

Produced by the Syrian Legal Development Programme

An analysis of the recently ratified Law No. 10 of 2018 concerning Housing, land and property (HLP) Rights in Syria from an International Legal Framework Perspective

This paper will start by outlining what are the international legal regimes that apply to the current non-international armed conflict going on in Syria . The first section of the paper will start off by outlining the legal arguments that prove that International law does have precedence over Syrian national legislations. It's important to have this point cleared out from the get-go given that the Syrian regime keeps coming up with new laws, such as the case with law no.10 (ratified in April 2018), in an attempt to cloak the illegality of its actions and repeal its international obligations under international law. The Syrian regime keeps trying to "legalize" its violations of the most essential rules of international humanitarian and human rights law, and this section of the paper will explain in through details that these attempts are already explicitly prohibited under international law. The second section of the paper will discuss the International Legal Framework on Housing, land and property (HLP) Rights as stipulated by the provisions of International Humanitarian Law and International Human Rights law. The third section of the paper will then cover Housing, land and property rights as stipulated in United Nations Principles on Housing and Property restitution for Refugees and Displaced persons (Pinheiro Principles) and the UN Guiding Principles on Internal Displacement. Finally, the fourth section of the paper will analyze the newly ratified Law no. 10 which pertains to Housing, land and property (HLP) Rights in Syria in light of the International Legal Framework Perspective discussed in the first three sections.

What international legal systems apply to the current conflict in Syria?[1]

[1] https://www.hrw.org/news/2012/08/10/q-laws-war-issues-syria#2

- **International Humanitarian Law**

First off, the current non-international armed conflict going on in Syria is governed by certain provisions of international humanitarian law. Fighting between the Syrian armed forces and pro-government shabiha militias on one side, and the Free Syrian Army and other opposition armed groups on the other amounts to a non-international (internal) armed conflict under international law. It is regulated by Common Article 3 to the Geneva Conventions of 1949, which sets forth minimum standards for the proper treatment of people within a warring party's control—namely civilians and wounded and captured combatants, and customary laws of war, concerning the methods and means of warfare. Syria has not signed to Protocol (II) Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts. However, most of Protocol II is considered to be part of customary humanitarian international law; customary international law is considered to be one of the sources of international law according to the International Court of Justice (art. 38) and it is binding in both international and non-international armed conflicts. The ICRC database is one of the most important sources of customary international humanitarian law, and can be accessed through this link. All parties to an armed conflict—both states and non-state armed groups—are responsible for complying with the requirements of international humanitarian law.

- **International Human Rights law**

Even during armed conflict situations in which the laws of war apply, like the one currently taking place in Syria, international human rights law remains in effect. Syria is a party to a number of human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR). While the ICCPR permits some restrictions on certain rights during an officially proclaimed public emergency that "threatens the life of the nation," any derogation of rights during a public emergency must be of an exceptional and temporary nature, and must be "limited to the extent strictly required by the exigencies of the situation." Certain fundamental rights—such as the right to life and the right to be secure from torture and other ill-treatment,

the prohibition on unacknowledged detention, the duty to ensure judicial review of the lawfulness of detention, and rights to a fair trial—must always be respected, even during a public emergency.

Section I. Hierarchy of laws - Does International law have precedence over Syrian national legislations?

First off, there is a need to identify the the legal regime that has precedence when it come to Housing, land and property (HLP) Rights in Syria: is it international law or is Syria's most recent domestic legislation on HLP rights, particularly Law no.10? The question may seem complex, at first glance, but the simple answer is that international law does have precedence over Syrian domestic legislation, which includes the recently ratified law no.10. The following is an explanation of the legal evidence and bases, extracted from the four main sources of International law, that supports reaching this conclusion.

