



# Lessons Learned From International Experiences Relevant To Syria Housing Land And Property Issues

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اليوم التالي  
لدعم الانتقال الديمقراطي في سوريا



THE DAY AFTER  
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# Lessons Learned From International Experiences Relevant To Syria Housing Land And Property Issues



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The Day After Association (TDA) is a Syrian organization working to support the democratic transition in Syria. Her scope of work focuses on the following areas: rule of law, transitional justice, security sector reform, electoral system design and the election of the Constituent Assembly, constitutional design, economic reform, and social policies.



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## EXECUTIVE SUMMARY

Since the beginning of the Syrian conflict in 2011, some 13.4 million Syrians (about 61.5% of the country's pre-war population) have fled their homes. Half of them are refugees in Syria's neighbouring countries, and the other half is internally displaced.<sup>[1]</sup> The massive conflict-induced displacement and violations of Housing, Land and Property (HLP) has led to large-scale dispossession.

Housing, land, and property (HLP) violations are typical features of conflict and forced displacement scenarios. Since the 1990s the international community has acknowledged the need to address conflict-related HLP issues and to support the right to return, durable solutions to displacement, economic recovery, development and peace-building. This is reflected in the policy discourse,<sup>[2]</sup> UN guidance on international HLP standards,<sup>[3]</sup> and the inclusion of HLP provisions in numerous peace agreements.

The purpose of this research is to identify lessons learned from international experiences that could inform the design and implementation of solutions to address the numerous HLP issues faced by Syrians since the conflict.

Dispossession in Syria is both a consequence of forced displacement and the result of a deliberate strategy by the Syrian regime to permanently prevent the return of those considered to be in opposition to their government. Financial profit is also a key driver, for example when informal settlements are replaced by lucrative businesses and construction projects. Other individuals, criminal groups, and opposition military factions have also contributed to dispossession, forced evictions, occupation, and forgery.<sup>[4]</sup>

The control of State institutions and the lack of separation between executive, legal and judicial branches of government has facilitated legal dispossession through the creation of laws that impact HLP rights. One source of dispossession results from the difficulty in fulfilling legal procedures used during peacetime. The requirement to contest an administrative or court decision within a timeframe, to apply in the place of residence, and

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[1] Humanitarian Needs Overview, Syrian Arab Republic, March 2021

[2] United Nations Security Council (UNSC), Report of the Secretary-General on the protection of civilians in armed conflict, UN Doc. S/2007/643, October 28, 2007; UNSC S/2004/616, Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, 3 August 2004; UNSC, The Guidance Note of the Secretary-General: The United Nations and land and conflict, 2019

[3] UN Sub-Commission on Protection and Promotion of Human Rights, Principles on housing and property restitution for refugees and displaced persons, Resolution 2005/21, August 11, 2005

[4] ILAC, Policy brief: Dispossession of housing, land, and property in Syria, 2021 publication pending, p.2

to supply extensive supporting documentation are often impossible in a conflict and displacement situation. Obtaining power of attorney, which allows a refugee or displaced person to grant a third party the right to apply on their behalf, is subject to clearance by the security apparatus. This is rarely granted to suspected supporters of the Opposition so for the displaced it constitutes a significant obstacle to accessing justice. HLP rights are lost if the property holder is not able to exercise their legal options, contest expropriation or valuation decisions, or if they have not been able to pay a mortgage or loan against which the property is secured.

Laws related to urban planning, development, expropriation, military service, or counter-terrorism adopted during the conflict have resulted in the risk of permanent dispossession.<sup>[5]</sup> The implementation of these laws risks making dispossession permanent, thereby constituting an obstacle to return and other durable solutions to displacement.

Pre-conflict structures characterized by a general disconnect between land registries and tenure rights also facilitate dispossession; many HLP rights are informal or not registered in the cadastre. The holders of such rights are at great risk of dispossession as it is difficult for them to prove their rights, particularly if they are displaced.

Many conflicts are characterized by human rights violations and the absence of the rule of law, leading to impunity and the use of legislation to dispossess opponents and prevent the return of displaced people. Restoring peace and public confidence in institutions in the post-conflict period usually requires a political settlement, a peace agreement or transitional justice processes to address the pre-conflict issues and the war's legacy.

This report identifies key principles that can guide policy decisions, to include HLP-related issues into peace agreements, and transnational justice processes. It asks how dispute resolution mechanisms and procedures used to remedy HLP violations in other regions might relate to Syria's current situation.

International experience teaches that a comprehensive approach is required to remedy dispossession and forced displacement, and to ensure peace, return, economic recovery, and development. This combines both reparative and transformative actions. Reparative actions include measures such as the creation of an HLP dispute resolution mechanism, which addresses the effects of the conflict through restitution and compensation. When the pre-conflict legal and institutional framework facilitated discrimination, unequal access to land and housing, or tenure insecurity, transformative actions may also be necessary.

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[5] ILAC, Policy brief: Dispossession of housing, land, and property in Syria, 2021 publication pending.

In such cases, restitution or compensation of HLP rights lost during the conflict will not be sufficient to address the root cause of the problem which requires structural reforms. Syria should, in addition to providing restitution and compensation for lost HLP rights, consider addressing the root causes of tenure insecurity and reform its land administration system, urban planning policies, and more broadly the judicial system to reinforce tenure security, access to adequate housing, and the capacity of the legal and institutional framework to protect those rights. The post-conflict period is an opportunity to review pre-conflict discriminatory legal structures and create principled foundations that support peacebuilding and social cohesion.

