



The Constitutional Guarantees of The Right of Property Ownership and The Right to Adequate Housing

HLP Working Group

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The Constitutional Guarantees of The Right of Property Ownership and The Right to Adequate Housing



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Executive Summary

Safeguarding and protecting property rights is a dual indicator; on the one hand, it shows how stable the economic situation in any state is; on the other hand, it indicates to what degree this state respects human rights.

However, the right to adequate housing has become a prerequisite for a set of other fundamental rights that cannot be achieved without it, including the right to health and human dignity. It is also a precondition for political and intellectual rights; an individual cannot exercise these rights if he is homeless.

Different types of ruling authorities presided over the Syrian state in recent history, and they had various and at times conflicting ideologies. However, the violation of property ownership rights continued. The degree of the violation of property rights varied under these various authorities, but it remained constant and was an indicator of the inability of the different constitutions of the Syrian state to protect property rights.

It is worth noting that the violation of property rights and ignoring the need to provide adequate housing was intangible. The authorities have often tried to provide legal legitimacy to these violations, in other words, to make them justifiable by legal texts.

The fact that there are legislations regulating property ownership rights, but these legislations did not prevent the violation of these rights raises the question about the ways in which these authorities manipulated the constitutional protection of the property rights without incurring any legal consequences?

This, in turn, raises a group of secondary questions:

- Why did the Syrian state not abide by the international treaties and agreements it had signed? And why was there a lack of general constitutional guarantees protecting the right to property ownership and adequate housing?

- And as a result, how can we fix this error so that the constitution provides the needed protection of the right of property ownership and adequate housing?

To be able to answer these questions, we need to examine the constitutional guarantees for the right of property ownership and adequate housing. These guarantees should be stated directly or indirectly in the constitution, or the international treaties signed by the Syrian state. Or they can be protected by general democratic principles.

Finding a solution for this problem requires changing the current reality. This requires us to research the current constitutional guarantees and the reason they failed in protecting property rights in order to be able to suggest the required modifications that would enact the constitutional guarantees.

First: The Inadequacy of The Syrian Constitutions in Protecting the Right of Property Ownership.

The various Syrian constitutions stipulated the protection of property rights. It tied the expropriation of property to two conditions: the first is that this expropriation serves a public interest, and the second is providing a fair reparation. However, these guarantees were too widely defined and malleable and needed restrictions.

However, None of the Syrian constitutions had any regulations regarding the right to adequate housing, neither in The Basic Principles chapter nor in The Freedom and Rights chapter.

The frequency of the property rights violations and the neglect of the right to adequate housing increased after 2011, despite the fact that the crisis of expropriation and lack of provision of adequate housing was one of the main reasons behind the conflict. The authorities in Syria have excelled in inventing ways to expropriate property: expropriation as a military tactic, expropriation as an aspect of the war economy, expropriation through contesting the legal documentation of ownership, and expropriation as a result of redrafting urban planning and housing regulations at times of conflict.

This leads us to emphasize the need to reenact the constitutional guarantees to address the accumulative problems that took place since the establishment of the Syrian state and until now.

Second: Suggestions

To address the problems in protecting property rights and the right to adequate housing, we should work on reenacting the relevant constitutional guarantees through three suggestions: first through amending the existing charter, second through working on addressing the current loopholes, and third through adding new legislations.

1- Suggestions to Amend the Existing Charter:

The existing constitutional charter did not provide the needed protection for property ownership rights, which require certain modifications such as:

A- Moving the text about protecting property rights from The Basic Principles chapter to The Rights and Freedoms chapter.

B- Do not equate in the legal text between the rights and the restrictions. The constitution should make rights indisputable, while the restrictions should be listed together in one text that details all the rights and public freedoms and the restrictions and limitations to these freedoms.

C- Syrian legislators should define the term “public interest” when used for the purpose of property expropriation. The term is best defined as what achieves the best benefit of the biggest number of people and prevents any damage to the interests of the public. It should fulfil the concept of equality, meaning the legislator should not be biased against a specific ethnic or political group.

“Public Interest” should be evident, it should be defined clearly, and its justifications explained in order to make it easy for the administrative judiciary to be able to monitor it.

D- Stating that reparations and compensations should be fair is insufficient. That is why we suggest that the compensations should be defined as equal to the market value of the properties subject to expropriation, and this value should include all of the property assets, including the non-redeemable assets.

It should also stipulate satisfaction in the form of property in addition to the financial compensation, especially in the cases where the expropriated property is agricultural land. It should be paid at the beginning of the project and in one sum. Moreover, if there were any delays in making the reparation for any reason, a legal interest should be paid with compensating the accumulative loss of benefit.

Assessing the amount of compensation should not be left for the expropriating authority but should be a right for both parties. If they fail to reach an agreement, and the authority determines the amount of compensation, the property owner should be allowed the right to litigation against the decision.

2- Addressing the Current Loopholes.

The right to adequate housing was not included in any of the former Syrian constitutions. None of the problems resulting from the lack of provision of this right, such as informal housing areas, was addressed, even though this right is usually given prominence in other national constitutions and international agreements.

A- Respecting The right To Adequate Housing.

In the beginning, it should be clearly stated that “everyone has the right to acquire adequate housing,” and the state has the responsibility to “not interfere directly or indirectly in the citizens’ rights to acquire adequate housing.”

As part of fulfilling this responsibility, the state is prohibited from carrying out forced evictions before offering alternatives. It is also prohibited to demolish homes before providing alternative housing.

B- Procedures That Can Not Be Subject to Delays or Progressive Implementation.

1- The Right to Equality

All citizens should have equal rights to the provision of housing, with no discrimination based on their ethnicity, gender, color, or religion.

2- The Protection of The Right to Adequate Housing

The new constitutional amendments should stipulate the need for the provision of adequate housing. This means it is not enough that the state should be prohibited from interfering in the provision of adequate housing, but it also has an obligation to take measures that prevent third parties from interfering in this right.

It is important that the Syrian state takes measures to oblige the relevant bodies like landlords and real estate development committees to abide by the international standards for human rights regarding the provision of adequate housing.

The state also has an obligation to take all necessary measures to prevent third parties, whether they are civilian or armed powers, from carrying out forced evictions and illegal property seizures. The right to reclaim a seized house should not be subject to the statute of limitations.

It should also stipulate the need for respecting private property. No one has the right to enter homes without the permission of its owner or per a legal warrant based on a criminal investigation.

3- It is important that the constitution should ensure the right to resort to litigation concerning the provision of adequate housing. This would motivate the state to provide adequate housing and regulate non-governmental bodies to prevent any infringement on this right. The right to litigation would also be vital in explaining housing regulations.

C- The Right to Adequate Housing is a Progressive Right.

Syria is now suffering the catastrophic consequences of war and a severe shortage of resources, which would make fulfilling the right to adequate housing extremely challenging in a short period of time. Because of this reality, the Syrian state has the duty to try to fulfil the right to adequate housing within its available resources. It should also work to secure the bare minimum of the fundamentals needed to fulfil this right, at least as a principle.

D- Taking appropriate measures to secure the right to adequate housing:

The Syrian state has an obligation to take all appropriate measures, within its financial resources, to provide adequate housing for its citizens. These measures can be progressively implemented on stages and as part of effective plans, and should include the following:

- Taking all legislative measures, within the available resources, to provide adequate housing progressively.
- The executive power is required to draft a national housing policy that focuses on the deprived and marginalized sections of society.
- Redrafting and expanding the urban design plans for the cities and towns in accordance with the increase in population.
- Dedicating an appropriate fund in the budget to providing adequate housing for the citizens.
- Drafting national housing plans that provide emergency shelters to the homeless and the families suffering a housing crisis.

E- Irregular Housing Areas.

There are many irregular housing areas in all the cities and towns in Syria, and the state cannot continue to ignore them or leave them out of its planning. These areas now house hundreds of thousands of families, and that is why it is essential that the state now regulate these areas in its urban plans and restore their residents' legal rights.

F- The Status of International Law Should Be Maintained.

There is a need for a clear stipulation in the constitution that the international agreements the Syrian state is a signatory to are superior to the constitution. The domestic laws that contradict these international agreements are many and addressing this problem should work through two parallel mechanisms: first, the parliament should ratify the laws in accordance with the international agreements. Second, the Supreme Constitutional Court should abolish the laws that are in breach of these international agreements after it opens the door for requesting the revision of these domestic laws by relevant individuals and organizations.

3- Adding New Legislations

Constitutions in democracies or countries that saw democratic transformation introduced new mechanisms to protect general rights and freedoms. That includes protecting the right of property ownership and the right to adequate housing.

A- Establishing monitoring committees specialized in protecting property rights, either a parliamentary commission or a governmental commission, or establishing a financially and administratively independent committee to monitor and implement the protection of property rights and the right to adequate housing.

B- Enforcing the doctrine of separation of powers by amending the constitutional texts that allow the president control over all powers and implementing the doctrine of separation of powers to allow the opposition an independent existence from the majority loyalist bloc and empower the opposition forces to monitor the authority of the majority.

C- Strengthening the rule of law by stipulating the hierarchy of laws and ensuring all legislative, executive and judiciary powers abide by this hierarchy.

D- Taking legislative procedures to enforce the principle of equality, especially in relation to the right to adequate housing. Allow all segments of the Syrian society the right to litigation, as it is an absolute right for all Syrians, and work to establish a national committee for equality that would be independent financially and administratively.

All these constitutional suggestions aim to activate the protection of property ownership rights and the right to adequate housing in the forthcoming constitution to be drafted and help get rid of a heavy legacy of violations against these rights.

Introduction

The international human rights law acknowledges the right of every individual to property ownership and to dignified living standards that allows this individual the right to adequate housing.

The first regulation for property rights came after The French revolution and The Declaration of The Rights of Man and of the Citizen passed in 1789. It emphasized the right of property ownership and gave it extreme importance as a reaction to the violation of this right that prevailed before the revolution.

It then became part of the constitutions of the modern-day states with varying phrasing, including the Syrian constitution of 1920 that considered the inviolability of the home as part of individual liberties.

The United Nations later adopted in 1948 property ownership rights and the right to adequate housing as a part of the right to adequate standards of living. This was the first international declaration signed in an agreement between all the members of the international community about fundamental human rights.

Even though this declaration is not mandatory and works as guiding principles, most of the world's countries now compete to fulfil these rights. The declaration has become a reference point for the governments to evaluate their performance and for the opposition to hold these governments accountable. The degree to which the government protects these fundamental rights has become a measure of how just these governments are towards their people.

It was followed by The International Covenant on Economic, Social and Cultural Rights, a binding treaty that was signed in 1966. The covenant gave the ownership rights greater importance. Later, many other international treaties acknowledged property ownership rights, and these rights became an integral part of many constitutions in the world.

Safeguarding and protecting property rights became a dual indicator; on the one hand, it shows how stable the economic situation in any state is. On the other hand, it indicates to what degree this state respects human rights.

However, the right to adequate housing has become a prerequisite for a set of other fundamental rights that cannot be achieved without it, including the right to health and human dignity. It is also a precondition for political and intellectual rights; an individual cannot exercise these rights if he is homeless.

All the Syrian constitutions since independence stipulated the protection of ownership rights. They ignored the right to adequate housing, which was not included in The Basic Principles chapter nor in The Freedoms and Rights.

However, it is worth noting that despite the fact that the constitution stipulates legal protection for ownership rights, the violations against this right has not stopped since the establishment of the Syrian state. In other words, the constitution has failed to protect ownership rights or the right to adequate housing.

This motivated us to examine and study the Syrian constitutions and their historical development, hoping to understand the current reality and suggest the appropriate amendments. We hope to employ the lessons of our previous constitutions to work on drafting a new Syrian constitution.

The fact that there are legislations regulating property ownership rights, but these legislations did not prevent the violation of these rights raises the question about the ways in which the authorities manipulated the constitutional protection of the property rights without incurring any legal consequences.

This, in turn, raises a group of secondary questions:

- How did the Syrian state avoid abiding by the international treaties and agreements it had signed that protect property ownership rights and the right to adequate housing?
- Has the basic constitutional principle of the doctrine of separation of powers, the rule of law, and the principle of equality influenced ownership rights and the right to adequate housing?
- And as a result, how can we fix this error so that the constitution provides the needed protection of the right of property ownership and adequate housing?

That is where the importance of scientific research emerges. Studying the constitutional protection for ownership rights leads us to understand the context of the development of the Syrian constitutions and the degree of protection these constitutions gave to ownership rights and the right to adequate housing. It helps understand how these constitutions dealt with the challenges of protecting ownership rights and the right to adequate housing faced with the constant violations of the authority to these rights and its relentless attempts to violate them.

From a practical point of view, the findings of this research and its recommendations could contribute to the protection of ownership rights and the right to adequate housing and to finding solutions to provide adequate housing in the context of a massive crisis or displacement and refugees that remain unmatched in modern history.

That is why this study will attempt to find the flaws in the Syrian constitutions in regard to the protection of ownership rights and the right to adequate housing. It will analyze these laws, in case they existed, to find the errors and suggest modifications, either through introducing amendments or through omissions or additions to the legal text.

It is known that scientific research does not succeed unless it follows a specific methodology. We will try to answer the questions mentioned above using the deductive analytical approach that relies on analyzing the constitution, revising all the interpretive judgments, and critiquing it in an attempt to reach an accurate description of the problem.

We will also rely on comparative research to compare the Syrian constitutions of different eras, and also compare them to the constitutions of democratic countries or countries that witnessed a democratic transformation.

Research Structure

To answer the questions of this research, we divided it into three chapters.

- **Chapter one: What are property ownership rights and the right to adequate housing?**
- **Chapter two: The special constitutional guarantees for property ownership rights and the right to adequate housing.**
- **Chapter three: The general constitutional guarantees to property ownership rights and the right to adequate housing.**

Chapter 1

What Are Property Ownership Rights and The Right to Adequate Housing?



Section one: What Are Property Ownership Rights?

Humankind has the right to ownership since birth and has the right to inherit what they own to their descendants. Ownership is a right innate to human nature; people work hard so that they can yield the results of their efforts.

Human life is centered around this right, and it provides a motivation for hard work that increases productivity and construction.

The countries that repressed this right and introduced collective ownership has, in reality, cancelled the motivation to work and excel, which function as a protection against internal collapse. That is why these countries didn't survive the challenges they faced, and eventually collapsed or disintegrated. One of the main reasons behind this collapse was the adaptation of prohibiting individual ownership.

On the other hand, the countries that acknowledged the ownership rights in their constitution did not invent this right. They merely acknowledged a right that is compatible with human nature. Acknowledging this right means protecting it from violations by the authorities.

First: The Definition of Property Ownership Rights

Acquiring a theoretical knowledge of the definition of this right would allow us to understand its parameters and contents, in order to be able to assess if the constitution managed to cover all these parameters and contents.

Practically, ownership can be defined as an individual's exclusive possession of something that allows this individual complete control and utilization of its benefits.

Based on this definition, ownership presumes an entity takes possession of the owned object, whether this entity is a natural or physical person, or non-human juridical person, and whether this entity is private or public. Ownership has varied forms, and it allows the owner exclusive power and control over his property. This control is one of the defining aspects of ownership.^[1]

1- The Diction of Ownership.

The word ownership is derived from the verb to own, and to own something means you possess it and have total control over it. In Arabic, the term Moulkiaa (ownership) is a name derived from the verb (malak).^[2]

[1] Mustafa Mohammad al-Jamal, The System of Ownership, Dar el-Maaref, Alexandria, page 29.

[2] For further linguistic understanding of the terminology look at Al-Qamus al-Muhit (Al-Muhit Arabic dictionary).

The book *Al-Hawi al-Qudsi fi Froou al-Figh al-Hanafi*, a book about Islamic jurisprudence by the scholar Jamal al-Deen Ahmad ibn Mahmud al-Ghaznawi who died in Aleppo in 1197 AD defined ownership as *al-Ekhtesas al-hajez* “the restricted possession” that allows its owner to prohibit others from using or benefiting from his property.

The prominent Egyptian theorist and jurist Al-Kamal ibn al-Humam who died in 1457 AD, wrote in his book *Fath al-Qadder lil-Ajiz al-Faqqer* in the chapter entitled *Selling that ownership* is “the ability of control and use based on one’s will, unless there is a prohibition,” meaning this ability is self-initiated and not derived from someone else.^[3]

2- The Definition of Ownership in Law

The term “ownership” is defined usually in civil law. However, it is also included in other branches of the legal texts, including the constitution. The definition of the term does not change between one text and another, but the interpretation of the text, its jurisdiction and application might vary.

Here, we will examine a group of the definitions in different laws, hoping that we build a better understanding.

In [The Iraq Civil Code no 40 of 1951](#), article 1048 stated: “Perfect ownership of property vests the owner with the absolute right to dispose of his or her property through use, enjoyment, and exploitation of the thing owned, its fruits, crops, and anything the property produces. The owner is entitled to manage through all permissible actions.”

In this definition, the Iraqi legislator ignored that one of the characteristics of ownership is perpetuity. He/she also should have made the permissibility of managing and disposing of property linked to laws, in order to have higher control over exceptions.

The French legislator defined ownership in the [French Civil Code](#) in article 544 as: “Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations.” One of the biggest influences for Arab legislators is the French Civil Code.

It is noticeable that the French legislator has also ignored the aspect of perpetuity, one of the most important characteristics of ownership. He/she described ownership as absolute, an adjective that contradicts the social functioning of ownership that is regulated by law, despite the fact that he/she later, and in the same article, restricted the right of ownership to abiding by regulations.

[The Algerian Civil Code](#) in article 674 defined ownership as “the right to use and enjoy things, provided they are not used in a way prohibited by statute or regulations.”

The Algerian legislator ignored that the right of use of property is one of the most important characteristics of ownership. He also ignored the aspect of perpetuity, and restricted

[3] Ikram Falah al-Sawaf, *The Legal and Constitutional Protection for Ownership Rights- A Comparative Study*. Zahran Publishing House, Amman, Jordan, 2010, page 16.

ownership rights to abiding by regulations.

The Syrian legislator was identical to the Egyptian legislator,^[4] and identified ownership in [The Syrian Civil Code, legislative degree No 84 of 1949](#), in article 768 as: “Only the owner of a thing has, within the limits of the law, the sole right to use it, enjoy it, and dispose of it.”

Here, the Syrian legislator included all the characteristics of ownership in his definition.