According to article 38 of the Statute of the International Court of Justice the sources of international law are as follows: "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."[2]

1st- International Treaty Law

The Vienna Convention on the Law of Treaties - the principal instrument governing the interpretation of treaties - contains several provisions concerning the relationship between international law and domestic law and declares explicitly that States have an obligation to amend their domestic legal measures in accordance with their international legal obligations. This is clearly stated in article 27, which provides that "a party may not invoke the provisions of

[2] http://www.icj-cij.org/en/statute

its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."[3]

Article 46 on the Provisions of internal law regarding competence to conclude treaties states that: "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

Moreover, the International Law Commission (ILC) - the expert body that was mandated to draft the Vienna Law Treaty - has highlighted that the process of ratification, acceptance, approval or accession to a treaty, gives government officials sufficient time to study said treaty and take into account the impact of treaty obligations on national legislation. The Committee is of the view that the government official authorized to sign on behalf of the state is aware of both the substance of the treaty and the domestic legal measures of his/her State.Thus, there lies an obligation on the State to make its domestic legislation compatible with the treaty before ratifying it. If a state did not wish to accept the consequences of the international obligations arising from the signing of a treaty, it should not sign the treaty in the first place or it should at least make a reservation to the provisions of the treaty which it does not agree with.

2nd- International Customary Law

Customary international law plays an important role in governing armed conflict, especially when it comes to the HLP rights of displaced people. The duty to amend the domestic legislations of the state to meet international obligations is one of the established principles of

[3] https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf, page 339.

customary international law, especially with regard to article 27 of the Vienna Convention on the Law of Treaties.

The *travaux préparatoires* of the Vienna Convention on the Law of Treaties, shows that Guatemala and Costa Rica had reservations to article 27, and that Germany, Sweden, Denmark, Finland and the United Kingdom objected to these reservations on the grounds that article 27 was "strongly based on customary international law."[4] Furthermore, the ICJ in *Djibouti v France* (2008) found that, Art 27 does in fact constitute a rule of customary law given that it is supported by long-standing State practice and case law .[5]

This principle is also reflected in articles 3 & 32 of the draft articles on responsibility of States for internationally wrongful acts. According to the International Law Commission, these draft articles are considered to be part of customary international law. These draft articles outline the ways in which violations of international law can be attributed to a State and the remedies that can be made available to affected States. Article 3 of the draft articles on responsibility of States for internationally wrongful acts confirm that: "The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."[6] Also article Article 32 on the irrelevance of internal law which states that "the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part."[7]

3rd- General principles of law:

General principles of law are the fundamental legal principles and rules that are common to all, or almost all, legal systems and that are conducive to international obligations. The precedence of international law over domestic legislation in disputes between States is an internationally

[4] https://treaties.un.org/PAGES/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en
[5] ICJ Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France) [2008] ICJ Rep 177 para 124.
[6] https://www.ilsa.org/jessup/jessup06/basicmats2/DASR.pdf , page 43.
[7] https://www.ilsa.org/jessup/jessup06/basicmats2/DASR.pdf , page 51.

accepted general principle of international law. It was recognized in the Advisory Opinion on the Greek-Bulgarian Communities, 1930. In this case, the Permanent Court of International Justice (the predecessor of the International Court of Justice) stated that "it is a generally accepted principle of international law that in the relations between Powers [States] who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty [ie international law] ".[8]

4th- Judicial decisions:

Judicial decisions issued by courts, tasked with interpreting international treaties, further confirm the principle that international law takes precedence over domestic (national) law. The International Court of Justice has made clear in several of its cases that international law has precedence over domestic law. For example, in the case of *Mexico v. United States of America*, the International Court of Justice held that "the rights guaranteed under the Vienna Convention [on consular relations] [ie international law] are treaty rights which the United States has undertaken to comply with … irrespective of the due process rights under United States constitutional law. "[9]

Moreover, Syrian domestic legislation and state practice support the conclusion that International law has precedence over Syrian national legislations

Prior to the current armed conflict in Syria, the Syrian Government has on more than one occasion confirmed its acceptance of and submission to the rule of international law through its own domestic legislation, government declarations and consistent state practice.

For example,

[8] http://www.icj-cij.org/files/permanent-court-of-international-justice/serie_B/B_17/01_Communautes_greco-bulgares_Avis_consultatif.pdf ,PCIJ, Greco-Bulgarian "Communities" (Greece v Bulgary), Advisory Opinion (31 July 1930), P.C.I.J. (ser. B) No. 17, page 32.