International experience has also taught the need for adopting transitional measures to address the conflict's many human rights violations. The exceptional circumstances of the conflict require transitional measures that derogate to normal laws and procedures in order to provide reparations in the fairest and fastest way. These transitional measures include simplified procedures to accelerate the processing of claims. This can include accepting alternative evidence of informal ownership, and the presumption of violations for transactions that took place during the conflict. The creation of a mass-claim mechanism to address HLP claims is a common feature in international practice. A specific mechanism is necessary to build public trust, and to avoid overburdening the existing administrative and judicial system. The report provides guidance on the design considerations of the dispute resolution mechanism with regard to principles, scope, timeframe, type of remedies and the role of the international community.

Short-term measures include:

- Ensuring the inclusion of HLP issues (right to restitution and compensation) into peace and new Constitution talks.
- Establishing a specific HLP mass claim dispute resolution mechanism, preferably under international supervision and outside the existing court system to avoid overwhelming courts with cases and address the likely distrust of citizens against institutions that actively contributed to dispossession. International monitoring or supervision can be provided if it is included in a peace agreement or political settlement ending the conflict.
- Creating procedures to ensure access to restitution and compensation.
- Reviewing and amending laws and procedures that are not suited to the circumstances of the conflict (insecurity, limited freedom of movement and access to institutions in the place of origin) and that risk dispossession.



In the mid to long-term:

- Initiate judiciary reform to ensure independence and respect for the rule of law, and increase the number of courts — to improve access to justice, and increase financial and human resources.
- Adopt urban planning and housing policies that accommodate low and middle-income urban residents.
- Determine criteria to regularize and upgrade informal settlements.

The report also provides best practices with regard to secondary occupants, and how to address informal settlements and possession, women's HLP rights, forgery, and reconstruction.

Issues that are particularly relevant in the Syria context are flagged, including:

- In order to prepare for political negotiations and a possible restitution or compensation process, actors involved with HLP issues should reflect on the different types of tenure that should be subject to restitution and compensation and according to which modalities. The specific circumstances of holders of housing cooperatives rights and other social housing schemes, tenants, users of agricultural land, and how their rights have been affected by the conflict should be well understood to ensure that they are included in the restitution process.
- Informal settlements will need to be comprehensively examined, considering pre-conflict settlements and those created during the conflict. An inventory of settlements should precede an analysis of the pros and cons of demolition vs regularization, and the compensation that may be required in either case.
- Reconstruction plans should follow a participatory approach and should not preclude return or violate HLP rights. Investors should exercise due diligence to ensure they do not contribute to human rights violations.
- Many claimants are at risk of losing HLP rights if a restitution or compensation mechanism does not recognise inaccurate land registries and informal rights. International experience shows the urgency of collecting evidence on properties and possession to prepare for a possible restitution phase. The report provides examples of different participatory methods using technology to accelerate collection and cross-checking of information.

The HLP mechanism will reflect the political context, the will of the conflict's main actors, and the signatories of a political agreement. The present report focuses on best practices that conform to international standards. If political constraints derail from such standards, it would be necessary to hear first what the Syrian regime is ready to accept and what it rejects, before proposing compromised solutions.

The Syrian government, still in power, is responsible for massive displacement and HLP dispossession, so it is unlikely that it will enforce a full transitional justice and human rights approach without external pressure. It is, therefore, necessary to advocate the importance of integrating HLP into peace discussions. Political leverage and arguments that encourage the Syrian regime to establish a just restitution and compensation process must be identified.

Such an ambitious endeavor requires strong, transparent, efficient cooperation between all agencies, INGOs and local NGOs working on HLP in Syria. Improved information exchange would benefit the multiple initiatives, funded by a wide group of donors, launched to support displaced people and to map informal ownership. HLP literature and data should be more easily accessible to avoid duplication, increase political leverage, facilitate progress and better cooperation.

## Introduction

“HLP rights are about having a home, free from the fear of forced eviction and a place that offers shelter, safety, and the ability to secure a livelihood. The concept of HLP includes the full spectrum of rights to HLP held according to statutory or customary law or informally, both public and private housing, land and/or property assets. HLP rights are not just related to ownership but also include rights held by owners, tenants, cooperative dwellers, customary land tenure owners and users, and informal sector dwellers without secure tenure.”<sup>[6]</sup>

The international community has increasingly addressed HLP rights from a broad human rights perspective. A human rights-based approach supposes a legal and institutional framework capable of ensuring the rule of law and access to justice, which are key to creating an enabling environment. The Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons reflect the evolution of international practice in post-conflict settings. They also aim to encourage a more consistent and systematic response to post-conflict HLP issues, either through the inclusion of provisions in peace agreements or with regard to the adoption of post-conflict legislation and mechanisms related to HLP. They also correspond to a transitional justice approach to address HLP issues. It considers that reforming institutions and legislation is necessary to restore the rule of law and ensure fair access to justice to solve HLP issues. Addressing HLP issues in Syria with this approach would contribute to achieving sustainable peace, even though it represents a huge challenge.

The characteristics of Syria pre-conflict situation on HLP indeed paved the ground for massive wartime dispossession. Indeed, law has indeed been used as a dispossession tool in Syria. A batch of pre-war legislation and laws issues during the conflict are used to strip alleged opponents from their ownership: expropriations are happening under the counter-terrorism law, urban renewal laws, laws related to the reconstruction and digitalization of land registration.

Even if the law does not have a deliberate intent to discriminate or dispossess, it can lead to this result if the procedures are not adapted to the exceptional circumstances of the conflict: the obligation to go to the area of origin to confirm ownership, to provide documentation impossible to get, the impossibility to contest administrative or judicial decisions within certain deadlines have a discriminatory impact on the displaced people.

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[6] Norwegian Refugee Council (NRC) and International Federation of Red Cross and Red Crescent Societies (IFRC), The Importance of Addressing Housing, Land and Property (HLP): Challenges in Humanitarian Response, 2016

In addition to these laws, the circumstances of the conflict also lead to practices leading to dispossessions. HLP occupation, sales under duress triggered by parts of the conflicts, informal transactions, forgery of documents and lack of ownership and civil documentation as well as the non-recognition of civil or HLP documentation issued by de facto authorities in opposition areas lead to dispossession but also represent serious obstacles to future reparations, whatever they will be restitution, compensation, or reconstruction.