We notice that most of the definitions did not describe ownership right as absolute. The Syrian and Egyptian legislators said it should be “within the limits of the law,” while the Iraqi legislator used the term “through all permissible actions.” Using this term helps, from the perspective of legislative policies, to restrict the right of ownership without violating it. On the other hand, it helps emphasize the social function of property rights, meaning that ownership has a social functioning.^[5]

In other words, it restricted the right and made its use restricted to what is permissible by law. The right in itself is not the benefit, but the means to achieve this benefit, and if the ownership rights were to be used outside the limitations of the law, that would be a violation. In doing so, the legislators applied the individual psychology theories to the definition of ownership rights and made these rights a privilege the individual maintain on the condition of not causing harm to others.^[6]

3- The Definition of Ownership in Jurisprudence.

Scholars who studied civil codes defined ownership rights, and this could explain the similarity of the definition of this right in law and in Islamic jurisprudence. The definition in jurisprudence is affiliated to, subordinate to and inseparable from the legal definition.

Professor Nazez Mohammad al-Sadeq defined ownership as “the authority that allows the owner to use the thing and enjoy all its possible benefits in perpetuity, and this use is restricted to the owner.”^[7]

Jurist and expert of civil code Abd el-Razzak el-Sanhuri defined the ownership of a thing as “the right to monopolize using this thing, advantaging from it, and disposing of it in perpetuity and within the limits of the law.”^[8]

In summary, it could be defined as “Ownership vests the owner with the right to control his property and take all permissible actions to use, benefit from and dispose of his property.”^[9]

[4] Egyptian legislators introduced the same definition in article 802 of [Egyptian Civil Code no 131 of 1948](#).

[5] Saeed Abdul Kareem, Explaining the Iraqi Civil Code, Jus in Re Propria, Freedom House for Publishing, Baghdad, 1973, page 24.

[6] Ismaeen Shamah, The Algerian Law of Land Planning, Algeria, Dar Homa for Printing, Publishing and Distribution, 2004, page 165.

[7] Nazez Mohammad al-Sadeq, Ownership in Socialist Systems, PhD thesis, Faculty of Law, Cairo University, page 47.

[8] Abd el-Razzak el-Sanhuri, The Lexicon of Interpreting the Civil Code, Volume 8, page 493.

[9] Abdul Mounaem Faraj al-Sedaa, Ownership Rights, Cairo, 1964, page 13.

Second: The Characteristics of The Right of Ownership

The right of ownership has certain defining characteristics, it is inclusive, it is exclusive, and it is permanent.

1- An Inclusive Right.

Ownership is inclusive, meaning it vests the owner of a thing with all the possible benefits of it, depending on the nature of this thing and within the limits of the law.

It is an inclusive right that allows the owner the permanent right to use, enjoy and dispose of the thing. All the other secondary jus in re rights that allows the owner limited control are derived from the right of ownership, for example, the right of usufruct.^[10]

The law might restrict the right of ownership; for example, a property could be expropriated for a certain amount of time in service of public interest. Another example is when the owner enters into agreements that limit his powers over the property for a limited amount of time

2- An Exclusive Right (Monopoly).

The right of ownership is exclusive to the owner, no one can share his property with him. If the action of sharing was enforced illegally, the owner has the right to file a lawsuit to stop this sharing, even if it was not detrimental to his interests. The fact that there could be many owners for the same property or thing does not negate the characteristic of exclusivity, each one of the owners will enjoy a share based on the part he/she owns^[11].

It is a right that applies equally to all citizens, and everyone is obliged to respect it, not violate it or prevent the owner from enjoying its benefits.

3- A Perpetual Right.

The right of ownership is perpetual, it lasts as long as the thing or property remains in place. It

is unlimited and does not terminate after a certain period of time, it lasts as long as the property remains in place. The element of perpetuity is related to the property, not to its owner, who might be changed after the ownership is passed to another through selling, transferring the ownership to another or inheriting it.

In other words, ownership is a perpetual right, and its perpetuity is reliant on the existence of the property. It lasts as long as the property lasts.^[12]

[10] Nasrat Mounla Haydar, How Constitutional Decree No 46 of 1980 is? Syrian Lawyers Periodical, issue 1-2-3, 1989, page 18

[11] Abd al-Razzak al-Sanhuri, The Lexicon of Interpreting the Civil Code, The Right of Ownership, Dar al-Nahda, Cairo, 1967, Volume 8, page 529.

[12] Mohamaad Ali Hanboula, The Social Functioning of Private Property, Alexandria, Dar Port Said for Publishing and Printing, 1974, page 421.

The right of ownership is reliant on the existence of the property of the thing. Being a perpetual right means it cannot be lost by abandoning or not using the thing or the property, unlike some of the secondary rights derived from the ownership right.

Third: The Elements of The Right of Ownership.

The elements of ownership mean the legal powers the owner is vested with over the thing or property he/she owns. The Syrian Civil Code listed them in article 768 as: the right to use, enjoy the advantage of and dispose of. We will briefly examine the meaning of each of these powers.

1- Use:

To use an owned property or thing means to utilize it for the purposes it was made for and are inherent to its nature.^[13]

It vests the owner with the right to utilize the thing or property for the purposes it was made for and in all possible means.^[14] If it is a house, the owner can live in it. If it is a car, the owner can drive it. And if it is a piece of jewelry, the owner can wear it.

2- Enjoyment:

Enjoying the advantages of something is different to using it. Enjoying the advantages of something means performing all necessary tasks to benefit from this thing. You enjoy the advantages of a house by renting it, and you enjoy the advantages of a land by yielding its crops. The owner might directly enjoy the advantages of the property, or he might authorize others to enjoy these advantages in return for receiving financial rewards.

Legislators restrict the right of enjoyment of the advantages of a property sometimes. For example, the Syrian Ministry of Agriculture predetermines the size of the land that should be cultivated, and what kind of crops are to be grown. No one would be allowed to cultivate that land without abiding by these rules and getting the required license.

3- Disposition:

The power to dispose of a property is the most important element of the right of ownership, and it distinguishes the right of ownership from the other jus in re rights. It means the owner has the sole authority to materially dispose of the property he/she owns. The owner also has the sole legal right to exhaust or alienate this property. This authority is exclusive to the owner, and it vests in him/her the right to dispose of the property itself, or of the advantages of this property.

And equally, the owner has the right to not dispose of his property.

[13] Mohammad Kamel al-Moursi, Explaining the Iraqi Civil Code, Jus in Re Propria, Cairo, Al-Alamia for Publishing and Printing, page 612.

[14] Abd el-Razzak el-Sanhuri, The Lexicon of Interpreting the Civil Code, The Right of Ownership, Dar al-Nahda, Cairo, 1967, Volume 8, page 493.

In exceptional cases, the owner's power of disposition is restricted, meaning he/she are deprived of this authority for a temporary period of time per a legal order or per administrative restrictions (restraint on alienation clause).^[15]

That is why it is the legislator's duty to protect property rights, cover all its elements, and devise the legal instruments for the owner to be able to exercise all his power over his/her property.

And when a restraint on alienation clause puts a restraint on the ownership right, it should be justified and clear, just, and publicized so that the principle of equality before the law is maintained. Any exceptions to this restraint should be predetermined and defined clearly in advance

Fourth: The Scope of the Right of Ownership.

The scope of the right of ownership indicates the parameters of this right and what it entitles the owner to claim. For example, an heir cannot file a lawsuit to defend the "potential ownership" of a property as long as the owner is alive, even if the ownership rights of this property were violated. He/she, however, has the right to a lawsuit if he/she has already inherited the property.

An heir also does not have the right to legally contest an increase of stamp duty payments in case the payment has increased in value between the time he started processing his/her inheritance documents and the time it was finalized, because he/she only the owner legally once all the paperwork is completed and thus, he/she does not enjoy the right to litigation until then.

It is worth mentioning that The European Court of Human Rights has broadened the interpretation of "ownership" to include a whole range of pecuniary rights such as rights arising from shares, patents, arbitration awards, established entitlement to a pension, entitlement to a rent, and even rights arising from running of a business.^[16]

Fifth: The Legal Foundations for The Ownership Right

The legal foundations of ownership rights have an important role in defining, restricting, and protecting the right of private property ownership. It is usually enough to examine the legal theory of ownership adopted in any constitution to determine the degree of protection this constitution provides to the right of private property ownership.

[15] Saeed Abdul Kareem, Explaining the Iraqi Civil Code, Jus in Re Propria, Freedom House for Publishing, Baghdad, 1973, page 33.

[16] Aida Grgic, Zvonimir Mataga, Matija Longar and Ana Vilfan-[The right to property under the European Convention on Human Rights- A guide to the implementation of the European Convention on Human Rights and its protocols](#)- Human Rights Handbooks, No.10 - p 7

1- The Theory of Natural Law as A Foundation of Private Property Ownership.

According to John Locke, an English philosopher and physician, natural rights are life, liberty, and property ownership. These rights are fundamental, and the fact that property ownership right is classified as a natural right means no government or authority, of any era, is entitled to take that right away. The role of the government or authority is to protect the right of private property ownership against any violations. The right of ownership is grounded in labor, and the government has the responsibility to protect those who, through labor, acquire the right of ownership from others who are not productive.^[17]

Some scholars argue that ownership rights are granted to humans by birth, and cannot be infringed upon, same as rights like freedom, security, or equality. They intertwine ownership and freedom and make them inseparable, arguing that ownership rights are the guarantors for freedom rights. That is why the right of ownership is absolute and should not be restricted in any way.^[18]

The French revolution enshrined the right of ownership in a legal text through article 17 of The Declaration of The Rights of Man and Of the Citizen passed in 1789. The Constitution of 1791 stated in article 87 that “Property being a sacred and inviolable right, no one can be deprived of it.”

This theory did not last long due to the criticism against it. Property ownership rights cannot be considered equal to freedom rights. It is possible to envisage a human being living without owning a property, but human beings cannot live without freedom. On the other hand, the right of ownership has developed through a long struggle to enshrine it and protect it by law, and if it was truly a natural right, it would not have needed such a long struggle.

2- Requisition and Acquisition (Homestead Principle).

Requisition and acquisition are justifications for private property ownership; anyone who requisites something and acquires it before others becomes its owner. Requisition and acquisition are actions that give a person a priority in owning a property and becoming its legitimate owner. Others are then required to respect the ownership rights of this person. Requisition and acquisition are the oldest methods of ownership procurement.^[19]

[17] Locke's political philosophy, The Stanford Philosophy Group, translated by Sarah Al Mudefer. [uploads/2021/08/%D9%81%D9%84%D8%B3%D9%81%D8%A9-%D9%84%D9%88%D9%83-%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9.pdf](https://www.stanford.edu/group/philosophy_group/files/2021/08/%D9%81%D9%84%D8%B3%D9%81%D8%A9-%D9%84%D9%88%D9%83-%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9.pdf)
last seen 27/01/2022

[18] Nazeem Mohammad al-Sadeq, Ownership in Socialist Systems, a PhD thesis, Faculty of Law, Cairo University, pages 80, 81.

[19] Nazeem Mohammad al-Sadeq, Ownership in Socialist Systems, a PhD thesis, Faculty of Law, Cairo University, pages 83.

Human survival requires the consumption of many things, and to be able to sustain life, one has to requisite these things and acquire them, which makes ownership a natural functioning.^[20]

This theory was criticized as it contradicts justice, it gives the powerful the right of ownership at the expense of the weak. It is also valid in regards to movable property, but doesn't apply to real estate or immovable property. Requisition is only possible over movable property because the land has always been owned, and increasingly so in modern times, you cannot find land that is not owned either by an individual or by the state.

3- Labor Theory of Ownership.

The proponents of this theory believe that private property ownership is grounded in labor. A laborer is entitled to earn wages for his work, and these earnings are the seed of private property. Once the right of laborers to receive remuneration is enshrined, then the legitimacy of individual ownership is established. Remunerations are the result of the laborer's work and efforts, and it is his/her right to requisite property and pass it to her descendants after his/her death.^[21]

Charles Fourier, a French philosopher and one of the founders of Utopian Socialism, thinks that labor is nourishing and self-sustaining, it is one of the most important foundations of ownership.^[22]

This theory is useful for explaining the ownership of movable property, not real estate, or immovable property. The land is created by God, and labor can't create land.

4- Positive Law as Foundation for The Ownership Rights

Philosophers like Montesquieu, Jean-Jacques Rousseau and Jeremy Bentham argued that private property ownership is constituted by man-made laws. The state prescribed these powers through devising relevant laws. This theory is an attempt to make private property ownership rights subject to the control of the state.

These philosophers justify their opinions by the fact that there was no privately owned property in the past, and collective ownership was the norm in primitive communal systems. Private ownership was introduced later when societies developed and became more organized. Law is what constitutes private property and protects it, and that is why law and private ownership are interlinked.^[23]

[20] Mohamaad Ali Hanboula, *The Social Functioning of Private Property (A Comparative Study of Man-made Laws and Islamic Sharia)*, Alexandria, Dar Port Said for Publishing and Printing, 1974, page 354.

[21] Nazeh Mohammad al-Sadeq, *Ownership in Socialist Systems*, a PhD thesis, Faculty of Law, Cairo University, page 84.

[22] Mohamaad Ali Hanboula, *The Social Functioning of Private Property (A Comparative Study of Man-made Laws and Islamic Sharia)*, Alexandria, Dar Port Said for Publishing and Printing, 1974, page 358.

[23] Mohamaad Ali Hanboula, *The Social Functioning of Private Property (A Comparative Study of Man-made Laws and Islamic Sharia)*, Alexandria, Dar Port Said for Publishing and Printing, 1974, page 36.

Regardless of the criticism against this theory, it came as a response to the theory that natural law was the foundation of private property ownership. The natural theory considered private property ownership rights fundamental natural rights that are granted to humans by birth, and cannot be infringed upon, just like rights as freedom, security, or equality. That is why the right of ownership is absolute and should not be restricted in any way.^[24]

5- Social and Economic Utilitarianism as The Foundation of Private Property Ownership.

Public interest is at the heart of justifying private ownership. An individual will not be motivated if he/she does not feel that their property is secure permanently. When an individual feels secure, he/she will make the utmost effort to increase their property. If this theory is applied, private ownership will become a motive for work and production, which would increase the economic resources of the society. Also, when each individual is preoccupied with increasing his personal wealth, strife and conflict would be reduced in the society. Protecting private ownership would become a vital instrument in maintaining peace and security, and the legal system would have an obligation to protect private property.^[25]

This theory faced many criticisms, as it would divide the society into different classes due to the concentration of wealth in the hands of a few and excluding the others. It would create a disparity in national income distribution, and lead to instability and social friction, which contradicts the notion promoted by the proponents of this theory that it would lead to peace and security.

6- The Social Function of Property

The social function principle emerged with the beginning of Social Thought. It was later developed by modern jurists into a legal notion. The social function principle promotes the idea that private ownership rights should be conditional and reliant on fulfilling the social function of property ownership.

This theory is built on two principles: social solidarity and the principle that any individual who owns a private property is indebted to the society for this ownership.

The justification for the social function of private property ownership is that it serves the public interest of the whole society, and it also protects the private interests of the individual at the same time.

However, the fact that the right of private property ownership is conditional and reliant on the social function of property ownership means this right is not absolute. All the elements that constitute this right, including the right of use, enjoyment, and disposition, are restricted.

[24] Nazeh Mohammad al-Sadeq, Ownership in Socialist Systems, a PhD thesis, Faculty of Law, Cairo University, pages 80 and 81.

[25] Aziz Kazeem Naser, Private Property and The Specifics of Implementation Of Socialism In Iraq, MA thesis, Baghdad university, 1984, page 37.

This allows the state a bigger control over property rights, and it has the right to hold the owner accountable if he/she infringes on the rights of others and fails to adhere to the social function of their ownership right.^[26]

The social function of private property ownership, in essence, is best described by the opinion that says: “if private property ownership right is a personal right, its use should fulfil a social role, meaning the owner needs to take into consideration the best interests of the society in mind, and if he/she infringes on the rights of others while exercising his/her right, the legislator needs to force him to abide.”^[27]

This opinion is similar to the thoughts of French jurist Leon Duguit that say that private ownership has a social function, and that the owner needs to fulfil this function as if he is a social worker.^[28]

Law does not protect the legal status of the owner if he/she failed to adhere to the social function of private property ownership right. Ownership, as a result, is deprived of the status of absolute right, and the owner’s right to use his property is restricted.

Private property ownership rights become subject to many restrictions the owner needs to abide by while exercising his/her right. This doesn’t diminish his/her personal interests. If the owner uses his/her property in ways that further the general public interest, he/she would, in turn, maximize his/her personal interests. But if the owner infringes on the restrictions maintaining the public interest while using his/her property, then his/her use of his/her property becomes illegal.

The social function of private property entails a very important stipulation; if the exercise of this right contradicts the public interest, then protecting the public interest becomes the priority. However, if the exercise of private property rights was to contradict a private interest, protecting ownership rights is the priority in such a case, unless public interest is still deemed more prioritized. In such a case, private property rights will be waived on the condition of providing the owner with an appropriate reparation.^[29]

Section 2: The Right to Adequate Housing.

Housing is a basic human need and, as with other basic needs, adequate housing is a prerequisite to national social-economic development. Inadequate housing can have adverse effects on the environment, the health of communities as well as their general wellbeing.^[30]

[26] Hadad Badya’a, [The Role of The Social Function In Restricting Private Property Ownership](#), Academic Journal of Legal and Political Research, issue 2, volume 4, 2020, page 219.

[27] Ali Kahloon, [The Social Function of Property](#), Legislation and Court Law Review, volume 4, 2011, page 2.

[28] Nazeh Mohammad al-Sadeq, [Ownership in Socialist Systems](#), Dar al-Nahda publishing, 1971, page 99.

[29] Nasrat Mounla Haydar, [How Constitutional Decree No 46 of 1980 is?](#) Syrian Lawyers Periodical, issue 1-2-3, 1989, page 19.

[30] Zambia National Housing Policy of 1996 available at www.mlgh.gov.zm

First: The Definition of Adequate Housing

Adequate Housing is an essential factor in protecting human dignity, the meaning of “adequate housing” goes beyond four walls and a ceiling that could shelter the human being. Adequate housing is a basic necessity for a healthy and dignified life.

Housing refers to a place that the person lives in permanently or temporarily, alone or with his family, and it contains furniture and the equipment needed for daily living.^[31] The term also extends to include its affiliated areas like a garden, a backyard, a garage, or a shed.

Also, the term housing applies to every place that shelters a person, whether it is owned or rented, and regardless of if it is small or big.^[32]

The Committee on Economic, Social and Cultural Rights (CESCR) affirmed that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace, and dignity.^[33]

Second: The Elements of The Right to Adequate Housing.