[9] http://www.icj-cij.org/files/case-related/128/128-20040331-JUD-01-00-EN.pdf , ICJ, Avena and Other Mexican Nationals (Mexico v. United States of America), Judgement (31 March 2004), para. 139.

- The preamble to the Syrian Constitution of 2012, states that "The Syrian Arab Republic considers international peace and security a key objective and a strategic choice, and it works on achieving both of them under the International Law and the values of right and justice."[10] This is the first piece of evidence that the Syrian regime itself acknowledges and declares its commitment to Syria's international obligations arising under international law.

- Article 25 of the Syrian Civil Code provides that "the provisions of the preceding articles only apply when no provisions to the contrary are included in a special law or in an International Convention in force in Syria."[11]

- Article 311 of the Syrian Code of Procedure states "the above rules shall apply without prejudice to the provisions of treaties entered into between Syria and other States."[12]

- Moreover, in the formal report to the United Nations Human Rights Committee in respect to Syria's compliance with the provisions of the International Covenant on Civil and Political Rights, the Syrian Government confirmed in 2004 its official position that "... in the event of conflict between any domestic legislation and the provisions of an international treaty to which Syria is a party, the provisions of the international treaty prevail."[13]

- In its ruling No. 23, of 1931, the Syrian Court of Cassation stipulated that: "No domestic legislative enactment can lay down rules that conflict with the provisions, or even indirectly affect the enforceability, of a prior international treaty." This

[10] http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125885.pdf
[11] http://www.wipo.int/wipolex/ar/text.jsp?file_id=243234
[12] http://ar.jurispedia.org/index.php/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A3%D8%B5%D9%88%D9%84_%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A7%D8%AA_%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9_(sy)/%D9%86%D8%B5%D9%88%D8%B5_%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86
[13] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSYR%2f2004%2f3&Lang=en , paragraph 39.

understanding was further reinforced in another decision by the Civil Chamber of the Court of Cassation, decision 1905/366 of 21 December 1980, which was published in the Lawyer's Journal, p. 305, 1981. This decision states that national courts do not enforce agreements on grounds that the State has entered into international obligations for their implementation but on grounds of the fact that these treaties have become part of the State laws. In case of any conflict between a treaty provision and a domestic law the national court shall apply provisions of the international treaty and give it weight over domestic law.[14]

Furthermore, Just because a domestic law is passed in a state and is classified as "legal" by the state's internal institutions, that does not make it *automatically* legal under international law as has been explained by several Human rights bodies on the issue of arbitrary detention.

There certain characteristics that should *not* be present in any law that might potentially limit basic human rights. For example, The Inter-American Court on Human Rights has held, with regard to article 7(2) and (3) of the American Convention on Human Rights, that "that no one may be subjected to arrest or imprisonment for reasons and by methods which, **although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual** because, among other things, **they are unreasonable, unforeseeable or lacking in proportionality**."[15]

Moreover, the Human Rights Committee in its General comment No. 35 on Article 9 (Liberty and security of person) of the CPPR found that: "12. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. **The notion of "arbitrariness" is not to be**

[14] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSYR%2f2004%2f3&Lang=en , paragraph 39.
[15] https://trialinternational.org/topics-post/arbitrary-detention/

equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality..."[16]Thus, not every domestic law is necessarily "legal" under international law. Domestic laws should not be arbitrary or unjust nor should they include elements of inappropriateness, injustice or lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

Given all of the above, it is then clear from the very beginning that international obligations should have priority over domestic legislation, including the newly ratified law no.10, in Syria. Since the start of the current Syrian armed conflict, the Syrian regime has been coming up with new legislations and laws that contradict in their essence rules of international law in an attempt to "repeal" Syria's international obligations under international law. One example of such laws is law no.10 which deals with HLP rights in Syria and which will be discussed below. Law no.10 can be easily described as unreasonable, unforeseeable or lacking in proportionality which makes it an arbitrary and an unjust law. Any attempt to repeal Syria's international obligations through the enactment of domestic legislation is itself an illegal act under general international law as has been discussed and proved above. The following sections of this paper will proceed to explain how the recently ratified law no.10 violates many essential provisions in both international humanitarian law and international human rights law and by doing so this law is itself "illegal" under general international law.