The inaccuracy and outdated nature of registries, combined with inadequate provision of affordable urban housing indeed pushed Syrians into a situation of informal ownership. This informality then facilitated their dispossession during the conflict and risks preventing the restitution, compensation, or reconstruction of their property. Informal housing has mushroomed in Syria since the 1980s because of the absence of implementation of the master's plans by the authorities, leading to a shortage of formal housing and widespread corruption practices among the security services and different government bodies involved in urban planning. Informal housing, for which owners have no formal property deeds, represent up to 40-60% of the cities' housing stock.<sup>[7]</sup>

These dispossessions are likely to affect specific groups of individuals: war-time laws often dispossess detainees and missing persons; women are also especially vulnerable to dispossession as their names are often not present on property deeds and suffer from unequal inheritance customary laws. Tenants, owners of social and cooperative housing are more likely to be dispossessed if they stopped paying for occupying their flats and/or paying their installments because of the circumstances of the conflict.

The purpose of this research is therefore to identify lessons learned from international experiences that could inform the design and implementation of solutions to address the massive housing, land and property challenges faced by Syria since the beginning of the conflict. It identifies typical responses used in post-conflict settings, notably transitional justice measures. In some cases, international practice related to HLP in post-disaster settings (community mapping, upgrade of informal settlements in situ, or relocation) as well as HLP practices related to development-induced settings (regularization of informal settlements, good practices for evictions) is mentioned when it can bring relevant guidance.

The report recommends, in line with lessons learned from international practice, that some structural reform should be done to address pre-conflict issues that may have an impact on the resolution of HLP conflict issues and the sustainability of these solutions. However,

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[7] The Day After. 2020. "Informal Housing in Syria Harvest of Decades of Neglect. Reality of Housing, Land, and Property Rights in Syria." HLP Working Group. Research Paper. p.7.

<https://tda-sy.org/wp-content/uploads/2021/04/HLP-03-Informal-Housing-in-Syria-ENG.pdf>

it is beyond the scope of this report to give details on how these reforms should be carried out.

In the first part, the report presents the various types of HLP provisions that are usually included in peace agreements. It then presents typical transitional measures taken to facilitate and accelerate the processing of claims, and the different types of HLP mechanisms that have been used in various contexts. Finally, it presents how a range of issues relevant to the Syrian context (secondary occupants, forgery, women's rights, informal settlements, and reconstruction) have been addressed by international practice.

The methodology combines a literature review on the post-conflict mass-claim mechanism process and resolution of HLP issues, interviews of HLP experts who worked or still work in different international post-conflict contexts on HLP issues.

## I. Peace agreements, political settlement, and new Constitution

The necessity to address HLP issues within peace agreements is widely acknowledged. At the global political level, the UN Secretary-General called for “Restorative actions,” such as the inclusion of the right to return and restitution of housing, land and property in all future peace agreements.<sup>[8]</sup> In terms of international standards, the United Nations Principles on property restitution for refugees and displaced persons<sup>[9]</sup> (also called Pinheiro principles after the name of the rapporteur who presented them) confirm this necessity: Pinheiro Principle 22.4 states that “International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through inter alia the establishment of national procedures, institutions, mechanisms and legal frameworks.”

Provisions on HLP issues are very common in peace agreements and are considered a good practice. The issues most frequently included are the right to return home,<sup>[10]</sup> the right to restitution<sup>[11]</sup> and compensation, and the adoption of land governance measures to address pre-conflict structural issues. The right to property also appears rather frequently.<sup>[12]</sup> It specifies that limitations to property rights can only be made in the public interest, in accordance with the law and against fair compensation. The right to home and the right to housing feature in several peace agreements,<sup>[13]</sup> and are particularly relevant to the Syria context as these rights protect informal HLP rights. In contrast, the protection of customary or informal land rights is included only in a few peace agreements.<sup>[14]</sup> In such cases, the recognition, regularization, or registration of informal rights further to restitution is also considered a good practice.

In line with international standards and discourse, the majority of peace agreements referring to the right to restitution include provisions to set up a commission addressing HLP

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[8] UN Secretary General, Report on the protection of civilians in armed conflict, UN Security Council, S/2007/643, October 28, 2007, paragraph 59, c.

[9] UN Sub-Commission on Protection and Promotion of Human Rights, Resolution 2005/21, August 11, 2005

[10] Almost all the peace agreements reviewed since the 1990s include provisions on the right to return home or to the place of the original residence. The exceptions are Kenya, Côte d’Ivoire, and South Africa.

[11] At least 17 peace agreements include provisions on property restitution: Bosnia, Burundi, Colombian Croatia, Darfur (2006), Darfur (2011), Eastern Sudan, El Salvador, Georgia, Guatemala, Kosovo, Mozambique, Nepal, Philippines, Rwanda, Tajikistan, and Uganda.

[12] Bosnia and Herzegovina, Burundi, Colombia, Cyprus, Darfur, Eastern Sudan (2006), Mozambique, Myanmar, Philippines, South Africa, and Sudan (2005)

[13] Right to Home: Bosnia and Herzegovina, Burundi, Cyprus, Darfur, Philippines, Sudan. Right to housing; Nepal.