The right to adequate housing includes a number of rights according to The United Nations vision:

- 1- Individuals have the right to be protected from forced evictions and arbitrary demolitions.
- 2- The right of inviolability of the home is protected to all individuals, and that also includes the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, or home.
- 3- The right to freedom of choice of place of residence and the right to freedom of movement.^[34]

Third: The Specifications of Adequate Housing.

The provision of four walls or a shelter is not sufficient to say adequate housing has been provided, homeless people across the world find shelters, either on a bench in a park or in the underground subways. Refugees are given tents to take shelter in, but that does not

[31] Khoder Khoder, An Introduction to General Liberties and Human Rights, The Modern Institute for Books, Lebanon, third edition, 2008, page 18.

[32] Kessal Abdelouaheb, General Liberties Publications, a series of lectures for the law faculty, University Mohamed Lamine Debaghine -Setif2, 2015, page 60.

[33] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page1.

[34] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page3.

make these tents adequate housing. The right to adequate housing needs to fulfil certain specifications according to The United Nations.^[35]

- Legal security of tenure

All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment, and other threats.

- Availability of services, materials, facilities, and infrastructure.

All beneficiaries of the right to adequate housing should have sustainable access to safe drinking water, sanitation and washing facilities, energy for cooking, heating, and lighting, refuse disposal and site drainage.

- Affordability.

Individuals need to be able to afford the housing-related costs, or they would be subject to evictions and becoming homeless.

- Habitability. Adequate housing must be habitable and safe, and protects the inhabitants from cold, dampness, heat, or other threats to health.

- Accessibility.

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.

- Location.

Adequate housing must be in a location that allows access to employment options, health-care services, schools, childcare centres and other social facilities. Similarly, housing should not be built on polluted sites.

- Cultural adequacy.

The way housing is constructed must appropriately enable the expression of cultural identity and diversity of housing.

Fourth: The Distinction Between the Right to Adequate Housing and Ownership Right.

Some scholars suggest that “housing can be seen as a freedom right and is thus on a par with the right to property.”^[36]

The problem with the argument that the right to adequate housing as one of the socio-economic rights is the fact that these rights are competitive, and thus one can only achieve a

[35] [The Human Right to Adequate Housing. Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page 4.

[36] PETER KING (2003) Housing as a Freedom Right, *Housing Studies*, Vol. 18, No. 5, 661–672, September 2003–p 661.

particular distribution of resources at the expense of some other person. This means that some will benefit whilst others incur a cost.

This means that socio-economic rights that are competitive in nature do not enjoy the status of fundamental rights like the non-competitive rights, usually represented as rights to life and property, and rights seen as protecting individual liberty and freedom.^[37]

That is where the distinctions between the right of ownership and the right to adequate housing appear:

1- The ownership right is superior to the right to adequate housing.

Many scholars consider non-competitive rights superior to socio-economic rights. This is not only because they are deemed to be non-divisible, but also because they are universal and do not depend on a particular set of institutional structures.

But whatever the justification, the result is that freedom rights are seen as superior to, and to override, socio-economic claims such as the right to adequate housing.

This superiority is most evident in relation to legal claims, ownership rights are clearer and more established when contested in a court of law than the right to adequate housing.^[38]

2- The conflict between ownership rights and the right to adequate housing.

When a conflict arises between the right to ownership and the right to adequate housing, the right of the owner is given priority. Professor Bo Bengtsson argues that “it is not difficult to find examples about how people were deprived of having a shelter, simply because they lacked, while others had, control over private property.”^[39]

One of the most important consequences of prioritizing ownership rights and protecting all its elements over the right to adequate housing is the power the owner has to file a legal action to evict the occupants who do not own the property in which they reside. Also, prioritizing ownership rights could lead to serious violations against the right to adequate housing, like forced evictions of the residents of disadvantaged neighborhoods who live in privately owned property.

3- The scope of the right to adequate housing is broader than that of the property ownership right.

The right to adequate housing is broader than the right to own property as it addresses

[37] Machan, T. (1989) Individuals and their Rights (La Salle, IL, Open Court).

[38] PETER KING (2003) Housing as a Freedom Right, Housing Studies, Vol. 18, No. 5, 661–672, September 2003-p 663.

[39] Bo Bengtsson. Politics And Housing Markets: Four Normative Arguments, Scandinavian Housing and Planning Research,1995- 12, p 126.

rights not related to ownership and is intended to ensure that everyone has a safe and secure place to live in peace and dignity, including non-owners of property. Security of tenure, the cornerstone of the right to adequate housing, can take a variety of forms, including rental accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements.^[40]

Fifth: The Right to Adequate Housing and the State Obligations.

State obligations regarding the right to adequate housing vary from one country to the other, because they are reliant on the legal system in each country and the international treaties these countries have ratified. Here we will discuss state obligations in general terms, and then we will explore the obligations the Syrian state has adopted.

State obligations are divided into two main categories, based on the action the state needs to take to fulfil these obligations.

1- Negative obligations:

The states are required to refrain from interfering directly or indirectly with the enjoyment of the right to adequate housing.

For example, states should refrain from carrying out forced evictions and demolishing homes; denying security of tenure to particular groups; imposing discriminatory practices that limit women's access to and control over housing, land and property.^[41]

States also have an obligation to prevent third parties from interfering with the right to adequate housing.

2- Positive obligations:

The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness, or intolerable housing.^[42]

States are required to adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures to fully realize the right to adequate housing. States must, for instance, adopt a national housing policy or a national housing plan that defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups.

The Committee on Economic, Social and Cultural Rights has stated that certain measures must be taken immediately, for instance, those aimed at conferring legal security of tenure to those lacking such protection and effectively monitoring the housing situation, and the provision of

[40] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page 8.

[41] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page 33.

[42] [Case Africa v Grootboom 2001- Case CCT 11/00](#)-p 20.

effective legal or other appropriate remedies for violations of the right to adequate housing.^[43]

States should regulate the housing and rental markets in a way that promotes and protects the right to adequate housing; guarantee that banks and financial institutions extend housing finance without discrimination.

The Constitutional Court of South Africa imposes an obligation upon the state to take reasonable legislative and other measures to ensure the progressive realization of this right within its available resources.^[44]

Thus, a state party to The International Covenant on Economic, Social and Cultural Rights in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is prima facie, failing to discharge its obligations under the Covenant.

If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être.^[45]

Sixth: Common Misconceptions About the Right to Adequate Housing

One of the most common misconceptions associated with the right to adequate housing is that it requires the state to build housing for the entire population, and that people without housing can automatically demand a house from the Government. While most Governments are involved to some degree in housing construction, the right to adequate housing clearly does not oblige the Government to construct a nation's entire housing stock.

The right to adequate housing does not prohibit development projects which could displace people, as long as they are paid fair reparation and provided with alternative housing where possible. There are inevitable needs for the redevelopment of certain areas in growing cities and for public agencies to acquire land for public use and infrastructure. The right to adequate housing does not prevent such development from taking place but imposes conditions and procedural limits on it.

Seventh: The Right to Adequate Housing and Human Rights Are Indivisible and Interdependent.

Housing is a basic human need and, as with other basic needs, adequate housing is a prerequisite to national social-economic development. Inadequate housing can have adverse

[43] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page 31.

[44] [Case Africa v Grootboom 2001- Case CCT 11/00](#)—p 20.

[45] [Case Africa v Grootboom 2001- Case CCT 11/00](#)—p 25.

effects on the environment, the health of communities as well as their general wellbeing.^[46]

All human rights are universal, indivisible, and interdependent and interrelated,^[47] and the violation of the right to adequate housing may affect the enjoyment of a wide range of other human rights and vice versa. Access to adequate housing can be a precondition for the enjoyment of several human rights, including the rights to work, health, social security, vote, privacy, or education.^[48] The possibility of earning a living can be seriously impaired when a person has been relocated following a forced eviction to a place removed from employment opportunities. Without proof of residency, homeless persons may not be able to vote, enjoy social services or receive health care. Schools may refuse to register slum children because their settlements have no official status.^[49]

The fact that human rights are indivisible and interdependent makes them equal, none is prioritized over the other, and if a conflict were to arise, no right would be considered supreme to the other.

The interdependence of these rights makes them relevant to everyday life, and the fact they are varied and multiple does not mean one is prioritized to another.

The best proof of the indivisibility of human rights is that the legal terminology used in all international treaties and democratic constitutions gives equal importance to each of these rights.

[46] Zambia National Housing Policy of 1996 available at www.mlgh.gov.zm.

[47] [Vienna Declaration and Programme of Action](#) Jul 12, 1993, UN Doc. A/CONF.157/23 para 5.

[48] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page 14.

[49] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page 14.

Chapter 2

Special Constitutional Guarantees



The constitutional guarantees for the right of property ownership and the right to adequate housing should be usually stated, directly or indirectly, in the constitution or in the international treaties signed by the Syrian state. Or they can be protected by general democratic principles.

Section One: The History of The Guarantees to The Right of Property Ownership and The Right to Adequate Housing in The Different Syrian Constitutions.

We have to examine the constitutional guarantees the current Syrian constitution provides to be able to suggest the needed amendments to this constitution so that it lay forth sufficient protection to the right of private ownership and right to adequate housing.

To put it simply, we want to amend the constitution to become the guarantor of our rights and freedoms, just as the dictatorship used the constitution to establish its authority.

And to achieve this aim, we will conduct a comparative study of the Syrian constitutional guarantees to the right of property ownership and the right to adequate housing. We will examine both the development of the Syrian constitutions from a historical perspective and compare the Syrian constitutions to the constitutions of other countries.

We will then use our findings to formulate suggested amendments to the forthcoming Syrian constitution that would guarantee the protection of the right of property ownership and the right to adequate housing.

First: The Inadequacy of The Syrian Constitutions in Protecting the Right of Property Ownership.

The constitution of any country is a prism that reflects the prevailing social, economic, and political realities of the state and the society it was drafted to govern. Since its establishment, the Syrian state has fluctuated, and it has adopted different political and economic ideologies. Studying the various Syrian constitutions would give us a clear understanding of the prevailing ideology of the era in which each of these constitutions was adopted. We will also examine how each of these constitutions was influenced by the former ones, and we will focus on how these constitutions protected the right of property ownership since the establishment of the Syrian state until now.

1- The Founding Constitution of the Syrian State 1920.

The Syrian National Congress approved this constitution on July 13, 1920. The founding fathers of the Syrian state succeeded in creating state institutions and drafting the laws needed to regulate their work. It was truly a pioneering and successful democratic govern-

ment, but it ended abruptly and soon after. However, the importance of this constitution remains in the fact that many of the subsequent Syrian constitutions were influenced by it. In effect, its spirit still governs Syria to this day, and it will continue to do so until the Syrians succeed in reestablishing their state and producing a new social and political contract.

Article 18 of the Syrian Draft Constitution of 1920 was the first constitutional article to protect property ownership rights in Syria. It stipulated the protection of the ownership rights of both individuals and the state “The property of individuals and government bodies are protected by law. The government does not have the right to expropriate any property unless in service of the public interest and only after paying reparation as regulated by law.”

It is natural for a country that is in the process of establishing its institutions to legislate to protect state property, equally as it legislates to protect private property.

Expropriation of any property was tied to two conditions: the first is that this expropriation serves a public interest, and the second is providing a fair reparation. This stipulation would be reemphasized in all subsequent Syrian constitutions.

This article is considered reasonably fair in the period it was issued in, which preceded all international treaties that protected ownership rights.

2- The constitution under the French mandate 1930

This constitution was first drafted by the Constituent Assembly in 1928. However, it was not approved as it was rejected by the majority of 61 out of 67 members. Their rejection was because of Art 116,^[50] which asserted that no provision of the constitution could counter the power of the French mandate. Later the French High Commissioner unilaterally adopted the charter on May 14, 1930.

■ Ownership Rights in the constitution of 1930

Ownership rights are protected by articles 13 and 14 in the chapter entitled Fundamental Provisions, which include the basic principles and the public rights and freedoms. This constitution did not have a separate chapter regulating ownership.

Article 13 of the constitution stated that “Rights of ownership shall be protected by law; no person may be expropriated, except on grounds of public utility and in the circumstances defined by law, and on condition that fair compensation is paid beforehand.”

[50] Art 116: “No provision of the present Constitution is or can be in conflict with the obligations contracted by France in respect of Syria, more particularly in regard to the League of Nations.

This reservation applies more especially to those articles affecting the maintenance or order, security, and the defenses of the country, and to those which concern foreign relations.

So long as France shall continue to be under international obligations in respect of Syria, any provisions of the present Constitution which may affect those obligations shall only be applied in conformity with an agreement to be concluded between the French and Syrian Governments”

This constitution did not consider the social function as the basis of the right of property ownership. It relied on positive law as the foundation for ownership rights.^[51]

The 1930 constitution adopted a theory that allows the legislator the power to expropriate property. The legislator gives the property ownership rights and has the power to abolish them, this is why the second paragraph aimed to restrict the legislator power to expropriate and made it conditional on serving public utility and after paying fair compensation.

3- The 1950 Constitution; The Constitution of Legitimacy and Public Endorsement

The 1950 constitution had the highest public approval rates amongst the Syrian people of all the other constitutions in the history of the Syrian republic, because it is the only constitution that was promulgated by an elected constituent assembly that was elected on Nov 05, 1949. This constituent assembly continued its work until the constitution was ratified on Sep 05, 1950. This constitution remained in force until the unity with Egypt was announced on Feb 22, 1958. After the secession from the United Arab Republic, the separatist government readopted this constitution on Sep 28, 1961, and it remained in force till Mar 08, 1963. This constitution was adopted and readopted at multiple times of crisis in the Syrian history, and many Syrians consider it to be the best amongst the successive Syrian constitutions.^[52]

A- Ownership Rights in the 1950 Constitution.

Art 21 of the 1950 constitution was pioneering in regards to the definition of the right of ownership. All the previous Syrian constitutions did not link the right of property ownership to fulfilling the social function of private ownership and its role in protecting the public interest.

Art 21 stated: "Private ownership is protected. The law determines the restrictions on the acquirement and use of property so that it fulfils its social function. No one has the right to use private property in ways that contradict the public interest."

The principle of the social function of property ownership rights was first included in the 1950 constitution. It was also included in all the subsequent constitutions.^[53]

B- The 1950 constitution adopted socialist concepts and influenced all the subsequent constitutions.

Regarding the 1950 constitution, I believe that both the socialist left and the Islamist right movement in Syria agreed to adopt socialist reforms. They might have disagreed on how to describe these reforms; the Socialists saw them as socialist reforms, while the Islamists maintained that these were social justice measures implemented in accordance with Islamic

[51] For more information, refer to paragraph entitled The Legal Foundations for The Ownership Right in chapter one of this research paper.

[52] That is why many are now calling to readopt this constitution in the transitional period, despite the fact that it is a different era now and the political, economic and social circumstances are vastly different.

[53] For more information, refer to the paragraph entitled The Legal Foundations for The Ownership Right in chapter one of this study.

jurisprudence. However, this agreement made the constitutional committee adopt a reformist socialist agenda.

This was best manifested in Art. 21, which defined the right of ownership to include both private and public property. It gave equal protection to state and legal entities' property rights and to private individuals. Everyone has the right to acquire property within the limitations of the law.

This constitution put forward principles to regulate the use of ownership rights and its social function in Art. 22, which stipulated:

A- Land should be cultivated, and if neglected for a period of time defined by the law, the right of land investment and disposition is forfeited.

B- The law set the upper limits of land possession, whether through ownership or through the right of investment and disposition. These limits vary based on the geographic location and have no retrospective effect.

This article was considered an announcement of a new policy regulating private property ownership rights, especially in clause B. However, in reality, land was appropriated with retrospective effect after implementing the land reform programme.

These articles also gave the state the right to appropriation in service of public interest, without stipulating the owner's right to the fair reparation determined by the law.

4- The 1953 Constitution Under President Adib Shishakli.

The Supreme Military Council, headed by Adib Shishakli, drafted a constitution that was ratified after a public referendum on Jul 10, 1952. This constitution adopted a presidential ruling system.

A lot of its articles were inspired by the 1950 constitution. However, the protection of the right of ownership was remarkably undermined. It first moved the stipulation regarding the ownership right from the chapter Rights and Freedoms to The General Principle, which made it non-binding. As a result, citizens had no legal grounds to file a lawsuit to protect their rights if they were infringed on. Art 29 of this constitution stipulated:

- 1-** Ownership, capital and labor are the basic elements of national wealth. Each one of them is considered an individual right that has a social function and should be regulated and dedicated to ensuring the strength of the homeland and the dignity, cooperation, and appropriate living standards for all citizens.
- 2-** The elements of national wealth should be organized to achieve social justice.
- 3-** Economic life should be directed in accordance with the interest of the entire population.
- 4-** The law guarantees the economic liberty of every citizen in accordance with the fulfilment of these above-mentioned goals.

The legislator applied the utilitarianism theory in this constitution and prioritized protecting the public interest over individual interests. It did not give any guarantees that protect the owners if the authorities infringed on their private property rights.

Also, the principle of the inviolability of the home was rescinded. The 1953 constitution permitted entering and searching homes based on the emergency law.

5- The Constitution of The United Arab Republic 1958

After the unification of Egypt and Syria in 1958, the president of the republic assumed the right to rule by decree and put forward a provisional constitution on Mar 13, 1958.

It was even more regressive in protecting ownership rights than the 1953 constitution. Like the 1953 constitution, this constitution moved the stipulation regarding the ownership right from the chapter about rights to be a non-binding general principle. In part 2, entitled Basic Constituents of The Society, article 5 states: “private property is inviolable. The law organizes its social function. Property may not be expropriated except for purposes of public utility and in consideration of just compensation in accordance with the law.”

This article did not provide any practical protection of property ownership rights. However, we will find it repeated in similar wording in the subsequent Syrian constitutions.

6- The Constitutions of Baath Party and Ownership Rights.

The Arab Socialist Ba’ath Party seized power in a coup on Mar 08, 1963. It tried to enforce its ideology since the first provisional constitutions it promulgated on Mar 25, 1964. The head of The National Council for The Revolutionary Command issued this constitution using the rule by decree powers.

On Feb 23, 1966, a power struggle erupted, and another coup was staged. The provisional constitution of 1964 was cancelled, and the country remained without a constitution until May 01, 1969, when a new provisional constitution was promulgated.

Another coup took place on Nov 16, 1970. It was led by Hafez al-Assad, who declared a new provisional constitution on Feb 06, 1971. Al-Assad finally solidified his political control over the country by ratifying a permanent constitution that was drafted by a technical committee and put to a public referendum and later ratified on Mar 13, 1971.