[16]http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en , paragraph 12.

Section II. International Legal Framework on Housing, land and property (HLP) Rights as stipulated by the provisions of International Humanitarian Law and International Human Rights law

A. Housing, land and property (HLP) Rights as stipulated in Customary International Humanitarian Law:

International humanitarian law (IHL), in particular the Geneva Conventions and their Additional Protocols, as well as customary international humanitarian law, protect civilians and civilian property in time of armed conflict. While protecting all civilians without discrimination, persons displaced during conflict are singled out for special mention. Certain provisions are of relevance for HLP rights. The customary rules of international humanitarian law that concern displacement and displaced persons:

- **Rule 129: B.** Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.[17]

- **Rule 131:** In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.[18]

- **Rule 132:** Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.[19]

[17] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129
[18] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule131
[19] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule132

- **Rule 133**: The property rights of displaced persons must be respected.[20]

B. Housing, land and property (HLP) Rights as stipulated in International Human Rights Law:

Universal Declaration of Human Rights (UDHR)

The right to adequate housing as part of the basic right of everyone to enjoy an adequate standard of living is enshrined in the Universal Declaration on Human Rights (UDHR) as adopted by the United Nations. The Universal Declaration of Human Rights is generally agreed to be the foundation of international human rights law. Adopted in 1948, the UDHR has inspired a rich body of legally binding international human rights treaties.

- **Article 12** "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

- **Article 17 (1)** "Everyone has the right to own property alone as well as in association with others; (2) No one shall be arbitrarily deprived of his property"

- **Article 25 (1)** " Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

[20] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to adequate housing is further enshrined under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was adopted by the General Assembly in 1966.The Syrian Arab Republic ratified the ICESCR on the 21st of April 1969:

- **Article 11 (1)** " The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

- **General Comment No. 4 (Adopted at the Sixth Session of the Committee on Economic,Social and Cultural Rights, on 13 December 1991**) further defines the notion of adequate housing under Article 11(1). Section 8 (a) elaborates on legal security of tenure stating that: "[t]enure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all people should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those people and households currently lacking such protection, in genuine consultation with affected people and groups".[21]

The International Covenant on Civil and Political Rights (ICCPR):

The Syrian Arab Republic ratified the ICCPR also on the 21st of April 1969:

[21] http://www.refworld.org/pdfid/47a7079a1.pdf, Section 8(a)

- **Article 17 Part 3** of the ICCPR states that: “(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, **home** or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.”

- **Article 26** provides that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, **political or other opinion**, national or social origin, property, birth or other status.”

Section III. Housing, land and property (HLP) Rights as stipulated by the International legal framework concerning the rights of Refugees and Displaced persons

It must be noted that both refugees and internally displaced persons are singled out for special mention under international law. Refugees in particular are governed by a separate branch of international law known as International refugee law. Article 1.A.2 of the UN 1951 Refugee Convention defines a "refugee" as any person who: "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Meanwhile, the Guiding Principles on Internal Displacement define displaced persons as: “Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.” It is important however to understand that the IDP definition is a descriptive definition rather

than a legal definition. It simply describes the factual situation of a person being uprooted within his/her country of habitual residence. It does not confer a special legal status in the same way that recognition as a refugee does.[22]

The following section will lay out the rights and protections given to these two specific groups under international law particularly the rights which pertains to their Housing, land and property (HLP) Rights.

A. The Pinheiro Principles

What are the the Pinheiro Principles: United Nations Principles on Housing and Property restitution for Refugees and Displaced persons?