[14] Colombia, Uganda, Sudan, South Sudan, and Darfur.

issues.<sup>[15]</sup> The peace agreements of Bosnia and Herzegovina and Cyprus elaborate in more detail than others on the mandate of the HLP commission. In Bosnia and Herzegovina for instance, the commission is in charge of processing property restitution and compensation claims, determining the value of compensation, and administering abandoned property. The Commission does not recognize as valid any illegal property transaction or those made under duress during the conflict. The Cyprus peace agreement<sup>[16]</sup> has similar provisions but includes much more information on the rights of occupants to alternative accommodation, or the possibility for the occupant to buy the property from the owner. The extensive rights granted to occupants reflect the length of displacement in the Cyprus case. After almost 50 years of displacement, it was considered that it made more sense for original owners to be compensated rather than obtain restitution since it is likely that only a few of the original owners would like to return after so long.

Peace agreements tend to include measures to protect the HLP rights of groups at risk of dispossessions such as indigenous people,<sup>[17]</sup> women or displaced people.

In some agreements, women's rights are only mentioned through a general non-discriminatory clause (Myanmar, Sudan, 2011, Uganda), or by referring to the equal rights of men and women to property (Burundi, Sudan, 2005). The Guatemala, Colombia, and Darfur (2011) peace agreements go further by calling for the elimination of discrimination "in fact or in law"<sup>[18]</sup> against women in relation to land and housing. The Guatemala and Colombia peace accord also calls for measures to ensure equal opportunities for women to access credit, rental housing, and land ownership irrespective of their marital status.<sup>[19]</sup> Equal access to housing, including through reconstruction is also mentioned in the Guatemala and Darfur 2011 agreement.

While some peace agreements limit their scope to addressing violations that occurred during the conflict, others aim to also address pre-conflict issues by reforming the legal and institutional framework on land to improve tenure security or to repeal discriminatory legislation.<sup>[20]</sup> A significant number of peace agreements include provisions modifying the land governance framework.<sup>[21]</sup> When pre-conflict tenure insecurity is linked to unequal access to land, weak or corrupt land governance institutions unable to protect HLP rights, this

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[15] Burundi, Darfur (2006 and 2011), Rwanda, South Sudan (2015), Guatemala, Bosnia and Herzegovina, Croatia, Cyprus, Georgia, and Kosovo.

[16] The agreement was rejected by referendum but is mentioned here because it described in an extremely detailed manner how HLP rights should be addressed.

[17] See peace agreements for Guatemala, Colombia, the Philippines

[18] Guatemala (1995), Chapter IV, Article F.9

[19] Guatemala, 1996, Chapter I. B.11; Colombia, Final peace accord 2016, p.11

[20] The Guatemala and Bosnia and Herzegovina peace agreements commit to amending "abandonment laws" legislation that facilitated the dispossession of forcibly displaced people.

[21] 16 peace agreements include such provisions: Afghanistan, Burundi, Colombia, Côte d'Ivoire, Darfur (2011), El Salvador, Guatemala, Kenya, Kosovo, Mali, Nepal, Philippines, Rwanda, Somalia, Sudan, and Uganda.

type of structural reform is crucial to sustainably address the root causes of HLP disputes and prevent their re-occurrence.<sup>[22]</sup>

For the same reason, structural reform should also extend beyond land governance institutions, and concern the judiciary and democratic institutions. Since the 1990s, most peace agreements have also committed to respect human rights, democratic and rule of law principles and to reform their institutions accordingly.<sup>[23]</sup> This provides a good basis to ensure that the legal and institutional framework is able to protect HLP (and other) rights. In some cases, a transitional or new Constitution is included in the peace agreement to cement a new social contract.<sup>[24]</sup>

The inclusion of HLP issues into peace agreements and the level of details included depends on various factors:

- The political will of the parties to commit to respecting HLP rights
- External pressure to ensure inclusion of HLP issues
- The format and length of the agreement: Peace agreements come in many forms and shapes and while some are limited to 5 pages, others have more than a hundred.

Depending on the above, the peace agreement may be very brief, with peace understood as the absence of military violence, or it can be a more detailed and long-term peace agreement based on a human rights-based approach and that would include many of the provisions mentioned above. When the political situation is not conducive to the inclusion of extensive HLP provisions, like in Syria until now, the necessity to reach an agreement may impose some compromise and limit the scope of HLP provisions. These provisions should be chosen carefully as they provide a basis for future discussions and reforms, as part of a transitional justice process or in the context of legislation addressing HLP issues. This strategy can be a way for the parties not to lose face when tensions are still high, while still preserving some margin to elaborate on some of the essential aspects that could be included.

For example, if HLP restitution is mentioned but there was no agreement to include a reference to the establishment of an HLP dispute resolution mechanism, the wording around the implementation of the right to restitution can be sufficient to elaborate on these issues

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[22] See also, Odlum, Alex. Land and Property Provisions in Peace Agreements, International Organization for Migration, Land, Property and Reparations Division. 2014, p.5.

[23] Christine Bell, Peace Agreements and Human Rights, 2000, p.233

[24] Bosnia and Herzegovina, Burundi, Cyprus, Kosovo, Sudan, and South Sudan.



through policies or legislation after the peace agreement is signed. This being said, it is important to include at least some key principles. While the inclusion of HLP provisions does not guarantee their implementation, they put the issue on the agenda, provide a roadmap for action and basis for follow up as part of the monitoring of the peace agreement's implementation, by international monitors such as the United Nations or a group of States.