The permanent constitution of 1973 did not bring anything new regarding ownership rights, contrary to the suggestion of some researchers. It reiterated articles from the previous Ba’ath provisional constitutions and reemphasized the approach of the first provisional constitution. We can summarize the most important points of these constitutions as follows:

A- All the Ba’ath party constitutions moved the stipulation regarding ownership rights from the part entitled Freedom, Rights and Duties to the part entitled Economic Principles. This constitutes a regression in the degree of protection and guarantees to ownership rights, because articles under basic principles provide less legal ground for litigation, unlike rights

that provide a stronger legal basis for the right to litigation in the case of infringement on ownership rights.

The fact that ownership rights are now under the part entitled Basic Principles does not negate the owners right to litigation, but moving it out of the Freedom, Rights and Duties deprive it of the higher protection and advantages the constitution bestows on fundamental rights.

B- The Ba'ath constitutions stipulated that the economy would be socialist, and the public has collective ownership over the means of production.^[54] It should be organized in ways that prevent all forms of exploitation.^[55]

It also stipulated the need for national economic planning to take into consideration the economic integration of the entire Arab world. This socialist and nationalist ideology has a negative impact on individual private ownership rights, socialist ideology is known to have a hostile perception against private ownership.

C- Ownership has been divided into three categories^[56] since the promulgation of the first constitution under the Ba'ath party. The first and most important is state ownership, which has the most significant role in development plans. The second is the collective ownership that belongs to all the workers, and the third is the individual ownership.^[57]

D- All the Ba'ath constitutions defined the social function of private property and restricted its use to be within the limitations of the law and in ways that do not contradict public interest.^[58]

E- All the Ba'ath constitutions reaffirmed the land reform policy, setting maximum limits on agricultural land possession.^[59] Reaffirming this policy further institutionalized the violation of the owners' rights whose land exceeded the permissible limits and was appropriated without being provided with appropriate compensation.

When any country adopts a policy of social justice, its implementation should not be at the expense of private citizens and their rights. Landowners should not be forced to bear the consequences of implementing the land reform policy without being provided with proper

[54] Art. 24 of the 1964 provisional constitution.

[55] This article was amended in the 1969 provisional constitution, adopted again later in the article 12 of the 1971 provisional constitution and later repeated verbatimly in article 13 of the 1973 constitution.

[56] Art. 25 of the 1964 provisional constitution:

Ownership of the means of production is divided into:

A- State ownership represented by the public sector, which has the biggest responsibility in national development. It includes public utilities, transport, and all means of production that provide the basics needs of the population.

B- Collective ownership shared between all the production force.

C- Individual ownership.

[57] The same article was reiterated in Art 13 of the 1969 provisional constitution, and Art. 13 of the 1971 provisional constitution and Art. 14 of the 1973 permanent constitution.

[58] Art. 26 of the 1964 provisional constitution, and Art.13 under Part 3 of the 1969 provisional constitution, and Art. 13 of the 1971 provisional constitution, and Art. 14 on the 1973 permanent constitution.

[59] Art. 16 of the 1973 permanent constitution sated: "The law defines the maximum of agricultural ownership in a manner that guarantees the protection of the farmer and of the agricultural worker against exploitation and insures increase in production."

compensation for their appropriated property.

F- All the Ba'ath constitutions adopted utilitarianism as the legal basis of ownership, and all of them also adopted socialist principles. That is why all these constitutions allowed the expropriation of property on two conditions: first that it serves a public interest, and second is the provision of fair compensation.^[60]

However, these guarantees were too widely defined, malleable and needed restrictions. They should define who is the authority that has the right to determine what constitutes public interest and when it is applicable. And what constitutes a fair compensation? And is it adequate that the same authority has the right to expropriate land and at the same time determine the amount of compensation?

History has showed us that the Syrian citizens have suffered repeatedly the state infringement of their property rights. In many cases, the Syrian state expropriated private property on the pretext that this expropriation served the public interest and provided compensation that was not satisfactory to the owner. The compensation was deposited in the bank account of the landowner without consultation, and the state then considered the expropriation complete and legal.

7- Ownership Rights In the 2012 Constitution.

The party in power drafted this constitution, and they did not involve the opposition forces in the process of drafting this constitution. The result was that this constitution is representative of the Syrian regime, and instead of being reconciliatory at the time of war, it became a further factor of division and controversy amongst the Syrians. It further exacerbated the societal rift amongst those who opposed the regime and those who supported it.

This constitution is but a continuation of the previous constitutions in different wording. It is merely a sophisticated facade for an autocratic regime, and legally it does not represent any added value. It is a deception that is employed to legitimize an exploitative autocratic regime and cover-up its true nature with a democratic facade with the presence of a constitution that protects rights. It is only meant to cover up the reality.

There are many similarities with the previous constitutions. The right of ownership was also listed in this constitution under the Basic Principles and not the Freedom and Rights.

It also maintained the categorization of property into three types, and the public property remained defined. It stipulated that the protection of public property is the duty of all citizens.^[61] It adopted the principle of the social function of property ownership without clearly stating it because it authorized the expropriation of property in service of public

[60] This was stipulated in Art. 26 of the 1964 provisional constitution, and in Art.13 of the 1969 provisional constitution, and Art. 13 of the 1971 provisional constitution, and Art. 15 of the 1973 permanent constitution.

[61] Article 14 of the [2012 constitution](#): "Natural resources, facilities, institutions and public utilities shall be publicly owned, and the state shall invest and oversee their management for the benefit of all people, and the citizens' duty is to protect them."

interest and on the condition of fair compensation.^[62] It maintained the land reform policy by determining the upper limits for land possession. Still, it did not address the problem of former land seizures that took place without providing fair compensation during the implementation of the land reform policy.^[63]

The 2012 constitution did not bring drastic changes in regards to addressing the violations of the land seizures that took place in the past, nor it stipulated the protection of property in the future. It did contain minor changes such as:

- 1-** It abandoned socialism, but this merely reflects the reality rather than changing it. The socialist economy has been abandoned by the countries that have established socialism. However, the 2012 constitution did not adopt a liberal economy, and its definition of the economic system in the country remained vague.^[64]
- 2-** It differentiated between the guarantees for property ownership rights at the time of peace and those at times of war by permitting the confiscation for necessities of war and disasters.^[65] This is considered a regression compared to former constitutions.
- 3-** The Syrian legislator tried to give a better guarantee for the “fair compensation” by stating that the compensation shall be equivalent to the real value of the property.^[66] Although this guarantee is not sufficient, this article represents an admission by the authorities that the compensations provided in the past were not adequate.

In reality, the constitutional charters did not change in essence since 1964, despite the fact that the violation of the authorities against ownership rights has increased over the years. It is now clear that the constitution does not provide practical guarantees to the right of ownership, nor it does it provide fair compensation, yet it remains unchanged.

[62] Paragraph 2 of the article 15 of the [2012 constitution](#): “Private ownership shall not be removed except in the public interest by a decree and against fair compensation according to the law.”

[63] Article 16 of the [2012 constitution](#): “The law shall determine the maximum level of agricultural ownership and agricultural investment to ensure the protection of the farmer and the agricultural laborer from exploitation and to ensure increased production.”

[64] Article 64 of the [2012 constitution](#): “1. The national economy shall be based on the principle of developing public and private economic activity through economic and social plans aiming at increasing the national income, developing production, raising the individual’s living standards and creating jobs.

2. Economic policy of the state shall aim at meeting the basic needs of individuals and society through the achievement of economic growth and social justice in order to reach comprehensive, balanced and sustainable development. 3. The State shall guarantee the protection of producers and consumers, foster trade and investment, prevent monopoly in various economic fields and work on developing human resources and protecting the labor force in a way that serves the national economy.”

[65] Paragraph 4 of the article 15 of the 2012 constitution: “Private property may be confiscated for necessities of war and disasters by a law and against fair compensation.”

[66] Paragraph 5 of the article 15 of the 2012 constitution: “Compensation shall be equivalent to the real value of the property.”

Second: The Inadequacy of The Syrian Constitutions in Protecting The right To Adequate Housing.

None of the Syrian constitutions stipulated the protection of the right to adequate housing. Neither in the Basic Principles, nor under the Rights and Freedoms. This is arguably acceptable in the constitutions promulgated before the independence for a simple reason: none of the international treaties or the democratic constitutions that protect this right has been issued. However, it is unacceptable for the subsequent constitutions to continue to fail to protect this right, especially after the international humanitarian law developed and the Syrian state ratified many international treaties that protect this right.

However, all the Syrian constitutions^[67] have protected the inviolability of the home, which is affiliated to the right to adequate housing and an integral part of it; no home can be violated if the individual did not have a home in the first place.

The 2012 constitution kept the article that protected the inviolability of the home and ignored the right to adequate housing.

Third: Ownership Rights and The Right to Adequate Housing in Democratic Constitutions.

We will examine the protection of property ownership rights and the right to adequate housing in some European constitutions. We aim to understand the mechanism of protecting ownership rights in these constitutions and how they addressed the right to adequate housing. We will later study the constitutions of the countries that witnessed democratic transition and look at the guarantees these constitutions provided.

1- Ownership Rights in European Constitutions

Most European constitutions' guarantee ownership rights, but they also maintain that right of the state to put restrictions on this right or expropriate property as long as the procedure of expropriation is fair and is carried out in service of public interest. Most of these constitutions did not specify the meaning of "public interest," nor defined its parameters and restrictions.

The Spanish constitution dedicated a specific section to address ownership rights in article 33. Paragraph three of article 33 defined the social function of property ownership and stipulated that the state maintain the right to expropriate property on justified grounds of public utility or social interest and with a proper compensation in accordance with the law.^[68]

[67] The principle of the inviolability of the home was first mentioned in article 17 of the [1920 constitution](#): "All homes are inviolable, They may not be entered or searched except under conditions specified by law."

[68] Article 33 of the [Spanish constitution](#): "1. The right to private property and inheritance is recognized. 2. The social function of these rights shall determine the limits of their content in accordance with the law. 3. No one may be deprived of his or her property and rights, except on justified grounds of public utility or social interest and with a proper compensation in accordance with the law."

The Swiss constitution guaranteed ownership rights under title one, article 26, paragraph 2, full compensation of any expropriated property. The constitution used the phrase “compulsory purchase of property and any restriction on ownership that is equivalent to compulsory purchase,” There is a clear contradiction in this terminology; the term “purchase” indicates the consent of the owner, but the Swiss law followed the word purchase with the adjective “compulsory.” I think that this choice of words was intended to alleviate the effects of expropriation and allow the citizens the right to litigation to object to the compulsory purchase of expropriation.^[69]

There is a similar article in the constitution of Finland, article 15 of the Finnish constitution protects ownership rights and allows expropriation for^[70] public needs on the condition of “full” compensation.

In most European constitutions, the legislators did not define the term “public interest.” I believe this is because the citizens of these countries did not suffer a history of violations against their ownership rights due to the ambiguity of the term. Authorities in these countries have only resorted to using expropriation when adequate and within the limitations of law due to the efficiency of their parliamentary and judiciary system monitoring.

However, the second condition of expropriation is providing fair compensation, and some constitutions have specified what constitutes a “fair” compensation in more detail. The Constitution of Romania specified in article 44, paragraph 3 that expropriation should be on the grounds of public utility and against just compensation paid in advance. Paragraph 6 of the same article stipulated those compensations shall be agreed upon with the owner, or by the decision of the court when a settlement cannot be reached.^[71]

The Basic Law for the Federal Republic of Germany expanded the definition of ownership. The ordinary legislative procedure defined its content and limits and stipulated that its use shall also serve the public good. In paragraph 3, the legislator gave the state the right to expropriate property but made it only permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning

[69] Article 26 of the [Swiss constitution](#): “The right to own property is guaranteed.

2 The compulsory purchase of property and any restriction on ownership that is equivalent to compulsory purchase shall be compensated in full.”

[70] Article 15 of the [Constitution of Finland](#): “The property of everyone is protected. Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act”

[71] Parts of Article 44 of the [Constitution of Romania](#): “(3) No one shall be expropriated, except on grounds of public utility, established according to the law, against just compensation paid in advance.

(6) Compensation provided under paragraphs (3) and (5) shall be agreed upon with the owner, or by the decision of the court when a settlement cannot be reached.”

the amount of compensation, recourse may be had to the ordinary courts.”^[72]

The European constitutions included guarantees of ownership rights. These constitutional guarantees complement the oversight and monitoring of the judicial and parliamentary systems, and they are implemented and observed. That explains why, despite the fact that the Syrian constitution is similar to many of the European constitutions, in real life, the implementation of these constitutional charters is vastly different.

2- Ownership Rights in The Constitutions of Countries That Witnessed a Democratic Transition.

The countries that witnessed a democratic transition are the countries that moved from being ruled by dictatorship to a democratic system as a result of a revolution or public protests. These countries include South Africa, Tunisia, and others.

The constitutions of most of these countries were ambiguous in their definition of what constitutes a fair compensation or public interest, which allowed a bigger scope for violations against private ownership rights. That is why South Africa, for example, made the language used in its constitution after the democratic transition very specific in an attempt to avoid further violations in the future. Article 25 of the [constitution of South Africa](#) gave the state the right to expropriate “only in terms of law of general application” and subject to compensation “the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.” Paragraph 3 of the article specified additional conditions of fair compensation:

3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

- a.** the current use of the property.
- b.** the history of the acquisition and use of the property.
- c.** the market value of the property.
- d.** the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- e.** the purpose of the expropriation.

[72] Article 14 of [The Basic Law for the Federal Republic of Germany](#): “(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws. (2) Property entails obligations. Its use shall also serve the public good. (3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.”

The legislator also defined the term “public interest” in paragraph 4 of the same article:

“4. a. the public interest includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources;”

3- The Right to Adequate Housing in The Constitutions of Different Countries.

The right to adequate housing is a natural right, which means everyone enjoys this right regardless of their circumstances and their resources and it is a universal right.

The right to adequate housing is a prerequisite to a wide range of basic human functions, especially the right to health and safety.^[73]

Despite the importance of the right to adequate housing and its interdependence with other fundamental human rights, countries did not give it the same importance. The way different countries dealt with the right to adequate housing can be divided into three categories.

First category:

The right to adequate housing was not mentioned in the constitutions of these countries despite its importance. It was listed neither under the basic principles nor under the rights section of the constitution. Some of these countries are signatories to international treaties that oblige them to fulfil their commitment to the right of adequate housing, including, for example, Syria, Egypt, Norway, and Finland.

Second category:

The countries in this category have listed the right to adequate housing in their constitutions, but different countries gave it different importance. There are two ways social and economic rights could be listed in the constitution: the first is under the rights and freedom section, and the second is to list them under the basic principles that serve as a guide to the country’s policy.

If a right is listed under the fundamental rights in the constitution, then the constitution guarantees all citizens the right to litigation in case of an infringement against it. Many countries, such as South Africa, Colombia, and Argentina have enshrined the right to litigation to defend all social and economic rights. Many African countries as well have become democratic and amended their constitutions and embraced more democratic practices.

The best example of these countries is South Africa. The South African constitution guarantees the protection of many social and economic rights and guarantees its citizens the

[73] PETER KING (2003) Housing as a Freedom Right, *Housing Studies*, Vol. 18, No. 5, 661–672, September 2003-p 661, p127.

right to litigation to defend these rights. And despite the fact that South Africa is not a signatory to the International Covenant on Economic, Social and Cultural Rights, yet its judicial system provides strong protection to social and economic rights.

Article 26 of the South African constitution stipulated the right to adequate housing.^[74]

This article obliges the state to provide adequate housing. And despite considering the fulfilment of this right to be “progressive,” it is binding, and it obliges the authorities to take all reasonable measures within its resources to provide adequate housing to its citizen. It also stipulates a negative obligation that prevents the state from carrying out arbitrary forced evictions.

This article is legally enforceable, and that is why we saw many cases related to this right taken to the Constitutional Court of South Africa. The first case was [The Government of the Republic of South Africa and Others v Grootboom and Others](#) which was concluded on October 4, 2000 and is considered a legal precedent that protected the right to adequate housing.^[75]

Third category

The constitutions of these countries listed the right to adequate housing under the basic principles that guided governmental policy and stipulated that the state should try and provide adequate housing for everyone.

However, the fact that this right is not listed under the rights and freedoms section means it is not enforceable and citizens do not have the right of litigation in relation to adequate housing. Citizens can not appeal to a court or any institution or administrative authority to demand the fulfilment of the right to adequate housing. The constitution only serves as a guide to the executive and legislative powers in regards to the right to adequate housing.

Among the countries that adopted this approach was Spain in article 47 of the Spanish

[74] Article 26 of [The Constitution of South Africa](#): “1. Everyone has the right to have access to adequate housing.

2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

[75] Mrs. Grootboom and most of the other respondents previously lived in an informal squatter settlement called Wallace Dene. It had no services, and the residents began to move on vacant land that was privately owned and had been earmarked for low-cost housing. The owner obtained an ejection order against them in the magistrates’ court, and they were forcibly evicted. The residents appealed to the High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation and were granted certain relief. That application was set down for 21 September 2000 and the court crafted an order putting the municipality on terms to provide certain rudimentary services. For more details [Case Africa v Grootboom 2001- Case CCT 11/00](#).

constitution^[76] and Switzerland in article 41 of the Swiss constitution.^[77]

Amongst the Arab countries that listed the right to adequate housing in the basic principles that guide the state policy are Iraq and Algeria. Paragraph one of article 30 of the Iraqi constitution^[78] stipulates the right to adequate housing. Article 66 of the [Algerian constitution](#) stipulates that “The State shall work towards facilitating the access to housing for disadvantaged categories.”

Fourth: The Constitution and The Irregular Housing and Slums.

The biggest threat to the right to adequate housing is the continuous building of irregular housing areas in the cities and urban centres. The residents of these areas are possibly subject to profiteering and blackmailing by bureaucrats, while their habitat lacks the most basic services.

The state bears the biggest responsibility in the development of these irregular housing areas because it failed to provide appropriate land to build adequate housing. Once slums were built, the state failed to provide the appropriate infrastructure and services and to incorporate these areas into the cities’ urban planning.

Syria has one of the highest rates of slum dwellers / biggest number of slums, yet the legal and judicial system never attempted to find solutions to this problem. Despite its failure to find remedies, the Syrian state violations against the residents of these areas never stopped. In many cases, they were forcibly evicted, and their homes demolished without being provided alternative housing.