After the culmination of years of consultation, discussion and operational experience, the Pinheiro Principles: United 'Various Principles on Housing and Property Restitution for Refugees and Displaced Persons were passed in 2005. While non-binding, they are a significant development on the protection of housing and property rights for refugees and IDPs. The Principles articulate the importance of assuring that refugees and IDPs enjoy the right to return to their homes of origin after conflict, and provide a guarantee of the right of refugees and IDPs to restitution of their pre-conflict property.[23]

Housing, land and property (HLP) Rights as stipulated by the Pinheiro Principles: United Nations Principles on Housing and Property restitution for Refugees and Displaced persons

In the context of HLP rights for displaced people the overarching normative framework is encapsulated in the United Nations Principles on Housing and Property Restitution for Refugees

[22] http://www.internal-displacement.org/assets/publications/2007/200712-idp-protection-handbook-thematic-en.pdf , page 6.
[23] The Property Rights of Refugees and Internally Displaced Persons: Beyond Restitution. By Anneke Smit., page 3. https://academic.oup.com/jrs/article-abstract/26/4/597/1595186

and Displaced Persons, commonly referred to as *the Pinheiro Principles* after the United Nations Special Rapporteur who led their development.

The *Pinheiro Principle*s consolidate and reaffirm existing human rights and specifically applies them to the issue of housing and property restitution. The *Pinheiro Principle*s reaffirm the right to protection of all internally displaced persons and refugees from arbitrary and unlawful deprivation of housing, and property. The Principles further reaffirm the right of restitution for people deprived of housing and property. Restitution refers to making good the loss either through restoration or adequate compensation.

- **Principle 2.1** reads **"**All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.
- **Principle 2.2** reads "States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative 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"

- **Principle 5.1** reads "Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence."
- **Principle 5.2** reads "States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control."
- **Principle 5.3** reads "States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war."
- **Principle 5.4** reads "States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that

individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement."

- **Principle 7.1.** reads "Everyone has the right to the peaceful enjoyment of his or her possessions."

- **Principle 10.1.** reads "All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, 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. "
- **Principle 10.2.** reads "States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations."

- **Principle 21 on compensation** states:"**...**further states in relation to contexts where restitution of original properties is deemed impossible that: "States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice."

The UN Guiding Principles on Internal Displacement

What are the UN Guiding Principles on Internal Displacement?

Unlike the case of refugees, there is no international universal treaty which applies specifically to IDPs. The Guiding Principles presented by the then Representative of the UN Secretary General on IDPs, M. Francis Deng, to the UN Commission on Human Rights in 1998, were therefore a milestone in the process of establishing a normative framework for the protection of IDPs. The Guiding Principle are consistent with and reflect international human rights and humanitarian law, as well as refugee law by analogy. The principles interpret and apply these existing norms to the situation of displaced persons. Although not a binding legal instrument, the principles have gained considerable authority since their adoption in 1998. The UN General Assembly has recognised them as an important international framework for IDP protection and encouraged all relevant actors to use them when confronted with situations of internal displacement. Regional organisations and states have also deemed the principles a useful tool and some have incorporated them into laws and policies.[24]

Housing, land and property (HLP) Rights as stipulated by the Guiding Principles on Internal Displacement

Relevant sections of the Guiding Principles on Internal Displacement:

- **Principle 6 (1)** Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. **(2)** "The prohibition of arbitrary displacement includes displacement: (b) In situation of armed conflict unless the security of the civilians involved or imperative military reasons so demand.

[24] http://www.internal-displacement.org/internal-displacement/what-is-internal-displacement/guiding-principles-on-internal-displacement/

- **Principle 14 (1)** Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

- **Principle 18 (1)** All internally displaced persons have the right to an adequate standard of living. (2) At a minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to … (b) basic shelter and housing.

- **Principle 21 (1)** No one shall be arbitrarily deprived of properties and possessions.
- **(2)** The property and possessions of internally displaced persons shall in all circumstances be protected, in particular against the following acts:
  (a) pillage; (b) direct or indiscriminate attacks or other acts of violence; (c) being used to shield military operations or objectives; (d) being made the object of reprisal and (e) being destroyed or appropriated as a form of collective punishment. (3) Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

- **Principle 28 (1)** Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
- **(2)** Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

- **Principle 29 (1)** Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services. (2) Competent authorities have the duty and responsibility to assist

returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. 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.