Several peace agreements include provisions to create human rights or transitional justice commissions. Even if the peace agreement does not explicitly include HLP in the mandate of the commission, a general formulation calling the commission to contribute to the acknowledgement and redress of violations can leave the door open for transitional justice commissions to address HLP issues. This has been the case in the Philippines, Kenya, and Colombia, where land issues were identified by transitional justice commissions as a root cause of the conflict and the object of numerous violations to be addressed in the post-conflict phase. In the case of the Philippines and Colombia, this resulted in the creation of dispute resolution mechanisms addressing HLP disputes through restitution, compensation, or moral recognition of harm for violations that took place before the conflict or at its early stage. <sup>[25]</sup>

In the Syrian context, the following provisions would be particularly relevant from an HLP perspective:

- the right to return home for refugees and IDPs
- the right to restitution and compensation including for holders of informal land rights
- Protect the right to adequate housing and home (in order to protect informal HLP rights) notably in urban areas through adequate planning and policies
- the requirement to create an HLP dispute resolution mechanism (ideally under impartial international supervision)
- Initiate a transitional justice process (which can include HLP restitution measures)
- the creation of a new Constitution (which could include HLP provisions)
- the need for specific measures to address discrimination against women in fact or in law and unequal access to housing, reconstruction, ownership, inheritance, and credit.
- Undertake legal and institutional reform to address pre-conflict and war-time legislation and policies that either discriminate against certain groups (like displaced persons, detainees, people in border areas) or contribute to tenure insecurity (urban planning legislation, expropriation laws)

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[25] The Colombian conflict lasted more than 40 years and HLP violations in the Philippines also go back to several decades ago which makes it difficult to provide restitution.

- Non-recognition of property transfers done under duress or in a fraudulent manner during the conflict
- Measures to review and restore the HLP rights canceled during the conflict, notably for groups at risk such as displaced persons, women, missing persons, detainees, and their relatives.

### Lessons for Syria

Despite standards and an established international practice including HLP issues in peace agreements, HLP has remained a side topic in the Syrian peace talks. A study shows that in the various peace talks forums such as the Civil Society Support Room or the Constitutional Committee, HLP was only discussed as a component of other primary issues like return, detention, counterterrorism, or reconstruction.<sup>[26]</sup> HLP also does not appear in any of the track 1 official documents such as the 6 points plan, the Geneva Communiqué, or the 4 thematic baskets guiding Intra-Syrian talks. The only exception is the Syria Small Group<sup>[27]</sup> Statement linking reconstruction assistance to a political settlement in 2018.<sup>[28]</sup> Before law 10/2018, this could have been due to the fact that HLP issues were seen as a complex and technical topic, not necessarily well understood. However, the wealth of publications that followed law 10/2018 clearly underlined the relevance of the issue to the peace process and will hopefully increase the pressure on the Syrian regime to address such issues. As shown by law 10/2018, including provisions on urban planning and expropriation is critical in the Syria context, although there are not many precedents of this in other peace agreements.<sup>[29]</sup>

The second main obstacle is the lack of political will of the Syrian regime to make any progress on peace talks. The fact that the Syrian regime seized significant parts of the territory provides little incentive to make concessions to the peace process, notably on HLP issues in peace agreements. It is therefore key for parties to the peace process to highlight to what extent HLP issues are considered an essential component of peace agreements by international practice.

It is essential for civil society actors, political opposition, and the international community to insist on the inclusion of HLP issues into peace talks, as it offers a strong basis for future political action. Depending on the power relation between the Syrian regime and

[26] Amr Shannan, HLP issues in the Syrian peace talks, 2020, unpublished

[27] The Syria Small group was created in 2018 and consists of an informal group of European states (Germany, France, UK), Saudi Arabia, Jordan, Egypt, and the USA. Their objective was to put pressure on the UN and Astana group to make progress on the peace process and the set-up of a Constitutional Committee.

[28] Barbara McCallin, Presentation at ILAC HLP training: HLP in the Syrian Peace Process, February 19, 2019, Gaziantep

[29] Out of 34 agreements reviewed, only 5 refer briefly to urban housing. Guatemala and Sierra Leone include provisions on the necessity to provide affordable and quality housing to rural and urban poor. The Burundi agreement requires an inventory of urban housing to plan reconstruction, and the Philippines and Kosovo have provisions granting competency on urban planning to the new political entity created (Bangsamoro province and Kosovo province).

external pressure, this might be limited to a few basic elements more restricted than the list suggested above. In case of failure, it is also possible to address HLP issues outside of the peace agreement, as part of a transitional process, post-conflict reform, or as a result of a conditionality linked to recovery and reconstruction assistance.

## II. Transitional measures: reparative and transformative approach

Transitional justice refers to the measures taken by countries emerging from periods of conflict to address large-scale violations of human rights. It aims to identify, acknowledge, and redress human rights violations.<sup>[30]</sup> Transitional justice can provide reparation to victims through various means, such as punishing perpetrators, providing restitution, compensation, or establishing facts and acknowledging past violations through Truth and Reconciliation Commissions. In addition to this reparative dimension, transitional justice can also have a transformative objective.

One of the objectives of transitional justice is to prevent the repetition of violations through the instauration of the rule of law and accountability. This is why transitional justice is also concerned with the reform of institutions (parliament, police, military, intelligence, justice) according to human rights and democratic principles. This type of reform contributes to sustainable peace by restoring confidence and fostering reconciliation.

Addressing the violations of HLP rights is an important component of transitional justice. The UN Security Council report on the rule of law and transitional justice highlights the relevance of HLP redress to the restoration of the rule of law, national reconciliation and sustainable peace:<sup>[31]</sup> “Peace and stability can only prevail if the population perceives that (...) denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner.”<sup>[32]</sup> The UN report recommends addressing property disputes to restore the rule of law.

This section presents a range of typical transitional justice measures or procedures that have been implemented in countries recovering from forced displacement and conflict and that could be useful in the Syria context. It will describe how transitional processes can contribute to addressing HLP issues. If a transitional justice commission is set up, it can help identify HLP violations as part of its work to establish facts of violations and make recommendations to address HLP violations through the creation of a dedicated mecha-

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[30] ICTJ website, “What is Transitional Justice?” Accessed 06/09/21

[31] UNSC S/2004/616, August 03, 2004

[32] Ibid, p.9.

nism. Transitional measures can also take place without a transitional justice commission being created. In such cases, transitional measures can be adopted through legislation or policies. In relation to HLP, measures include the review and repeal of legislation with a discriminatory impact or intent or violating human rights, the creation of an HLP dispute resolution mechanism, and the adoption of measures facilitating the processing of HLP restitution claims.