One of the constitutions that elaborated on the solution for irregular housing and slums was the Brazilian constitution. It allows residents of irregular housing areas and rural areas to acquire the legal domain of their homes and land. Article 83 stipulates: “People who possess an urban area of up to two hundred and fifty square meters, for five years, without interruption or opposition, using it as theirs or as their family’s home, shall acquire the domain of it, provided that they do not own any other urban or rural property.”

[76] Article 47 of [The Spanish constitution](#): “All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation.

The community shall have a share in the benefits accruing from the town-planning policies of public bodies.”

[77] Article 41 of the [Swiss constitution](#): “e. any person seeking accommodation for themselves, and their family can find suitable accommodation on reasonable terms;”

[78] Article 30 of the Iraqi constitution: “First: The State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life and shall secure for them suitable income and appropriate housing.”

Article 191 is dedicated to solving the problem of irregular housing in rural areas. It stipulates that gaining the ownership of any land not only requires that a squatter have unchallenged possession of the land, but also that they lived on the property, a condition that the Syrian legislator neglected. Article 191 states: “People who possess an urban area of up to two hundred and fifty square meters, for five years, without interruption or opposition, using it as theirs or as their family’s home, shall acquire domain of it, provided that they do not own any other urban or rural property.”

On the contrary, the Syrian constitution does not address this issue and neglects the entitlement of the residents of irregular areas to acquire the legal title to their land even if they occupied it for years.

Second Chapter: Suggested Amendments to the Right of Ownership and The Right to Adequate Housing in The Forthcoming Syrian Constitution.

As stated earlier, studying the development of the Syrian constitutions since the establishment of the Syrian state and until the 2012 constitution led us to conclude that no drastic changes were introduced. The violations and infringements against the right of ownership continued, though mostly these cases of violation did not break the law. On the contrary, you can describe them as legitimate^[79] as they relied on and were justified by legal orders based on a constitutional mandate.

This leads us to address the current charter through three suggestions: first through amending the existing charter, second through working on addressing the current loopholes, and third through adding new legislations.

First: Suggested Amendments to The Current Charter

I believe that the inability of the current charter to provide the required protection to the right of ownership and the right to adequate housing resulted from two things:

First: The 2012 Syrian constitution deliberately listed ownership rights under the guiding principles (The Basic Principles). The optimum choice would have been to list it under the Rights and Freedom chapter because that would have guaranteed the right to litigation in case of any violations against ownership rights, and because the restrictions to this right would have been clearly defined.

[79] The use of the word “legitimate” here implies that the expropriation was carried out per an order by the legal system of the Syrian state. It does not infer that this expropriation is rightful.

Second: The terminology used in the current charter is vague and indecisive. The problem is in the wording of the current constitutional charter, as it is the foundation of the entire legal system. By examining the practical implementation of this constitution, we find many cases where the executive authority manipulated the terms in the charter, the term “public interest” for example, and it interpreted “fair compensation” in ways that served the state treasury’s financial interests. The legislative power also abused the constitutional mandate given to it by the legislator.

To introduce a new constitution, we should start by determining the definition of the legal terms and studying it accurately.

1- The Term “Public Interest”

The Syrian constitution restricted the right of ownership to the fulfillment of its social function in service of public interest, and that was stated clearly in the charter. However, the Syrian constitution did not define the public interest, nor it determined its scope. This made the term “public interest” vague, and many scholars consider that this vagueness became a flexible and malleable tool that allowed the state to infringe on the rights of property ownership of many individuals.^[80]

A- The Definition of Public Interest.

The concept of public interest is always evolving. It started with a narrow definition and evolved into a flexible concept that is influenced by the general needs of the society and state. With the lack of a precise definition of public interest, we find that multiple terms have been used to indicate the same idea. Scholars used the terms “public good,” and “public benefit,” and “public utility” to express the same concept.

Egyptian law professor Gamil al-Sharkawy defined it as: “Public interest is the benefit that is achieved for the biggest possible number of individuals, without predetermining who these individuals are. Or it is the prevention of damage against the interest of the public.”

This definition adopted a nuanced understanding. It does not expand the scope of public interest, nor it restricts it.^[81] Public interest does not necessitate that public benefit is achieved to every individual, it is sufficient to fulfil the benefit of the biggest possible number of individuals, or it should prevent harm against the public.

Based on this definition, public interest has two sides: the first is positive; it requires taking action, to achieve the public interest of a group of people. The second is negative, and it requires the prevention of an action. That prevention would lead to the protection of the interest of a group of people, either before the violation takes place or by remedying it after it occurs.

[80] Omar al-Boubakri, Expropriation for The Fulfilment of The Public Interest, Derasat Series 1973- 2004-page14.

[81] Wafaa Said Ahmad Mouhamad Khalaf, The Restrictions on Ownership Rights for Public Interest, Dar al-Nahda, Egypt, page 216.

Although the term “public interest is not mentioned in the French constitution, the French jurisprudence expressed the concept of public interest by the term “general will,” which indicates the primacy of fulfilling the social and economic higher interests.”^[82]

The Syrian legislator needs to define the term “public interest” when it is used as a pretext to expropriate property. It is not sufficient for the legislators to classify a certain project as a public interest project, they need to elaborate and define the public interest this project serves and not just categorize it as such. Public interest should be defined as fulfilling the public benefit of the biggest number of citizens and preventing harm against the public. It should also incorporate the principle of equality; any public interest project should not be discriminatory against any ethnic group or political class of the society.

B- The Justification of Public Interest.

Public interest should be justifiable. The authorities should not simply quote the public interest as a reason for expropriation, they need to justify it and define the exact reasons behind it to allow the executive power to assess and monitor it.

In some European legal systems,^[83] the claimant has the responsibility to prove that the restrictions they are protesting are not enforced on them in service of the public interest. If they fail to prove this, then their claim is refused. There will be no injustice done if the restriction is enforced in accordance with the public interest.

The burden of proof is on the authorities in the first place, and they need to explain the public interest, define it and clarify its reasons. If an expropriated owner still objected and argued that the expropriation does not serve the public interest, the legal system then would have the responsibility to evaluate the case, review the reasons behind the expropriation as defined by the expropriating authority and assess them against the reality and the defense presented by the claimant who objected to the validity of the public interest argument.

In all cases, the expropriating authority does not have the right to expropriate a property that exceeds the land required for its project.^[84]

C- Monitoring and Oversight

The constitution should stipulate the legislative power’s right to monitor the executive power use and application of the term “public interest.” The executive branch should not be the sole power that has the right to determine what constitute “public interest.”

[82] Mouz Jeer, *The Enforceable Restrictions on Ownership Rights*, Tunisian Legal Magazine, University Publishing, 2010, p157.

[83] The Irish legal system for example.

[84] Paragraph A of Article 6 of The Syrian Expropriation Law, Legislative Decree 20 of 1974: “The administrative authority has the right, when expropriating in line with the purposes detailed in paragraph A of Article 3, to expropriate what exceeds the required land for the project from one property or parts of different properties to the extent of a distance of forty square meters on each side, or on one side, as necessity requires. The expropriation of these extra parts is also an action carried out in service of public interest. The administrative authority has the right to dispose of it, and enjoys all the rights the owner has, including selling.”

The administrative judiciary should have the right to oversee and monitor any cases of expropriation for the public interest.

2- Fair Compensation

Most constitutions and national charters and the relevant international treaties stipulated the need to pay a fair compensation when a property is expropriated in accordance with the public interest. These charters and treaties stipulated that the compensation should be fair. However, in reality, it is impossible for any compensation to be fair as it will only compensate for some of the aspects of the loss endured, but not all of it.^[85]

That is why describing compensation as “fair” is not sufficient, and that is why we will attempt to define the term fair compensation and determine its elements.

A- The Definition of Fair Compensation

Some United Nations organizations provided a definition of what constitutes fair compensation. The Food and Agriculture Organization of The United Nations (FAO) defined it in a study published in 2008 as “people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.”^[86]

Some associated fair compensation with the “replacement cost,” which is defined as “a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement.”^[87]

Some scholars defined fair compensation as “a market value calculated from comparable realpropertytransactions.”^[88]

The term “fair compensation” was also defined as a result of court proceedings. The United States Court of Claims determined the case of Gustav BERENHOLZ, et al. v. The UNITED STATES. Under the fifth amendment, fair compensation is “the market value of plaintiffs’ property,” which means: “The market value is usually considered to be what a willing buyer would pay in cash to a willing seller.”^[89]

B- The reasons for “Fair Compensation.”

To have a full definition of what constitutes a fair compensation, we need to start by examining the reasons behind the need for such compensation. Understanding the justification behind the compensation rule allows us to assess how fair this compensation is in the future.

[85] Haydar Faleeh al-Hassan, [Fair Compensation For Expropriation For public Benefit \(A Comparative Study\)](#), The Journal Of Law And Humanities Sciences, Volume 13, First Issue, April 2020, page 67.

[86] Keith, S- [Compulsory Acquisition Of Land And Compensation](#), Food And Agriculture Organization Of The United Nations, Land Tenure Studies10- C-FAO- Rome- Italy-2008, P 23

[87] World Bank. Environmental and Social Standard 5, [Land Acquisition- Restrictions On Land Use And Involuntary Resettlement](#)- World Bank- Washington, DS, USA, 2016- P 105.

[88] Kauko VIITANEN , [Just Compensation In Expropriation](#), fig XXII International Congress Washington,D.S –USA -APRIL -19-26-2002, P4.

[89] [Berenholz v. United States, 1 Cl. Ct. 620 \(1982\)](#). Available on the website. [Cite.case.law](#).

Usually, the reason is one of the following:

- to recompensate the loss incurred by an expropriated owner and to restore their financial position to what it was before the expropriation.
- to prohibit authorities from carrying out expropriation without a solid justification.
- to fulfil the principles of fairness and equality. It is not logical that a few members of society should bear the damage of being expropriated so that the project that serves the public interest is carried out. It is only fair that other members of society share the burden, and the compensation for the loss of private property is divided amongst the other member of society.

C- The Factors of Fair Compensation

The majority of constitutions and national charters that stipulated the need for fair compensation in the case of expropriation, neglected to elaborate on the elements of fair compensation, especially the subjective elements.

Fair compensation contains two sets of factors, the valuation method of each of them is different from the other.

First: The objective factors (or the financial factors) which consist of:

- The value of the land. This value is determined based on the market value of nearby lands sold recently or are still on offer.
- The value of the crops the land produces if the land is agricultural. The value of the crops should be compensated based on calculating the cost of the working force and the cost of the seeds and fertilizers, and other production costs. In addition, calculating the expected profits that would result from selling the crops.^[90]
- The value of the immovable assets built on the land, in addition to all the real rights associated to them.

Second: The subjective factors (or the non-financial factors).

These factors are not compensated in Syria currently. The legal system in place at the moment compensates for the market value without considering the emotional value the expropriated owners confer on their properties, and the emotional value they attach to the neighborhood or the housing district, or the value of the commercial name or the brand.

[90] The Syrian legislator did not specify all these things in the Syrian Expropriation Law, Legislative Decree 20 of 1974. Decree number 20 left it to a specialized committee or to an executive order to determine the value, article 15 stated: "If the expropriated land is a wooded land, the valuation would be calculated based on the value of the land and the trees, and the value of the trees would be calculated based on its kind, age, and its crops as assessed by a specialized committee at least of whom is an agricultural expert.

2- Plants and tree corps are valued at the date of their harvest by a specialized committee who is formed for this purpose, and at least one of its members is an agricultural expert. The committee's appraisal is conclusive."

Many people, especially the elderly, have a strong emotional connection to the property they live in, especially since their life memories are in that place.

There are four ways to determine the emotional value of the expropriated property:

First: Some of the American states adopted this method at the beginning of the last century. It adds a fixed percentage rate to the market value, 25% or 50% extra to the market-place for example as compensation for the proprietary objective value. The final compensation is then calculated to be equivalent to 125% or 150% of the property's market value.

Second: A tendency in jurisprudence that pays a fixed compensation to each individual who has suffered emotional loss because of the expropriation, which means the bigger the family is, the bigger the compensation would be.

Third: rely on paying a variable rate in addition to the market value of the property. This rate is determined based on a number of variables, including the number of years the expropriated owner had the property. The longer the period is, the bigger the rate would be.

Fourth: It incorporates **three steps:**

- The authorities notify the owners that it is going to expropriate their property in service of the public good.
- The authorities ask the owners to determine the proprietary emotional value of their property.
- It is then left to the authorities to determine whether to expropriate and pay the compensation as determined by the owner or to refuse to pay and do not expropriate.

There are two consequences in the case the authorities refuse to pay:

First: The owner is prohibited from selling their property in the future for less than the value they determined for the purposes of expropriation, and if they ever were to sell the property for less than that set value, then they need to repay the difference to the authorities.

Second: The value the owner determines for the property will be the basis on which the property tax will be determined in the future.

The current mechanism in the Syrian constitution for compensation in cases of expropriation in service of the public interest only covers some of the objective or financial factors, and none of the subjective non-financial factors. That is why the compensation currently is only partial and not fair.

D- Restitution Reparation and Compensation

The Syrian constitution legislation relating to expropriation has restricted fair compensation to financial compensation without reference to restitution, which is not right.

The usual standard practice is to start by offering financial compensation. However, the

authorities should also proceed to offer the possibility of restitution to the expropriated owners, especially if the expropriated property was agricultural land.

E- The Date of Paying The compensation

Compensation should be paid in advance to the execution of the project and in one instalment. If there was a delay for any reason in the payment, a legal interest should be paid with a cumulative effect.

F- The Power to Negotiate the Compensation Sum.

Not only the expropriating authority has the right to determine the amount of the compensation. Both parties, the expropriating and the expropriated, have the right to determine the sum of the compensation. Many international charters gave both parties this right. Article 311/ paragraph 4 of the [French Code of Expropriation for Public Utility](#) states: “The expropriating party notifies the expropriated with his financial offer and invites the expropriated to make known the amount they request.” In case of a disagreement between the two parties, a court of law is asked to determine the amount of the compensation.

The same is also stipulated in the Expropriation Law of 1996 in Ghana in article 52. In case of a disagreement and the authority then decide the amount of compensation, the expropriated owner should be granted the right to appeal.

3- Legal Mandate

Paragraph 2 of article 15 of the 2012 Syrian constitution states: “Private ownership shall not be removed except in the public interest by a decree and against fair compensation according to the law.”

The wording of this article makes it absolute, and based on it, any decision made by the legislator will be final and enforceable. This article exceeded the constitutional mandate and gave the ordinary legislative procedure complete power to regulate ownership rights without any restrictions or controls. Based on this article, ownership rights should adapt to any legal decrees or verdicts that could be issued in the future, rather than any future legal text adjusting its wording and rulings to respect the constitutional guarantees for freedom and rights.

By using vague and indecisive wording, the Syrian legislator gave the ordinary legislative procedure full authorization to expropriate property without the need to clarify the reasons.

It is not odd then that the Syrian legislator politicized the use of this article to settle scores with its political opponents and expropriate their property or restrict ownership rights for certain groups based on the ruling party’s ideology.

The ordinary legislator should not be granted a full mandate over fundamental rights and freedoms, nor it should be prevented completely from regulating these rights and freedoms as long as it functions within the constitutional limits. Abiding by the constitutional guarantees will make the ordinary legislator’s involvement measured and cautious, as it

would be the subject of the scrutiny of the constitution, which did not give him a full mandate.

I agree with constitutional law professor Abdul Hamid Mutawali statement that: “when the constitution authorizes the ordinary legislator to regulate a certain right or freedom, in a matter of fact, it is authorizing it to violate this freedom. If the legislator is given the right to organize a right or a freedom, then he/she also has the right to set restrictions and controls over this right, and by doing so he/ she will naturally be undermining this right.”^[91]

That is why the forthcoming Syrian constitution in the future should never give the ordinary legislative procedure full mandate over ownership rights and expropriation, and it should set restrictions and controls over the legal authorization the ordinary legislator has to expropriate.^[92]

That would help us overcome the grievances of the violations that took place in the past. Although the former Syrian constitution stipulated the protection of ownership rights, the ordinary legislator used his mandate to pass laws that were supposed to regulate that right but, as a matter of fact, violated it.

Second: Addressing the Loopholes in The Current Constitutional Charter (Uncooperating the Right to Adequate Housing in The Forthcoming Syrian Constitution).

The right to adequate housing has not been mentioned in any of the former Syrian constitutions, and as a result many irregular housing areas developed in the country. The right to adequate housing is highly prioritized in many national charters or international treaties, and that is why the forthcoming Syrian constitution should clearly state the right to adequate housing in accordance with the relevant international treaties.

The UN Committee on Economic, Social and Cultural Rights said in its comments No 14 that all human rights impose three types or levels of obligations on states parties: respect, protect and fulfil.^[93]

Syria is a signatory to The International Covenant on Economic, Social and Cultural Rights, and it has an obligation to protect the right to adequate housing.

1- The Obligation to Respect the Right to Adequate Housing.

First, the constitution should clearly stipulate that “everyone has the right to have access to adequate housing.” In addition to this commitment, “the obligation to respect requires states to refrain from interfering directly or indirectly with the enjoyment of the right to adequate housing.

[91] Abdul Hamid Mutawali, *Public Freedoms: A Study of Its Development, Guarantees and Future*, Dar al-Maaraf, Alexandria, 1972, page 78.

[92] That is what we will be studying in the third chapter The Legal Guarantees.

[93] UN Committee on Economic Social and Cultural Rights, [The Right to the Highest Attainable Standard of Health General](#), Comment No. 14. UN Doc E/C.12/2000/4, para. 33.

” For example, States should refrain from carrying out forced evictions and demolishing homes before providing alternative housing.

In this context, it is useful to refer to paragraph 3 of article 26 of the constitution of South Africa: “3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

■ Procedures That Can Not Be Subject to Delays or Progressive Implementation.

■ The Right to Equality

All citizens should have equal rights to the provision of housing, with no discrimination based on their ethnicity, gender, color, or religion.

States have an obligation to refrain from any discriminatory practices like denying housing to particular groups or issuing general and vague legislation that does not ensure equality amongstallcitizens.^[94]

The covenant acknowledges that states have resource constraints and that it may take time to ensure the right to adequate housing to everyone. Therefore, some components of the right to adequate housing are deemed subject to progressive realization. However, obligations such as non-discrimination are not subject to progressive realization.^[95]

That is why the forthcoming Syrian constitution should guarantee all citizens the right to adequate housing without any discrimination.

2- The Obligation to Protect The right To Adequate Housing.