Section IV. An analysis of the recently ratified Law No. 10 of 2018 concerning Housing, land and property (HLP) Rights in Syria in light of the International Legal Framework mentioned above

Law no. 10 which was introduced on April 2, 2018 sets in motion a massive overhaul of the government land registry across Syria, a copy of the new law was published by state news agency SANA which can be accessed on the following link.

Prominent Syrian lawyer Aref al-Shaal commented on this law by saying that
"Article 1 of the law, which is considered to be one of the main problems of this law, has allowed the creation of one or more organizational zones (within the generic organization chart) based on an approved economic feasibility study. This first article, in legal terms, means that the legislative authority, granted the executive authority the absolute authority to reorganize urban areas that have already been previously regulated and settled by previous laws. It puts in place an easy and flexible condition for the executive authority to be able to do so. The condition is the availability of an approved economic feasibility study, without specifying the criteria for this study, without specifying the organization or agency that issues or adopts this study. This law is considered from the point of view of legal specialists: a "carte blanche". It is not limited by a specific place or region or city. It is not limited by a specific case, such as it only includes areas that have been destroyed."[25]

Article 6 of Law no.10 gives property owners both in Syria and abroad just 30 days—starting April 11—to present their deeds to local council offices in the country. Article 6 (2) allows family

[25] https://www.facebook.com/permalink.php?story_fbid=1720359681380377&id=100002190846476

members up to the fourth degree of property owners to present the required documents in their stead. Otherwise, the state has the right to liquidate their titles and seize their holdings. Once the registration window closes, "the remaining plots will be sold at auction," according to Article 31 of the law.

Law no.10 clearly violated the provisions of international law which were listed in the first two sections of this paper. The law specifically targets two vulnerable categories of Syrian people: refugees and internally displaced people. Millions of Syrian who are refugees and internally displaced people left no family back home to assist with registration and they have no way of compiling with the law which allows the Syrian regime to arbitrarily deprive them of their private properties and possessions that they left back home . For Syrian refugees and internally displaced persons seeking to establish ownership per the law, traveling back to Syria or to their original towns to claim their properties is extremely dangerous, if not impossible, because of the threat of arrest or forced conscription upon return, constant bombardment across the country, and government control of entry and exit points.[26] Although the law states that family members up to "the fourth degree" can make an ownership claim on behalf of an absent property owner, forced displacement has largely uprooted entire families, neighborhoods, and villages, making this point nearly irrelevant.[27] Further, in rare cases that extended family is present in the area, their absent, property-owning family members are often wanted by authorities; thus, extended family members who fear government retaliation, arrest, or forced conscription for their loved ones are unlikely to submit claims on their behalf.[28]

Thus, Law no.10 clearly violates provisions of Customary international humanitarian law in particular Rules number 131, 132, and 133 mentioned in the first section of the paper. It also violates provisions of international human rights law particularly Article 12 & Article 17(2) of the UDHR, the Committee on Economic, Social and Cultural Rights definition of adequate housing stipulated in Article 11 (1) of the ICESCR, Article 17 Part 3 of the ICCPR. Moreover, the law violated many principles stipulated in the Pinheiro Principles particularly principles number 2.1, 5.1, 5.2, 5.3, 5.4, 7.1, 10.1, 10.2. Finally, it also violates essential principles stipulated by the

[26] https://timep.org/commentary/with-new-law-assad-tells-syrians-not-to-come-home/
[27] https://timep.org/commentary/with-new-law-assad-tells-syrians-not-to-come-home/
[28] https://timep.org/commentary/with-new-law-assad-tells-syrians-not-to-come-home/

UN Guiding Principles on Internal Displacement particularly principles number 6.1, 21.1, 21.2, 28.1, & 28.2.