Transitional processes can take many different forms depending on what is politically feasible. In some cases, this will be a high-profile process acknowledged and publicized at the political and public levels. In countries where political sensitivities are high, transitional measures may be taken without being named as such and can be integrated into post-conflict legislation dealing with HLP issues. Such measures can include the establishment of truth commissions, reparation programmes dealing with the dispossession of HLP rights and the redress of violations through restitution, compensation, or other remedies.

## 1. Establishing facts and acknowledging violations

Truth and reconciliation commissions are one of the typical features of transitional justice processes. They aim at building a common understanding of past violations which represents a moral recognition of the harm done and can give rise to other forms of reparation such as restitution and compensation. Transitional justice commissions in Colombia, Kenya, the Philippines, and South Africa have recognized the role of land grievances in the conflict and the need to acknowledge and provide a remedy to the wrong done to specific groups in that regard. The process can help identify patterns of violations in different parts of the country as well as the profile of perpetrators and victims. This information can then feed into the design of an HLP dispute resolution mechanism by ensuring that the mechanism adequately addresses the different types of violations identified.

The collection of testimonies and claims of violations should be as participatory as possible to better contribute to the accuracy of facts and to social cohesion. To facilitate wide participation, the Colombian transitional justice processes offered the possibility for people to report violations to an online secure platform.<sup>[33]</sup>

Building on the Colombia experience, some pilot projects invite victims of HLP right violations to document their rights and report the violation onto a mobile application. The application also provides information on alternative evidence that can be used if people do

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[33] Jean-Marie Chenou, Lina P. Chaparro-Martínez and Ana María Mora Rubio, “Broadening Conceptualizations of Transitional Justice through Using Technology: ICTs in the context of Justicia y Paz in Colombia,” *International Journal of Transitional Justice*, vol. 13, No. 1 (March 2019).

not have formal HLP documentation.<sup>[34]</sup> This participatory process allows victims to play an active role in their restitution claims.

### Lessons for Syria

Considering the current political dynamics and positioning of the Syrian regime, it is difficult to imagine a high profile and in-depth transitional justice process, although this should be advocated for. However, as shown above, several transitional measures supporting remedies to HLP violations can be taken without necessarily being part of an official transitional justice process. In terms of international accountability, institutions like the Commission of Investigation (COI) on Syria and the International, Impartial and Independent Mechanism for Syria (IIIM) are investigating, collecting, and analyzing evidence of international crimes committed in Syria. The COI investigates alleged crimes committed by all parties of the conflict on the Syrian territory and documents the circumstances of these violations and tries to identify those responsible for these violations. The IIIM collects and analyzes information and evidence of international crimes committed in Syria to assist criminal proceedings in national, regional, or international courts or tribunals that have or may in the future have jurisdiction over these crimes. There have also been in Syria civil society initiatives to support the online documentation of HLP rights. However, the success has been limited so far. The use of online tools or mobile applications to document HLP rights or report violations is confronted by the generalized distrust and fear of Syrians that these tools could be used by the regime as a tool for further reprisals. Unless confidence is restored, it will be difficult to overcome this lack of trust directed at the Syrian regime but also at the international community. Efforts to restore the confidence in actors managing the online database or in the security of the system are necessary for this method to be successful.

## 2. Review, repeal or amend legislation

Legislation is often used during the conflict to dispossess people. This can be done by using pre-conflict laws or by adopting new laws during the conflict. In the post-conflict phase, it is often recommended to review the legislation related to HLP to identify aspects that are discriminatory or that negatively affect tenure security. Based on the review, it can be decided whether the law needs to be repealed or amended. This approach is supported by Pinheiro principle 18, dedicated to legislative measures. Principle 18 provides that States should ensure the right to HLP restitution through all legislative means, including through the adoption, amendment, reform or repeal of relevant laws, regulations, or practices.

[34] John Unruh, Emily Frank, and Matthew Pritchard, "A digital advance for housing, land and property restitution in war-affected States: leveraging smart migration," *Stability: International Journal of Security and Development*, vol. 6, No. 1 (October 2017).

This review should concern pre-war legislation as well as laws issued during the conflict. The review is an opportunity to reform discriminatory or inadequate laws to address past violations, but also to set the basis of a new social contract to restore confidence between the State, its institutions, and citizens. It is a contribution to the rule of law and peace-building. Laws subject to review or reform can relate to various topics: land registration procedures, creation of an HLP dispute resolution mechanism, expropriation laws, counter-terrorism law, or law protecting refugees and IDPs. The international community often provides technical assistance in the drafting of HLP legislation related to restitution. This has been the case in Albania, Bosnia-Herzegovina, Georgia, and Kosovo.<sup>[35]</sup> The Pinheiro principles invite States affected by conflict to request technical assistance and cooperation from the international communities.<sup>[36]</sup>

## 2.1. Pre-conflict laws

When pre-conflict HLP laws discriminate against a particular group, it is a common practice to repeal such legislation and to address the HLP problems that resulted from this discrimination. This was the case in Kosovo.

In the Serbian province of Kosovo, Yugoslav laws systematically discriminated against the Albanian population of Kosovo. As a result, Kosovo Albanians' right to acquire or transfer property was limited. To avoid restrictions, people engaged in numerous informal property transactions without any legal value. At the end of the Kosovo conflict in 1999, the United Nations Mission in Kosovo (UNMIK), the UN mission in charge of administering Kosovo after the secession of the province from Serbia, adopted Regulation 1999/10 "On the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property."<sup>[37]</sup> The regulation repealed two pre-conflict discriminatory laws against Albanians from Kosovo.