The forthcoming constitutional charter should stipulate the protection of the right to adequate housing. It is not enough for the state to respect its negative obligation to not interfere in the enjoyment of the right to adequate housing. It has a positive obligation to prevent third parties from interfering in the fulfilment of this right.

States also have an obligation to prevent all relevant non-governmental organizations from infringing on the right to adequate housing.

The Syrian state has an obligation to take measures that ensure that all the relevant private parties such as landlords and real estate development committees abide by international human rights standards regarding the right to adequate housing.

The state has an obligation to protect private individuals from the exploitation of landlords who ask for higher rents. In such a case, a conflict would arise between the right of ownership that guarantees the owner the right to use their property as they sees fit, and the right to adequate housing. In such a case, the state has a duty to mediate to end this conflict

[94] Article 2 of The International Covenant on Economic, Social and Cultural Rights obliges all state parties to protect all the rights in this covenant without any discrimination.

[95] , [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992.

when the owners greedily exploit people's need for housing.

It is essential that the state regulate the housing and rent market to ensure and protect the right to adequate housing.

The state also has an obligation to prevent third parties, whether civilian or militant, from carrying out forced eviction or illegal house seizures. The right to litigation to reconstitute a seized home should not be subject to the statute of limitation.

Protecting individuals from forced evictions is a vital aspect of the right to adequate housing, which also stipulates the inviolability of the home. No one has the right to enter private homes except per a legal warrant issued based on a criminal felony.

3- The Right to Litigation^[96]

There is no justification for not including the right to adequate housing in the rights and freedom chapter of the constitution, which would also guarantee the right to litigation in defense of the right to adequate housing.

What is the point of granting the citizens a right that cannot be defended in a court of law if violated?

That is why the constitution should include and prioritize the right to adequate housing. That would motivate the state to provide adequate housing and to regulate the work of all non-governmental relevant parties so that they do not infringe on this right. Also, stipulating this right in the constitution would constitute a vital tool in formulating housing regulations.

4- The right To Adequate Housing Is a Progressive Right.

The International Covenant on Economic, Social and Cultural Rights accepts that states could suffer constraints on resources needed to protect and fulfil the rights enshrined in the covenant, and that is the situation in Syria currently as a result of the catastrophic outcome of its long war.

The covenant acknowledges that some states might not be able to fulfil all the economic, social, and cultural rights in a short period of time. That is why it obliged all the states parties to the covenant to fulfil these rights progressively.

States must make every possible effort, within their available resources, to realize the right to adequate housing. The covenant states that each state should guarantee at least minimum essential levels of this right.

[96] To understand the legitimacy and legality of this right revise the paragraph in this study discussing the right to litigation in international treaties.

5- Taking Appropriate Measures to Secure the Right to Adequate Housing:

The Syrian state has an obligation to take all appropriate measures, within its financial resources, to provide adequate housing for its citizens. These measures can be progressively implemented on stages and as part of effective plans, and should include the following:

- Taking all legislative measures within its available resources to provide adequate housing progressively. The relevant legislation should protect this right, prevent any violations against it, facilitate its fulfilment and avoid any loopholes that might disrupt it.
- The executive power is required to draft a national housing policy that focuses on society's deprived and marginalized sections.
- Redrafting and expanding the urban design plans for the cities and towns in accordance with the increase in population and cancelling all legal restrictions that might prevent the use of farming land in housing projects, especially in the areas close to urban centres.
- Dedicating an appropriate share of public expenditure to providing adequate housing for the citizens.
- Drafting national housing plans that provide emergency shelters to the homeless and the families suffering a housing crisis. Homelessness should be considered a crime by law only after the homeless person refuses the authorities offer of possible adequate housing.
- Administrative authorities have an obligation to provide affordable housing for all citizens and to provide housing assistance to those who otherwise cannot afford it.
- The state has an obligation to determine and invest its resources in the most efficient way that would help generate the best possible revenue. This would help in developmental projects, especially the right to adequate housing.
- The state has an obligation to provide appropriate infrastructure for the housing projects, and provide all essential services like electricity, drinking water, adequate sanitation, and refuse disposal.

The state fails to respect and fulfil its obligation to the right to adequate housing when it takes no action, does not do enough, or does not take the appropriate measures to fulfil this right.

The covenant states that available resources refer to those existing within a state as well as those available from the international community through international cooperation and assistance. That is why Syria has the obligation in the future to direct some of the resources it gets as grants from the international community to provide adequate housing to its people.

6- Irregular Housing Areas.

There are many irregular housing areas in all the cities and towns in Syria. The state cannot continue to ignore them or leave them out of its planning, and these areas now house hundreds of thousands of families.

These irregular areas should not be left as it is either; their residents now do not have tenure security and feel threatened with forced evictions by the authorities. This situation is not reasonable and represents a failure of the state towards its citizens and their right to adequate housing.

It is the duty of the state to find viable solutions that incorporate irregular housing areas into the urban plans and legally register the ownership of the housing units in these areas. That could be done in multiple ways:

- Any citizen who possesses a housing unit in an irregular housing area of up to two hundred and fifty square meters, for five years, without interruption or opposition, using it as theirs or as their family's home, shall acquire domain of it, provided that they do not own any other property in the Syrian republic.

The right shall be granted equally to women and men, and only once. If a person has more than one irregular housing unit, they shall acquire the domain for only one.

It is the obligation of the state to incorporate these areas into the urban planning design and provide the needed infrastructure.

- In case there are irregular housing areas the state does not wish to develop and regulate, then the state should move the residents of these irregular housing areas into new areas that have already been incorporated into the urban planning design, grant them allocated residential lots and facilitated housing loans they can use to build.

But in case the state was to develop certain irregular housing areas, then the original residents of these areas have the priority of being housed.

Third: Additional Guarantees to Monitoring Ownership Rights and The Right to Adequate Housing.

Countries can establish financially and administratively independent national mechanisms to monitor the work of the legislative power and protect ownership rights and the right to adequate housing.

Some countries have established a national monitoring mechanism to guarantee efficient protection of these rights, especially taking into consideration the history of violations against ownership rights and the right to adequate housing.

That is why I recommend establishing such a monitoring mechanism in Syria in the future.

There are different systems to establishing these monitoring mechanisms, and countries can choose to establish more than one mechanism implementing different systems. Still, the distinctive function of each mechanism should be very accurately detailed, so there is no overlapping of their work in the future.

1- The Ombudsman System.

The ombudsman is an official who could be appointed or elected by the parliament, with a significant degree of independence. His/her task is to receive complaints from citizens about the government's performance, investigate these complaints and suggest the appropriate measures. He/she also has the right to press charges against government officials if they commit any violations.

He/she also has the right to issue instructions and recommendations to the administrative power on how best to address problems, he/ she presents an annual report to the parliament in which he/she also suggests possible solutions to the administrative challenges.^[97]

He/she initiates his investigations based on a personal initiative, or based on authorization from the parliament, or based on a complaint by citizens.

2- The Mediator of The Republic System.

It consists of an institution that is affiliated with the presidency, and its job is to receive citizens' complaints and mediate with the authorities to solve their problems. It also presents annual reports to the president about the country's general legal and administrative reality. However, this institution has no power over state employees or the judicial system.^[98] It was first implemented in France in 1937.

Its main role is to mediate to resolve ownership disputes between the state and the citizens amicably, especially if they could have not been determined in a court of law.

3- National Human Rights Commissions and Councils

Some countries have established national human rights commissions and councils to protect and promote human rights. I recommend the establishment of a legal and technical commission specialized in ownership and housing rights in the future in Syria. Its main task is to receive complaints from the citizens and direct them to the relevant governmental body, who would be obliged to respond. The commission can also be given the role of resolving disputes on the condition that they are independent of any governmental body.

[97] Ben Belqaseem Ahmad, [General Liberties Publications, a series of lectures for the law and political science faculty](#), University Mohamed Lamine Debaghine -Setif2, 2015, page 122.

[98] Kessal Abdelouaheb, [General Liberties Publications, a series of lectures for the law faculty](#), University Mohamed Lamine Debaghine -Setif2, 2015, page 102.

Chapter Three: Ownership Rights and The Right to Adequate Housing in International Law and Its Impact on The Syrian Law

First: Ownership Rights in International Treaties

Ownership rights started at the end of the primitive communal systems and endured till the present. All religions and manmade laws have protected ownership rights until the eruption of the French revolution. The [Declaration of the Rights of Man and of the Citizen](#) issued in France in 1789 gave a sacred status to the right of ownership and stated that “no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.”

The spirit of the French revolution prevailed in the successive national charters and international treaties. The general assembly of the United Nations made ownership rights international rights in [The International Declaration Of Human Rights](#) of 1948. ART. 17 of the declaration:

- “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.”

Despite the fact that the declaration is not binding, it has a great moral importance that most countries adopted it. It has guaranteed both individual and collective ownership and prevented arbitrary expropriation. The term “arbitrary expropriation” has variable definitions. It could mean any case of expropriation without the owner’s consent, or it could be more precisely defined to mean unlawful expropriations.

The wording of the declaration has intentionally differentiated the right from the restraints on this right and the rule from the exceptions. The wording used to describe the right in the first paragraph is emphatic and express an absolute right, while the second paragraph stipulates the exceptions and allows for expropriation as long as they are not arbitrary.

The Syrian state was one of the states that voted for the declaration when it was first adopted in 1948, but it is legally not binding despite the great moral importance it carries.

Neither The International Covenant on Civil and Political Rights nor The International Covenant on Economic, Social and Cultural Rights referred to ownership rights or clearly stipulated their protection.

[The International Covenant on Civil and Political Rights](#) did not mention the protection of ownership rights in any of its articles, but it stipulated the protection of the property of the people and the nation. Paragraph 2 of article 1 stated: “2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any

obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” This article protects the collective right of the people rather than the private property ownership rights.

Article 47 of the same covenant reiterated the same idea: “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”

But neither The International Covenant on Civil and Political Rights nor The International Covenant on Economic, Social and Cultural Rights, both of which are legally binding for the state parties, protected private property ownership.

The protection of private ownership rights was stipulated in some of the regional human rights treaties^[99]. However, as Syria was not a signatory to these, we will not be discussing them.

Some special international treaties protected the right of ownership, including [The International Convention on the Elimination of All Forms of Torture](#) which was adopted and opened for signature in 1965 and entered into force in 1969. Article 5 of the convention “guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:” “The right to own property alone as well as in association with others.”

The international law did not just emphasize the protection of the right of ownership of movable and immovable property and preventing any violations against this right in times of peace, but also during armed conflict. Article 53 of [The Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War Of 12 August 1949](#): “ Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

This article prohibited any destruction by an occupying force, and this prohibition should be even prioritized when the military operations are carried out by local authorities fighting their own people.

Second: The Right to Adequate Housing in International Treaties

The international human rights law put particular emphasis on the right to adequate housing. Multiple international human rights treaties stipulated the protection of this right and determined the regulations and standards of this right. Treaties are legally binding for the states that ratified them.

[99] In The [European Convention on Human Rights](#) 1950, article 1 of the first protocol issued in Paris on Mar 20, 1952 states: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

The customary international law also determines the obligations of states towards the protection of human rights. It refers to general practices accepted as law. States are obliged to abide by it and incorporate its rules into their legal system, just as they do with international treaties.

1- The Universal Declaration of Human Rights

The right to adequate housing was not clearly included in the [declaration](#). However, it was protected as secondary commitment through paragraph 1 of article 25 that states: “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.”

This article does not specify any commitments states are obliged to honor in relation to the right to adequate housing.

2- The International Covenant on Economic, Social and Cultural Rights.

Through ratifying this covenant and The International Covenant on Civil and Political Rights, state parties elevated human rights to legally binding principles.

Syria has willingly ratified The International Covenant on Economic, Social and Cultural Rights^[100] and most of the other relevant international treaties that protect the right to adequate housing.

The most important article protecting the right to adequate housing^[101] is paragraph 1 of article 11 of [The International Covenant on Economic, Social and Cultural Rights](#): “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 Committee on Economic, Social and Cultural Rights (CESCR), which is a body that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties, stated in its [General Comment No.4 the Right to Adequate Housing](#) that “Although a wide variety of international instruments address the different dimensions of the right to adequate housing, article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.”^[102]

[100] Syria ratified the International Covenant on Civil and Political Rights on Mar 23, 1966, and The International Covenant on Economic, Social and Cultural Rights on Jan 3, 1966.

[101] Joel Audefroy- ‘ [Eviction Trends World-Wide and the Role of Local Authorities in Implementing the Right to Housing](#)’, Environment and Urbanisation, volume 6 issue 1, April 01, 1994, pages 8 to 24.

[102] UN Committee on Economic Social and Cultural Rights, [General Comment No.4 The Right to Adequate Housing](#), UN Doc E/1992/23, para.3.

The article does not only refer to housing rights. It specifically addresses the right to adequate housing, which is part of “the right of everyone to an adequate standard of living” that is recognized by a “wide variety of international instruments.”^[103]

3- Special Agreements Relating to The Right to Adequate Housing.

Effective implementation of the right of adequate housing will ensure disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Disadvantaged groups as children, women and homeless persons and the physically disabled, and migrant workers and refugees and indigenous groups, and all individuals who are living in insufferable or dangerous conditions.

Many international treaties focused on the protection of the right to adequate housing for these disadvantaged groups including [The Convention on the Rights of the Child](#) (UN-CRC) of 1989,^[104] and [The Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) 1979,^[105] [The International Convention on the Elimination of All Forms of Torture](#) of 1965,^[106] and [The Refugee Convention, 1951](#),^[107] and [The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) 1990.^[108]

These conventions obliged states to provide adequate housing to groups that are disadvantaged either due to their social circumstances or their physical conditions.

Third: The Right to Litigation Concerning the Right to Adequate Housing.

Most legal systems deem social and economic rights as rights that should not be subject to litigation. As a result, the constitution does not protect social and economic rights, and they are not enforceable.

The UN Committee on Economic, Social and Cultural Rights noted that “in relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic,

[103] UN Committee on Economic Social and Cultural Rights, [General Comment No.4 The Right to Adequate Housing](#), UN Doc E/1992/23, para.3.

[104] Official Records of the General Assembly, Forty-fourth Session, Supplement No. 49 (A/44/49). It was Adopted and opened for signature, ratification in 1989, and entry into force Sep 02, 1990. Articles 16 (1) and 27 (3) of the convention stipulated the right to adequate housing.

[105] Entry into force Sep 03, 1981. Articles 14 (2) (h), and 15 (2).

[106] Entry into force Jan 04, 1969. Article 5 (e) (3).

[107] Article 21 of The Refugee Convention 1951 stipulated the protection to the right to adequate housing.

[108] Article 43, paragraph 1, (d).

social, and cultural rights.”^[109] This distinction renders economic, social, and cultural rights a lesser state.

This distinction goes back to the days of the cold war at the beginning of the 1950s when the rights in The Universal Declaration for Human Rights were classified into two groups.^[110]

This classification was revealed through the adaptation of two different covenants: The International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights. These covenants have different implementation mechanisms, and “for many years the inferior status of economic and social rights, compared to civil and political rights, has had a negative impact on the possibilities to claim effective protection of these rights both at the international and domestic level.”^[111]

This discrepancy and the inferiority of economic, social, and cultural rights to civil and political rights contradicts the principle that “All human rights are universal, indivisible and interdependent and interrelated.”^[112]

This principle was adopted in The World Conference on Human Rights which the United Nations held in Vienna in 1993. It is expressed in [The United Nations Charter](#)^[113] and acknowledged in article 2 of [The Universal Declaration of Human Rights](#).

The Universal Declaration of Human Rights constitutes a standard model of interdependent and indivisible rights. The countries signatory to it have to endorse the entire model and do not have the right to choose to endorse certain rights while refusing the others.^[114]

“The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”^[115] That is why it is contradictory to claim the universality of all human rights while a group of these rights is given an inferior status.

[109] UN Committee on Economic Social and Cultural Rights, [General Comment No 9 The Domestic Application of the Covenant](#), E/C.12/1998/24 para 10.

[110] Abdullahi A. An-Na'im 'To Affirm the Full Human Rights Standing of Economic, Social and Cultural rights' in Yash Ghai and Jill Cottrell Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural rights, page 12.

[111] Fons Coomans 'Some Introductory Remarks on Justiciability of Economic and Social Rights in a Comparative Constitutional Context' in Fons Coomans (ed) Justiciability of Economic and Social Rights: Experiences from Domestic Systems.

[112] [Vienna Declaration and Programme of Action](#) July 12, 1993, UN Doc A/CONF.157/23, para 5.

[113] Article 55 of [The United Nations Charter](#).

[114] [Vienna Declaration and Programme of Action](#) July 12, 1993, UN Doc A/CONF.157/23, para 3.

[115] [Vienna Declaration and Programme of Action](#) July 12, 1993, UN Doc A/CONF.157/23, para 5.

So that states can fulfil their obligations effectively and protect economic, social and cultural rights, these rights need to be enforceable and subject to litigation in the domestic legal systems of these countries, so that claimants can request fair compensation and their cases can be determined by an independent and neutral committee, “if a violation of a subjective right is found, a court (or quasi-judicial body) must be able to find remedy to redress the violation.”^[116]

However, those who oppose making economic, social, and cultural rights justiciable argue that “the judicial branch cannot arrogate to itself the roles of the legislative or executive branches without usurping their separate and distinct public powers,” and that “the judiciary also lack the detailed financial and political expertise that the other two branches can bring to bear on the questions of resources allocation.”^[117]

It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. “While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications.”^[118]

That is why the right to litigation in regards to economic, social and cultural rights is vital if the states want to fulfil their obligations in protecting these rights. Otherwise, the covenant and all relevant legislations become ink on paper.

Fourth: The Role of International Treaties in Protecting Rights and Fundamental Freedoms in Syria.

1- The Status of International Treaties in the Current Syrian Legislations

Studying the successive Syrian constitutions led to the conclusion that most of these charters attempted to be compatible with the international treaties in regards to rights and fundamental freedoms. However, the discrepancy began when appropriating these international rules to the domestic laws, statutory regulations, and legal procedures.

One of the tactics that the Syrian state has used to override international treaties was to enact domestic legislation that in effect contradicts the human rights international treaties the Syrian state ratified.

[116] Frans Viljoen ‘[The justiciability of socio-economic rights](#)’ in Yvonne Donders and Vladimir Volodin Human Rights in Education, Science and Culture: Legal Developments and Challenges 55.