Furthermore, this law also clearly targets opposition supporters as "all property owners wishing to register their lands must first obtain approval from state security officials", as reported by a lawyer in Damascus familiar with the law which reported this to Syria Direct. The lawyer spoke to Syria Direct on condition of anonymity for fear of repercussions. "Without this approval, they will not be able to prove ownership of the property," said the lawyer. "Therefore, it would be sold at auction or claimed by another person." "Herein lies the seriousness of this decree," she added.[29] The fact that a security clearance is required would deter a large number of Syrians living inside and outside Syria from registering their property particularly Syrians who have an outstanding arrest warrants issued against them or Syrians who are known to hold anti-government views. This clearly violates Article 26 of the ICCPR which stipulates that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on... **political or other opinion**...". It also violates principle 3 of the Pinheiro Principles on the right to non-discrimination. Finally it also violate principle 4(1) of The UN Guiding Principles on Internal Displacement.

Many Syrian lawyers and activists have also voiced their concerns that this law would help the Syrian regime to continue committing its crimes of forcible displacement. Forced displacement can amount to both a war crime and a crime against humanity under international criminal law. The definitions of forced displacement as a war crime and as a crime against humanity are slightly different.

- As a **war crime,** forced displacement can be defined as a coercive act of displacement of the civilian population in the context of an armed conflict not justified by reasons of security of the civilian population or imperative military necessity.[30]

[29] https://syriadirect.org/news/displaced-syrians-ensnared-by-new-property-law-stand-to-lose-everything/
[30] International Committee of the Red Cross, *IHL Database Customary IHL*, (last visited 16 Jan 2018), *available at* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129.

- As a **crime against humanity,** forced displacement is defined as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[31]

Law no.10 is an attempt to "legally" allow the Syrian regime to forcibly displace any property owner who did not present their deeds to local council offices before the registration window of 30 days closes. It would also enable the Syrian regime to forcibly displace anyone who is too scared to obtain the necessary security approval due to their fear of losing their life or liberty. Moreover, the Syrian regime has been notoriously known for its attempts to impose demographic change by means of forced displacement and this law can futhure help the regime impose such illegal demographic change. For example, Decree No. 66 of 2012, which the new law no.10 amends and expands, disproportionately targeted previous opposition strongholds for demographic change. Decree No. 66 allowed Syrian authorities to "redevelop areas of unauthorized housing and informal settlements" in two specifically designated locations in Damascus which were unique in being opposition strongholds. In fact, similar neighborhoods that were largely aligned with the Assad government and at similar socioeconomic backgrounds were left untouched by this displacement and redevelopment scheme.[32] Many reports have surfaced, following Decree No. 66, that pro-government Syrian and Iranian settlers have been allowed to informally and illegally take over homes in former opposition strongholds once the original civilian residents were forcibly displaced as a result of the regime's siege, starvation, and bombardment policies.[33] Understandably, displaced Syrians legitimately fear that the new individuals resettled by Law No. 10 of 2018 will also be war-time elites and pro-government settlers.[34]

In conclusion, Law no.10 can be viewed as yet again one of the newly developed tactics that would allow the Syrian regime to continue its its crime of forcible displacement which is prohibited under customary international humanitarian law (particularly Rule 129: B.) and under

[31] Rome Statute of the International Criminal Court art. 7(2), 17 Jul. 1998, *available at* https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.
[32] https://timep.org/commentary/with-new-law-assad-tells-syrians-not-to-come-home/
[33] https://timep.org/commentary/with-new-law-assad-tells-syrians-not-to-come-home/ (See also: No Return to Homs A case study on demographic engineering in Syria &'We Leave or We Die' - Forced Displacement Under Syria's 'reconciliation' Agreements & After Decree 66, Some Residents Fear Reconstruction Means Eviction & Decree 66: The blueprint for al-Assad's reconstruction of Syria?)
[34] https://timep.org/commentary/with-new-law-assad-tells-syrians-not-to-come-home/

the provisions of international criminal law. However, the irony lies in the fact that this tactic of legislating laws that violate Syria's international obligations under international humanitarian and human rights laws used by the Assad regime (such as law no.10) is itself an"illegal" act under general international law.