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[35] FAO, IDMC, OCHA OHCHR, UNHABITAT, UNHCR, Handbook: Housing and property restitution for refugees and displaced persons: Implementing the Pinheiro principles, 2007, p.86

[36] Pinheiro principles 12.4: "States should, where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes responsible for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies". See also principle 22 on the role of the international community, including international organizations. It includes a provision on a peace agreement, peacekeeping, and sharing of expertise.

[37] UNMIK Regulation 1999/10 (October 20, 1999) On the Repeal of Discriminatory Legislation Affecting Housing and Property in Kosovo. The two laws are The Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of the Republic of Serbia 22/91 of April 18, 1991); and The Law on Conditions, Ways and procedures of Granting Farming Land to Citizens Who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija (Official Gazette of the Republic of Serbia, 43/91 of July 20, 1991).

The repeal of these laws gave the right to the Kosovo Property Commission, in charge of processing the post-conflict property claims, to review and validate the informal sales that resulted from these pre-war laws. Further to this regulation, UNMIK regulation was established by the Housing and Property Directorate (HDP), an independent body mandated to coordinate housing laws and policies, solve HLP disputes, and promote property restitution.<sup>[38]</sup> This proved the determination of the international community to have a sustainable approach to discriminatory laws leading to dispossession, acting both on legislation enforced before and during the conflict.

### Lessons for Syria

In the Syria context, the Border Legislation<sup>[39]</sup> limits the right of populations living in border areas to transfer property by imposing certain restrictions, notably a prior approval involving various ministries and the Governor.<sup>[40]</sup> This situation affects all residents in border areas but particularly Syrian Kurds who tend to live in such areas and who would have more trouble than others to obtain this authorization.<sup>[41]</sup> As a result, like Kosovo Albanians, they tend to sell and buy property informally. Since these properties are not registered in their names, it makes buyers vulnerable to dispossession and can complicate their efforts to prove their ownership rights in the context of a restitution or compensation process.

It would be useful to examine to what extent measures similar to the ones used in Kosovo (repeal of law and recognition of pre-conflict informal transactions) could be adopted in relation to the border legislation or other problematic pre-conflict legislation.

[38] Displacement Solutions and NRC. 2018. "Housing, Land and Property Rights and Peace Agreements: Guidance for the Myanmar Peace Process." February 2018. p.18 <https://www.nrc.no/globalassets/pdf/reports/myanmar/hlp-rights-and-peace-agreements-guidance-for-peace-negotiators-in-myanmar-1-1gd.pdf>

[39] Syria issued several laws limiting sale and purchase of property in border areas. Law 41/2004 amended by Presidential decree 49/2008 restricts the sale and purchase of property in certain border areas. Presidential decree 43/2011 includes similar restrictions in borderland areas which are defined as land within 25km of the Turkish Syrian border. Hasakah, Daraa and Qunaitra are also considered to be part of the "borderland." Source: Syrian Legal Network, A. Al Zien, Legal obstacles to housing, land and property rights in Syria, 6 March 2019, p.5 and Pax/Impunity Watch, Policy brief: Violations of housing, land and property rights: An obstacle to peace in Syria, March 2020, p.5

[40] The Day After, Khaled El Helou, Riyad Ali, Mohamad Anwar Majanni, The property issue and its implications for ownership rights in Syria, June 2019, p.51. The application for approval is to be submitted to the Directorate of Agriculture, which refers it to the governorate, and from there to the Ministry of Defense (Military Intelligence) and the Ministry of Interior (Political Security) to seek their opinion. The decision is then made by the governor.

[41] GIZ, Barbara McCallin, Challenges, and options for dispute resolution mechanisms: safeguarding HLP rights in the context of the Syrian conflict, July 2021, p.27 and 32, unpublished.

## 2.2 Conflict-related discriminatory laws and the role of the international community

It is frequent in many countries to adopt legislation contributing to dispossession during the conflict. The adoption of abandonment laws aiming at administering houses left empty by forcibly displaced people is one example of this. Such laws were passed in Bosnia and Herzegovina, Croatia, and Guatemala. The repeal of such laws was first included in the Bosnia<sup>[42]</sup> and Guatemala peace agreements and implemented through legislation afterwards.

### Guatemala

In Guatemala, article 2.9 of the Agreement on the resettlement of population groups uprooted by the armed conflict (1994) stipulated that “In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment and to ratify the inalienable nature of landholding rights. In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions.”

### Bosnia and Herzegovina

During the conflict in Bosnia and Herzegovina, authorities in each political entity adopted abandonment laws which allowed them to consider that the properties of people who fled were “abandoned.” The political entity could therefore administer these properties and allocate them to other displaced persons in need of housing. Since the properties were usually abandoned by minority groups and allocated to groups belonging to the ethnic majority, these laws were reinforcing the political base and consolidating ethnic cleansing. They also represented a key challenge to minority return after the conflict.

Bosnia and Herzegovina illustrate another typical aspect of discrimination through legislation: the implementation of procedures not adapted to the circumstances of the conflict and forced displacement. In 1996, Republika Srpska (RS), the Serb entity within Bosnia, issued a ‘Law on Use of Abandoned Property’ that permanently canceled the right of holders of socially owned apartments who had not used their property for more than 6 months.<sup>[43]</sup> The 6 months rule corresponded to the function of socially owned apartments which was to fulfill housing needs. Therefore, if somebody was not using the flat, it meant there was no need and the flat should be reallocated.<sup>[44]</sup> While such a rule makes sense in a normal situation, applying such a rule in a context of massive, forced displacement, where

[42] Dayton peace agreements, Annex 7. Return of refugees and displaced persons, article I.3.a

[43] [http://www.ohr.int/ohr\\_archive/law-on-the-cessation-of-application-of-the-law-on-the-use-of-abandoned-property-5/](http://www.ohr.int/ohr_archive/law-on-the-cessation-of-application-of-the-law-on-the-use-of-abandoned-property-5/)

[44] Socially owned properties were located in buildings administered by state-owned companies or other public bodies. They were allocated to employees of companies who contributed to a fund giving access to the building. These employees could keep the occupancy rights for an indefinite period, as well as transmit them to household members after the main holder passed away.



half of the population was forcibly displaced, clearly discriminates against displaced persons, in this case, non-Serb minorities. The cancellation of their occupancy right created an additional obstacle to return since it prevented their restitution.