[117] Lord Lester of Herne Hill QC & Colm O’ Cinneide ‘[The effective protection of socio-economic rights](#)’ in Yash Ghai and Jill Cottrell (eds) Economic, Social and Cultural Rights in practice: The Role of Judges in Implementing Economic, Social and Cultural Rights page 20.

[118] UN Committee on Economic Social and Cultural Rights, [General Comment No 9 The Domestic Application of the Covenant](#), E/C.12/1998/24.

That has led to a conflict between the domestic and international legislations. The question remains: what is the correlation between the international and domestic legislation regarding ownership rights and the right to adequate housing? What is the legal hierarchy? And which is considered superior, the international or the domestic legislations?

Modern constitutional charters follow one of the following four models of a hierarchy of sources:

First: International law is superior to all domestic legislation, for example, the constitution of the Czech Republic^[119], the constitution of Moldova,^[120] and the constitution of Romania.^[121]

Second: International law is inferior to the constitution and superior to domestic laws, for example, The constitution of France,^[122] and the constitution of Germany.^[123]

Third: The International treaties are equal to the domestic laws, for example, the constitution of Egypt.^[124]

Fourth: The constitutions that remain ambiguous regarding the status of the international law in relation to the domestic legislation and laws.

Syria chose this option, and the status of international law remains ambiguous in its national charter. Article 107 of the [2012 constitution](#) stipulates: “The President of the Republic concludes international treaties and agreements and revokes them in accordance with provisions of the Constitution and rules of international law.”

Article 75 of the constitution stipulated that The People’s Assembly undertakes the approval of the treaties and conventions that are “contrary to the provisions of the laws in force and requires new legislation which should come into force.”

[119] Article 10 of The [constitution of the Czech republic](#): “Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply.”

[120] Article 4 of the [constitution of Moldova](#): “2) Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.”

[121] Article 20 of The [Constitution of Romania](#): “(2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.”

[122] Article 25 of The [French constitution](#): “Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party.”

[123] Article 25 of The [German constitution](#): “The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.”

[124] Article 151 of The [Egyptian constitution](#) of 2014: “The President of the Republic represents the state in foreign relations and concludes treaties and ratifies them after the approval of the House of Representatives. They shall acquire the force of law upon promulgation in accordance with the provisions of the Constitution.”

These two articles increase the confusion on how international law is applicable within the framework of domestic laws. Let us hypothetically presume that Syria now opts to give equal status to international and domestic law; there is always the danger that the international law will be overridden by the domestic legislation, especially those passed prior to 2012.

Syria attended the meetings of the working group on the declaration on human rights. It signed and ratified The Universal Declaration for Human Rights 1948, and The International Covenant on Economic, Social and Cultural Rights, and The International Covenant on Civil and Political Rights of 1966, and The International Convention on the Elimination of All Forms of Torture of 1965, and The Convention on the Rights of the Child (UNCRC) of 1989, and many other treaties prior to 2012. They all contradict the Syrian legislation and laws. Article 75 of the 2012 constitution stipulated that all international treaties and conventions that are contrary to the provisions of the domestic laws in force require The People's Assembly approval before they are adopted in the future. However, the constitution did not specify the mechanism to deal with the contradiction of the formerly ratified treaties.

This approach is even riskier because it allows the legislators to suspend the international treaties whenever they want by promulgating contradictory domestic legislations.

In addition to the above-mentioned concerns regarding the drafting of legislation on a domestic level, there are always concerns about the credibility and execution on the domestic level. And if we take into consideration the widespread violations the Syrian authorities have committed, we reach the conclusion that the international law and human rights treaties are not adhered to in Syria.

2- The Status of International law must be maintained.

The forthcoming Syrian constitution should avoid any ambiguity or being a signatory to international treaties only nominally. It should be clear and decisive and allow the international treaties stipulations to be applied domestically. It is not enough to sign an international treaty to say Syria is a state party to these treaties, but the real measure should be based on applying the international law rules in practice.

The first obligation is [The Vienna Convention on the Law of Treaties](#) which was adopted and opened to signature in 1969, and it entered into force on 27 January 1980. It stipulates those treaties are binding upon the parties based on three principles: free consent, good faith and the *pacta sunt servanda* rule.

The *pacta sunt servanda* rule means “every treaty in force is binding upon the parties to it and must be performed by them in good faith.” It requires that obligations instituted by treaties be honored. This basis of good faith for treaties implies that a party to a treaty

cannot invoke provisions of its domestic law as justification for the negligence of its obligations pursuant to the treaty in question. This rule is well established and has been respected by states. Every time a conflict arose between international treaties and domestic laws, even if it was the constitution of a country, international courts upheld the *pacta sunt servanda* rule and ruled in favor of the superiority of international law.

That is why the forthcoming Syrian constitution needs to clearly stipulate the superiority of international treaties to the domestic constitution. The Supreme Constitutional Court should review every new treaty to decide if there is any conflict between this treaty and the domestic laws. Then the Supreme Court decision should be presented to the parliament. The parliament then needs to decide either to amend the contradictory domestic laws if they existed and ratify the treaty, or to refuse the treaty altogether.

As for the existing domestic laws that already contradict the international treaties, addressing this problem should work through two parallel mechanisms: first, the parliament works on amending these laws to be compatible with the international treaties. Simultaneously, The Supreme Constitutional Court should abolish the laws that are in breach of these international agreements after it opens the door for requesting the revision of these domestic laws by relevant individuals and organizations.

Chapter 3

The Constitutional Guarantees to The Right of Ownership and The Right to Adequate Housing



To be able to protect rights and freedoms in reality, the constitution should guarantee the protection of these rights against violations by the authority or by individuals. This protection requires special constitutional guarantees and general constitutional guarantees.

General constitutional guarantees would protect all rights and freedoms, and the absence of these guarantees would threaten the protection of all rights. Human Rights are interdependent, and the general constitutional guarantees cover all of these rights without exception; ownership rights and the right to adequate housing among them.

However, if a right is not stipulated in the constitution, the role of general constitutional guarantees subsides. If the constitution does not stipulate the protection of a right, then the general constitutional guarantees cannot protect it either. For example, the right to adequate housing is not included in the 2012 Syrian constitution, so even if Syria had effective constitutional guarantees, they would not protect a right that is not enshrined in the constitution.

The general guarantees are many, but this study will focus on three of them: first, the principle of separation of powers, second is the principle of the rule of law, and third is the principle of equality before the law.^[125]

First Principle: Separation of Powers as A guarantee For the Right of Ownership and The Right to Adequate Housing.

Separation of powers is an important principle of the constitutional guarantees, and this study will focus on its role in guaranteeing the protection of ownership rights in particular.

Separation of powers means the division of the institutions of the state into branches: the legislature, the executive power, and the judiciary, each with separate, independent powers and responsibilities. The doctrine of the separation of powers requires that authority is not concentrated; no one individual or one branch of government, be it the electorate themselves through direct democracy or the parliament through a representative democracy, should be allowed to hold all powers. The power should be clearly divided between the three branches in order to safeguard the state's interest and the citizens' liberties and guard against tyranny because "absolute power corrupts absolutely."^[126]

[125] This study will not discuss the principle of the independence of the judiciary and the principle of the control over the constitutionality of the laws as I believe they need to be discussed in a separate study about the judicial guarantees for the ownership rights and the right to adequate housing.

[126] Abdul Hamid Mutawali, Summary of Political Theories; Political Systems and Their Constitutional Principles, al-Maktab al-Araby al Hadeth Publishing, Alexandria, 2012, pages 263- 264.

Political systems differ in the understanding and implementation of the principle of the separation of powers. Countries that adopt presidential systems^[127] interpret the principle to mean decisive separation between the executive and legislative branches of governments. Parliamentary Systems adopts a more flexible approach to the separation of powers.^[128] There are states that do not apply the principle of separation of powers but rather is ruled by an elected federal council in a directorial system.^[129] In semi-presidential systems, states developed the parliamentary system by strengthening the presidency and giving the president bigger powers.^[130]

Second: The Role of The Principle of Separation of Powers in Protecting Ownership Rights and The Right to Adequate Housing.

The main aim of the principle of separation of powers is to protect the citizens' rights and freedoms. Jurists and scholars of public law agree that there is no political freedom without separation of powers.^[131]

The separation of powers is a vital instrument in preventing tyranny. When one side or branch of government holds all the powers, it will infringe on the rights and freedoms of the individuals^[132], because human nature is selfish and egotistical.^[133]

The principle of separation of powers constitutes a guarantee to ownership rights and the right to adequate housing because it creates a system of checks and balances between the three branches of government that prevent misuse of power by any of them.

[127] Presidential Systems are systems that are built on decisive separation between the powers, where each branch of government is independent from the others in its functions and formation. There is no overlapping between the functions and competences of these branches, for example, the executive power does not participate in the legislature work at all, and the president and the cabinet's ministers do not answer to the legislature. Executive power is exercised solely by the President

[128] Parliamentary system adopts a more flexible approach to the separation of powers, it is based on the interaction between the branches of government, especially the legislative and executive powers. For example, the legislature has many powers to legislate (drafting laws, objections, decrees that have the force of laws), but also it has many powers over the executive power (questioning, inquiries, investigative committees). The checks and balances system are upheld by giving the parliament the right to withdraw confidence from the government and the government maintain the right to dissolve the parliament. Executive power is exercised dually, and the position of the presidency is weakened.

[129] Directorial system is a system that concentrates all the powers in the hand of the parliament that elects the executive power, and it continues to answer to the parliament. It also elects the judiciary. The Parliament has powers over the other branches of government, while they have none over it. This system is implemented in Switzerland.

[130] Semi-presidential system: it is a parliamentary system that grant the presidents bigger powers. It was first applied in France, where it was effective. Many states in the Arab world copied the system, however the result was distorted and largely ineffective systems.

[131] Ali al-Hanoudi- Public Freedoms- available at http://fsjesmartil.blogspot.com/2015/03/blog-post_29.html, page 96.

[132] Kessal Abdelouaheb, General Liberties Publications, a series of lectures for the law faculty, University Mohamed Lamine Debaghine -Setif2, 2015, page 95.

[133] Khoder Khoder, An Introduction to General Liberties and Human Rights, The Modern Institute for Books, Lebanon, third edition, 2008, page 249.

It also prevents the infringement of any of these powers on the function of the others.

The legislature is responsible for drafting laws, yet it cannot pass a law that contradicts the constitution or violates the constitutional controls that protect ownership rights. Laws that are contradictory to the constitution will be abrogated by the judicial monitoring over the constitutionality of laws.

The executive power can not infringe on ownership rights through individual or executive administrative decisions. In case such an infringement occurs, the official who approved the decision can be held accountable through the parliament. The administrative decision can be challenged and cancelled at an administrative court of law. If the claimant sustained damage to his/her personal interests as a result of the decision, they could claim compensation through the administrative courts.

The legislature needs to abide by the constitutional limitations, and the executive power has an obligation to execute the laws without infringement on the right.

In addition to the fact that the separation of powers protects individual rights and freedoms and prevents tyranny, it is also the parameter that determines how democratic any political system is, and to what degree it adheres to the principles of justice and equality in society.^[134]

Third: The Principle of Separation of Powers in The Syrian Constitution Of 2012.

The principle of separation of powers was not mentioned in the Syrian constitution because the office of the presidency infringes on the jurisdiction of the legislative and executive powers. The president has more legislative powers than the parliament, he has the right to “prepare draft laws and refer them to the People’s Assembly to consider them for approval” according to article 112, and the right to “pass the laws approved by the People’s Assembly. He might also reject them through a justified decision” according to article 100, and the right to “assumes the authority of legislation when the People’s Assembly is not in session, or during sessions if absolute necessity requires this, or in the period during which the Assembly is dissolved” according to article 113, and the right to “declares the state of emergency and repeals it” according to article 103, and article 114 grants the president exceptional presidential powers with no controls, limitations or prohibitions.

The president is also the head of the executive power, he has the power to appoint and dismiss the government and “The Prime Minister, his deputies and the ministers shall be responsible before the President of the Republic” according to article 121, and the president holds all the executive powers relating to domestic and international affairs.

[134] Ali al-Hanoudi- Public Freedoms- available at http://fsjesmartil.blogspot.com/2015/03/blog-post_29.html, page 98.

“The Supreme Judicial Council is headed by the President of the Republic” according to article 133, he is deputized by the minister of justice who is appointed by the president himself, and “The judicial authority is independent; and the President of the Republic insures this independence” according to article 132. The president appoints and dismisses the members of the constitutional court according to article 141.

In addition to all of the above-mentioned powers, the president enjoys many political factors that increase his position’s strength. He is the head of the ruling party, and he controls the media.

It is fair to conclude then that the Syrian regime does not apply the principle of separation of powers, and that the executive branch headed by the president controls the other branches of government.

Naturally, the failure to implement the democratic principle of separation of powers will reflect negatively on the protection of human rights under this regime. And that is why many of the expropriation orders in the past were arbitrary and poorly compensated in the light of the complete absence of any monitoring by the judiciary or the parliament.

Fourth: Suggested Amendments to Enshrine the Principle of Separation of Powers in The Forthcoming Syrian Constitution.

The principle of separation of powers has lost its edge with the recent developments to the political systems of governance, but it is still widely considered one of the best guarantees to prevent tyranny and stop any branch of government from infringing on the jurisdictions of the other branches.

However, modern theories of legal jurisprudence agree that the traditional doctrine of separation of powers is no longer sufficient to guarantee the protection of rights due to historical and current reasons and due to the phenomenon of political parties.

The historical reason is that the principle of separation of powers was first developed by the French philosopher Montesquieu in 1748, a historic era when most governments were tyrannical and needed to be reined in with controls. Today, however, most countries are ruled by democratic systems.

The current reason that makes the doctrine of separation of powers less efficient is the degree to which the formation and functions of the executive power have grown in modern days. The functions of the executive system have become so diverse that this system has become integral in the life of society. As a result, it was natural for the executive power to gain more importance and acquire increased influence over the other branches of government.

However, in reality, the phenomenon that impeded the principle of separation of powers most is the political party system. Modern political systems could not absorb the rivalry of

political parties and maintain the doctrine of separation of powers as decisive as it should be. When one political party wins an election, it usually dominates both the legislative and executive power, which in turn erodes the protection of rights and freedoms the principle of separation of powers should guarantee.

The aim of presenting these arguments is not to undermine the principle of separation of powers in political systems, but to call on introducing additional guarantees that further promote the protection of rights and maintain the separation of powers.

The required constitutional amendments should address two different issues:

First: it should enshrine the principle of the separation of the powers by enforcing general rules and constitutional guarantees in any political system that will be adopted in Syria in the future. Every modern political system abides by general rules and the constitutional principle of separation of powers. These rules should be respected and maintained so that the political system effectively protects rights and freedoms.

For example, the basic rule of the presidential system is that the president is the head of the executive power, but he does not have any power over the legislature. In the parliamentary system, the president nominally has ceremonial powers, and all the executive powers are held by the government that rules in partnership with the parliament. In semi-presidential systems, the position of the presidency is strengthened, and the system is based on the duality of the president and the cabinet, but the cabinet holds more powers than the president.

That is why when the Syrian state adopts a political system in the future, the general rules of organizing the government according to that system should be respected; any breaches would reflect negatively on the principle of separation of powers.

Second: Some jurists and scholars argue that the traditional interpretation of the doctrine of separation of powers has become outdated, and in the present, it is replaced by two powers: the majority (or the authority of the state), and the opposition. The first holds the power over the legislature and the executive branch (the power to shape policy), while the opposition has the power to monitor.^[135]

This theory of division of powers led many countries to enshrine in their constitution the adoption of shadow cabinets like the British parliamentary system. Others stipulated that “The opposition is assigned the chair of the Finance Committee” as in article 60 Of [The 2014 Tunisian constitution](#). States resorted to many methods, including the two listed above, to enhance the opposition’s monitoring authority over the executive power.

The opposition has the power to initiate a motion of no confidence if one of the ministers

[135] Kessal Abdelouaheb, *General Liberties Publications*, a series of lectures for the law faculty, University Mohamed Lamine Debaghine -Setif2, 2015, page 93.

faces criminal charges, and the motion would require a lesser share of votes than the usual to pass. However, none of these measures includes the opposition forming one government with the winning party because that would blur the line, and the opposition would lose its role politically and legally, as has happened in Lebanon.

Second principle: The Rule of Law (Legitimacy)

First: What Is the Principle of The Rule of Law

Taking the consideration, the vital role the law plays in facilitating the affairs of individuals and determining their duties and their rights generally, all legal and political scholars agree that the rule of law is integral to democracy. No state can be democratic unless its institutions apply the principle of the rule of law that should be applied to both the ruling class and the citizen equally.^[136]

Everyone should be equal before the law, both the government and the citizens, with no discrimination based on their ethnicity, gender, language, religion, social or financial status.^[137]

The legislators disagree about the definition of the principle of legitimacy. Some jurists define it as the legal stipulations issued by the legislature, which is considered a narrow definition of the concept. Others expanded their definition and said that the principle of legitimacy also means all the components of a legal system, whether written as the constitution, the domestic laws, and any administrative decision, or not written as customary law and principles of natural law.^[138]

Second: The Principle of Rule of Law and Its Role in Protecting Ownership Rights and The Right to Adequate Housing.

The essence of abiding by the principle of the rule of law is that the state recognizes that the principles and rights protected by the law should be respected and adhered to in all circumstances and situations.^[139]

It is important to determine the means to achieve administrative goals. State functions are restricted to fulfilling the public interest. The authorities are equally restricted both in

[136] Ali al-Hanoudi- Public Freedoms- available at http://fsjesmartil.blogspot.com/2015/03/blog-post_29.html, page 98.

[137] Kessal Abdelouaheb, General Liberties Publications, a series of lectures for the law faculty, University Mohamed Lamine Debaghine -Setif2, 2015, page 97.

[138] Saad Asfour, The Basic Principles of The Constitutional Law and Political Systems, Dar el-Maaref Publishing House, Alexandria, Egypt. Page 162.

[139] Abdullah Saleh Ali al-Kameem, Freedoms and Rights and Their Guarantees in the Constitution of The Yemeni Republican 1990, Baghdad, 1995, page 162.

determining their objectives and their functions.^[140]

And the legislature has an obligation to draft laws protecting the right to private ownership, enshrine the protection of that right in the constitution, and refrain from issuing any contradictory laws that might undermine that right.

The legislators have an obligation to stipulate the protection of ownership rights in the constitution. In other words, when the legislature respects the principle of the rule of law, they protect the rights and freedoms in the constitution.

Any restrictions on ownership rights should be regulated by a law that passes in the parliament. The purpose of this law should not be to restrict ownership rights but rather to regulate them and provide the legal protection needed.^[141]

The judiciary abiding by the principle of the rule of law in all its rulings means it abides by the legal system in force. The judiciary has an obligation to respect legal hierarchy, which means it first abides by the constitutional rules and then the legislative rules.

The biggest priority is that the executive branch abides by the principle of the rule of law in all its decisions and functions.

The most important feature of a state that respects the rule of law is that the administrative authorities cannot force the citizens to do anything outside the limitations of the law. This means the state is restricted on two levels:

First: the administrative power is not permitted to engage in any interaction with individuals who break the law.

Second: the administrative power cannot compel the citizens to do anything unless it is stipulated by law, or the law enforces it.^[142]

The importance of implementation of the rule of law is best manifested when the individuals in society are obliged to abide by the law, and as a result each citizen respects the rights of others and their properties.

Even when the state declares that it implements the rule of law, and the constitution stipulates the protection of private property ownership rights and the legislature passes the laws that further protect ownership rights, the protection of these rights should not be taken for granted. The right of private ownership will not be protected and guaranteed unless

[140] Ali al-Hanoudi- Public Freedoms- available at http://fsjesmartil.blogspot.com/2015/03/blog-post_29.html, pages 98, 99.

[141] Souad al-Shawkawi- Political Systems in Modern Times, Dar al-Nahda al-Arabia, second edition, 1982, page 342.

[142] Al al-Hanoudi- Public Freedoms- available at http://fsjesmartil.blogspot.com/2015/03/blog-post_29.html, page 101.

the legislations and laws stipulating its protection are enforced and respected.

The principle of the rule of law is “the impregnable fortress that protects rights, especially the right of private ownership. It protects them from any violations from the authorities by enforcing effective judicial monitoring and holding anyone who breaks the law accountable, whether a citizen or an official.”^[143]

Third: The Principle of Rule of Law in the 2012 Syrian Constitution

The principle of the rule of law represents the ultimate guarantee for the protection of fundamental freedoms, the cornerstone of public freedoms is dependent on the state abiding by the rule of law.

That is why the constitutions and legal systems in most modern democracies stipulate that the state should abide by the law as a guarantee for democracy and the freedom of public opinion.^[144]

The 2012 Syrian constitution enshrined the principle of the rule of law. Article 50 under Title II in the constitution, entitled Rights, Freedoms, and the Rule of Law, stipulates: “The rule of law shall be the basis of governance in the state.”

Article 35 obligated all citizens to respect the law: “Every citizen shall be subjected to the duty of respecting the Constitution and laws.”

But in reality, the Syrian state did not respect the principle of the rule of law. When the legislature issued laws and decrees that contradict the constitution, it acted in breach of the principle of the rule of law. There are multiple examples of the Syrian state doing that.

And when the executive power issued administrative decrees that contradicted the law, or violated individual rights and expropriated property unjustly, the executive power also did not abide by the principle of the rule of law.

Also, the laws in force deprived the citizens of the right to litigation to defend their rights. The judiciary suffers unconstitutional constraints, and the judiciary’s power to compensate expropriated citizens is restricted, and that is a clear breach of the principle of the rule of law.

[143] Ta’aema al-Jouref, *The Principle of Legitimacy and Controls Over State Abidance*, al-Qahera al-Haditha publishing house, 1973, page 5.

[144] Ali al-Hanoudi- *Public Freedoms*- available at http://fsjesmartil.blogspot.com/2015/03/blog-post_29.html, pages 98.

Fourth: The Principle of the Rule of Law in The Forthcoming Syrian Constitution.

As I have clarified, there are multiple breaches of the rule of law, especially in regards to ownership rights and the right to adequate housing. This proves that the stipulation of the protection of ownership rights in the constitutional charter was not sufficient.

That is why I suggest adding a stipulation about the hierarchy of the legal rules. The constitution should be supreme to all other legislations, and all the branches of government are obliged to abide by it, or their decisions and functions will be considered illegitimate.

The legislature should be obliged not to issue any laws that contradict the constitution. The executive power should be obliged to refrain from issuing any administrative decrees that contradict the laws, and the judiciary should not accept any restrictions on its work by the legislature of executive power.

The implementation of the principle of the rule of law will protect ownership rights and the right to adequate housing and prevent any infringement on these rights. Any restrictions on these rights will be defined by the constitution.

The Third Principle: The Principle of Equality as A Guarantee for Ownership Rights.

First: What is the principle of equality?

The principle of equality and non-discrimination guarantees that those in equal circumstances are dealt with equally in law and practice, with no discrimination between them in rights and duties for any reason, because “all human beings are born free and equal in dignity and rights.”

The principle of equality is one of the basic foundations of democratic systems; democracy is founded on equality and non-discrimination. No public freedom or right can be protected without the implementation of the principle of equality and violating this principle ruins democratic practices and undermines freedoms.^[145]

[145] Ahmad Saleem Sa'afan, Public Freedoms and Human Rights, al-Halabi Publishing for Legal Studies, Beirut, 2010, volume 2, page8.

Based on this approach, the principle of equality is a cornerstone for the protection of public freedoms. It is one of the strongest guarantees that ensures the smooth functioning of a democracy and the legitimacy of the state. For that reason, the principle of equality is enshrined in many regional and international treaties.^[146]

The right of non-discrimination is integral to the principle of equality. It is a fundamental and obligatory rule in international human rights law, it is the very core of human rights law.^[147]

I will conclude by saying that most rights and personal freedoms acquire their legal standing and relevance from the stipulation of the principle of equality, which has become a foundation of freedom.

That is why the principle of equality has become vital for the protection of ownership rights and the right to adequate housing. The legal system should guarantee equal protection for all citizens, whether in regards to the right to acquire possession of private property, or the right to use and dispose of their properties, or the protection of their ownership rights.

Second: Aspects of the Principle of Equality

1- Equality Before the Law

The principle of equality and non-discrimination means that those in equal circumstances are dealt with equally in law and practice. No individual or group should be discriminated against because of their gender, ethnicity, language, religion or living circumstances. All people are equal before the law in their duties, rights, and legal status.^[148]

The principle of equality before the law is a fundamental guarantee for individual rights and freedoms. In the absence of this guarantee, the public authority could discriminate against certain individuals based on its ideology or policies. Such a state would become a totalitarian with no protection for individual rights and freedoms.

The principle of equality before the law protects all rights and freedoms, and depriving an individual or a group of citizens of the right to private ownership when they have the means to it, is a breach of the principle of equality before the law and a violation of this group constitutional rights .

[146] The principle of equality is stipulated in article one of [The United Nations Charter](#), and articles 2 and 8 of [The Universal Declaration Of Human Rights](#), and article 2 of [The International Covenant on Civil and Political Rights](#), and article 14 of [The European Convention on Human Rights](#).

[147] Saleh Ahmad al-Farajani, [The Principle of Equality Before the Law And Its Application In The Libyan Law](#), The Legal And Legislative Journal, volume 6, page 227.

[148] Dajal Saleh, Lectures in Public Freedoms, University of Algiers 1 Benyoucef Benkhedda law school, 2015, page 39.

That is why we find that The European Court of Human Rights (ECHR) held in the case of [Chassagnou and Others v. France](#) that a French law (Loi Verdeille) that obliges owners of property of a certain size to become members of approved hunting associations and to cede hunting rights to them was unjustifiably discriminatory as it only applied to those who own land smaller than 20 hectares. Those who owned larger land were under no such obligation, and that is why the court overruled the French law (Loi Verdeille) after deeming it discriminatory^[149], and “The Court considers that the Government have not put forward any objective and reasonable justification for this difference in treatment.”^[150]

The burden of proof here lies with the state. The state needs to prove that the difference in treatment was in accordance with the law, and that it enforced this measure for a legitimate reason, and that the means it used was proportionate.

It is worth noting that when the reason behind the difference in treatment is property, the state enjoys a larger margin of appreciation compared to the margin it would have concerning issues like gender, nationality, and personal social status.

In housing, discrimination can take the form of discriminatory laws, policies, or measures; zoning regulations; exclusionary policy development; exclusion from housing benefits; denial of security of tenure; lack of access to credit; limited participation in decision-making; or lack of protection against discriminatory practices carried out by private actors.

States have an obligation to prohibit and eliminate discrimination on all grounds and ensure de jure and de facto equality in access to adequate housing and protection against forcedeviction.^[151]

2- Equality in Public Responsibilities and Duties

In return for the enjoyment of public services, it is natural that the law enforces equality in bearing public responsibility and duties. The principle of equality amongst citizens in public responsibilities and duties is best manifested when the expropriation of a property is carried out. The legal basis for the right to compensation is derived from the principle of equality in public responsibilities and duties.

[149] Eur. Court HR, Case of Chassagnou and Others v. France, judgment of Apr 29, 1999, Reports 1999-III, p. 50, para. 66

[150] Eur. Court HR, Case of Chassagnou and Others v. France, judgment of Apr 29, 1999, Reports 1999-III, p. 50, para 121.

[151] [The Human Right to Adequate Housing, Fact Sheet No.21](#), Office of The High Commissioner for Human Rights, 1992, page15.

It is not acceptable to ask one citizen to bear the cost of building a public utility on his land, considering that all citizens will have the right to benefit from this utility. That is why the state has an obligation to compensate the owner of the expropriated property that is used to build a public utility that would provide a public service.

Furthermore, if a residential building or a property was damaged as a result of the construction of a public utility, compensation is legally required without the need to prove that mistakes committed by the administrative authority led to this damage. This is the case in the jurisdiction of France^[152] and Lebanon.^[153] However, in Syria, the administrative judiciary refuses to hold the administrative authorities accountable for compensation without proving a mistake has led to the damage.

Third: The Principle of Equality in the 2012 Syrian Constitution:

Equality is the cornerstone of all freedoms, and the lack of it jeopardizes all public freedoms. That is why all modern constitutions stipulate the right to equality among all citizens with no discrimination based on their gender, origin, color, or political orientation.

Article 33 of the 2012 Syrian constitution stipulate: “3. Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.”

Despite this article, the principle of equality was not implemented. Equality before the law was not implemented, many legislations have been discriminatory; for example, expropriating property without proper compensation or without any compensation at all. Also, there is the discrimination of treating people who are not equal in circumstances equally. For example, the Syrian legislator asks all Syrian citizens to provide the same ownership documentation papers, whether they are still residents in Syria or have immigrated or been displaced by the war. There are many other examples of discrimination.

[152] René Chapus, *Droit Administratif Général* Tome 2, p. 654, n813.

[153] For example, look at: The Council of The State decision 92 issued on Oct 05, 2001. Also look at Moulhem Massoud al-Ghazi, Council for Development and Reconstruction, *Administrative Judicial Magazine*, 2005, page 106.

Fourth: The Principle of Equality as A Guarantee for Ownership Rights and The Right to Adequate Housing in The Forthcoming Syrian Constitution.

The state that does not learn from its previous constitutions cannot amend its future constitution nor change its practices and would remain captive in its old practices and fail to re-establish its governance or state. None of the Syrian constitutions stipulated the protection of the principle of equality from violations.

Any state that does not guarantee the principle of equality will eventually end up being a repressive state where individual rights and freedoms are violated, which is what has happened to the Syrian society.

I will be listing a group of suggestions to promote and enshrine the principle of equality that protects ownership rights and the right to adequate housing against any discriminatory measures. All these suggestions are inspired by The Declaration of Principles on Equality^[154].

- Adopting constitutional procedures to enshrine the principle of equality

The Syrian state needs to adopt constitutional procedures that will enshrine and protect the principle of equality and eliminate any laws that contradict or undermine that principle. The constitution needs to become the supreme source of law and regulate all the functions of the Syrian state.

The Syrian state needs to take all appropriate measures to amend the legislation regulating ownership rights and the right to adequate housing that is contradictory to the right of adequate housing. There is a large number of these legislations at the moment, and there is a need to guarantee to prevent any contradictory laws in the future.

The Syrian state needs to reaffirm its commitment to all the international treaties it is a party to, especially its commitment to the principle of equality as stipulated in the treaties without any reservations.

[154] A group of international experts, [Declaration of Principles on Equality 2008](#), The Equal Rights Trust, a meeting held in London, UK between 2 to 5 of April 2008.

- The right to litigation against discrimination.

The right to litigation should be guaranteed for every citizen, and any law that undermines this right is unconstitutional. That is why Syria needs to abolish the laws or procedures that unjustly prevent the victims of discriminatory treatment or violations of their ownership rights and their right to adequate housing from resorting to the judicial system to seek reparation.

The constitution should guarantee the right of litigation for all civil society organizations that have an interest in implementing the principle of equality at the state level. They should be allowed to participate in a lawsuit as main plaintiffs or as representatives of the interests of a third party.

- The right to reparation and compensation

It is not sufficient for the constitution to stipulate the right to litigation; it needs to also include punitive measures against officials who misuse their powers and violate the right to equality. The constitution also needs to stipulate appropriate reparations for the individuals who suffer a breach against their right of equality, whether it is financial compensation, restitution, or any other form of reparation.

- Establishing a national body for equality

The Syrian state should establish in the future an independent body to protect and promote the right of equality, especially in regards to ownership rights and the right to adequate housing.

Conclusion:

At the beginning of the 20th century, the Syrian state was born and with it came a new constitution. That very first constitution allowed the violation against ownership rights of the Syrian citizens.

Different types of ruling authorities presided over the Syrian state in recent history, and they had various and at times conflicting ideologies. However, the violation of property rights continued. The degree of the violation of property ownership rights varied under these various authorities, however, it remained constant and was an indicator of the inability of the different constitutions of the Syrian state to protect property rights.

The first violation against ownership rights in Syria happened when Syria became independent from the Ottoman Empire, and it was the result of external factors and international circumstances the newly established state could not influence nor control.

However, the violations against ownership rights intensified after the independence of the Syrian state from the French mandate, these violations took place in the name of social justice and were the result of the ideology of socialism.

After the coup of the Baath party in 1963, the violations against private ownership rights were enshrined and became the norm. The prevailing thinking amongst both the state and the owners at that point considered the violations to be the norm, and the exception would be to protect ownership rights.

The frequency of the property rights violations and the neglect of the right to adequate housing increased after 2011, despite the fact that the crisis of expropriation and lack of provision of adequate housing was one of the main reasons behind the conflict. The authorities in Syria have excelled in inventing ways to expropriate property: expropriation as a military tactic, expropriation as an aspect of the war economy, expropriation through contesting the legal documentation of ownership, and expropriation as a result of redrafting urban planning and housing regulations at times of conflict.

It is worth noting that the violation of property rights and ignoring the need for provision of adequate housing was an intangible violation. The authorities have often tried to provide legal legitimacy to these violations, in other words, to make them justifiable by legal texts.

The reason behind the approach that attempts to legitimize violations by drafting constitutional provisions sanctioning them is, in fact, because modern totalitarian systems have adapted to modern times. These systems do not attempt to forbid the promulgation of a constitution, modern times do not allow such a repressive measure, and it will provoke public anger.

After extensive research into the constitutions of totalitarian regimes, I found that the first step in establishing a totalitarian system begins with the constitution. Modern autocratic systems do not attempt to prevent the promulgation of a constitution, but rather they draft a constitution suitable for their interest, and it does not fulfil its presumed task of protecting the interest of the public. It is natural that, as a result, these constitutions are deficient and is a mere facade for autocratic regimes.

Suggestions:

To address the problems in protecting property rights and the right to adequate housing, we should work on reenacting the relevant constitutional guarantees through three suggestions: first through amending the existing charter, second through working on addressing the current loopholes, and third through adding new legislations.

1- suggestions to amend the existing charter:

The existing constitution did not provide the needed protection for the property rights, which require certain modifications such as:

- A** Moving the text about the protection of property rights from the Basic Principles chapter to the Rights and Freedoms chapter.
- B** Do not equate in the legal text between the rights and the restrictions. The constitution should make rights indisputable, while the restrictions should be listed together in one text that details all the rights and public freedoms and the restrictions and limitations to the implementation of the relevant laws.
- C** Syrian legislators should clearly define the term “public interest” when used for the purpose of property expropriation. The value of reparations and fair compensations should be defined clearly, and its elements, schedule and the mechanism of agreements should be determined in the constitution.

- D** Assessing the amount of compensation should not be left for the expropriating authority but should be a right for both parties. If they fail to reach an agreement and the authority determines the amount of reparation, the owner of the property should be allowed the right of litigation against the decision.

2- Addressing the current loopholes.

Despite the fact that most modern constitutions stipulate the protection of the right to adequate housing, this right was not included in the Syrian constitution. The forthcoming Syrian constitution should stipulate the protection of this right. It should be under the Rights and Freedoms chapter. The constitution should guarantee the right to litigation to all citizens regarding the right to adequate housing, and it should determine the state's positive and negative obligations towards this right.

In regards to international law, all the international treaties the Syrian state signed that stipulate the protection of rights and freedoms remained ink of paper, because the Syrian constitution does not clarify the hierarchy of the law or the place these treaties have in relation to domestic law. This problem should be addressed by ensuring that the forthcoming Syrian constitution clearly stipulates the superiority of international treaties to the domestic constitution. The Supreme Constitutional Court should review every new treaty to decide if there is any conflict between this treaty and the domestic laws and whether this conflict could be avoided by amending the contradictory domestic laws before ratifying the treaty. If these laws cannot be amended, then the state should refuse the treaty altogether.

3- Adding new legislations

Constitutions in democracies or countries that saw democratic transformation introduced new mechanisms to protect general rights and freedoms. That includes protecting property ownership rights and the right to adequate housing.

- A** Establishing monitoring committees specialized in protecting property rights, either a parliamentary commission or a governmental commission, or establishing a financially and administratively independent committee to monitor and implement the protection of property rights and the right to adequate housing.

- B** Enforcing the doctrine of separation of powers by amending the constitutional texts that allow the president control over all powers. And implementing the doctrine of separation of powers to allow the opposition an independent existence from the majority loyalist bloc and empower the opposition forces to monitor the authority of the majority.

- C** Strengthening the rule of law by stipulating the hierarchy of laws, and ensuring all legislative, executive and judiciary powers abide by this hierarchy.

- D** Taking legislative procedures to enforce the principle of equality, especially in relation to the right to adequate housing. Allow all segments of the Syrian society the right to litigation, as it is an absolute right for all Syrians, and work to establish a national committee for equality that would be independent financially and administratively.

All these constitutional suggestions aim to activate the protection of property ownership rights and the right to adequate housing in the next constitution to be drafted and to help get rid of a heavy legacy of violations against these rights.

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