In 1998, the post-conflict ‘Property Laws’<sup>[45]</sup> supported by the international community made these ‘abandonment laws’ null and void. Among these property laws, the ‘Law on the Cessation of Application of the Law on the Use of Abandoned Property’ granted owners, possessors and users of real property the possibility to repossess it with all the rights they had prior to April 30, 1991, or before the real property became abandoned.<sup>[46]</sup> The adoption of such laws followed the provision of the Dayton peace agreement which called for the repeal of domestic legislation and administrative practices with discriminatory intent or effect.<sup>[47]</sup> These laws created an environment legally conducive to return and restitution. But it did not address concerns related to the security issues or discrimination upon return. As a result, restitution did not necessarily result in return as people who would return to areas where their group would be a minority were fearful of discrimination and attacks against them. The relative impunity that prevailed after the conflict resulted in many displaced being reluctant to return for fear of coming across perpetrators of human rights violations.

Croatia sadly illustrates the crucial importance of international pressure to obtain the repeal of discriminatory laws. The country went through a similar legal reform but fell short of providing restitution to holders of socially owned flats. During the war, it adopted abandonment legislation designed to favour persons of Croat ethnic origin. Under the ‘Law on Renting Apartments in the Liberated Areas’ and the ‘Law on Temporary Taking Over and Administration of Specified Property’, ethnic Croats who fled their homes during the fighting of the early 1990s were considered to have justified reasons for doing so, while the flight of other ethnic groups (especially Croatian Serbs) was defined as “voluntary.” Consequently, tens of thousands of Croats lost the ability to return to their pre-conflict homes. In the end, the Croatian Supreme Court declared unconstitutional a law that attempted to revoke ownership rights over private property for owners who had not lived in their property for more than ten years.<sup>[48]</sup> However, the law canceling occupancy rights to socially owned apartments on the basis of their lack of use during the conflict was never repealed

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[45] The adopted laws were: Law on the Cessation of the Application of the Law on Abandoned Apartments (1998) (Bosnia and Herzegovina), Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (April 03, 1998) (Bosnia and Herzegovina), Law on the Cessation of the Application of the Law on Abandoned Property (December 11, 1998) (Republika Srpska). Displacement Solutions and NRC. 2018. “Housing, Land and Property Rights and Peace Agreements: Guidance for the Myanmar Peace Process.” February 2018. p.21. <https://www.nrc.no/globalassets/pdf/reports/myanmar/hlp-rights-and-peace-agreements-guidance-for-peace-negotiators-in-myanmar-1-1gd.pdf>

[46] OHCHR. 2007. “Housing and Property Restitution for Refugees and Displaced Persons. Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles.’” p.34. [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

[47] Bosnia and Herzegovina, Dayton Peace Agreement, Annex 7. Return of refugees and displaced persons, article I.3.a.

[48] OHCHR. 2007. “Housing and Property Restitution for Refugees and Displaced Persons. Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles.’” p.32. [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

and rights holders were never entitled to repossess their flats; nor were they entitled to compensation. They were instead allowed to apply for alternative housing.<sup>[49]</sup> Moreover, the deadline for holders of private property to apply for repossession was also not adapted to the circumstances of displacement. It was too short and therefore excluded many from restitution.<sup>[50]</sup>

Kosovo, Bosnia and Herzegovina and Croatia all came from countries or provinces that separated from Former Yugoslavia, they had the same institutions and legal framework and endured a conflict with similar characteristics: massive displacement along ethnic lines, and discriminatory legislation leading to dispossession. Kosovo and Bosnia adopted laws repealing these laws while Croatia did not. The main reason is that Croatia was not subject to the same level of international pressure. Kosovo was directly administered by the UN which had the power to adopt laws. In Bosnia and Herzegovina, the implementation of the Dayton peace agreement (DPA) was ensured by the Office of the High Representative which benefited from binding powers allowing the High Representative to repeal, amend or adopt laws and to dismiss officials who were obstructing the implementation of the DPA. Several dismissals of mayors took place after they refused to implement restitution laws.

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[49] UNHABITAT, Housing and property rights in Bosnia and Herzegovina, Croatia and Serbia and Montenegro, 2005, p.76

[50] Ibid

## Lessons for Syria:

Syria presents similarities with the situation described above in the sense that some HLP rights have been canceled due to the implementation of laws and procedures not adapted to the conflict situation. The Syrian regime adopted administrative and procedural requirements that have a discriminatory impact on displaced people.<sup>[51]</sup> The requirement to obtain a security clearance prior to returning, selling, obtaining power of attorney, or claiming ownership rights prevents people from defending their rights. Even if we assume that they are aware of the right procedures, the security situation and displacement make it difficult for people to obtain the right documentation in the place of origin and to respect the deadlines provided by law to contest a decision of seizure, expropriation, valuation of property or confiscation. Similarly, dispossession or seizures resulting from the non-payment of mortgage or other obligations could fall under the category of obligations impossible to fulfill in the context of force majeure and therefore be canceled.

There have been rumors that the Syrian regime would reactivate a provision of the law on Amiri land (public land allocated to individuals for agricultural use) that provides to cancel the rights of those not cultivating their land for more than 5 years.<sup>[52]</sup> This would of course have a disproportionate impact on displaced people. Many other laws adopted during the conflict on counterterrorism, military service and expropriation or urban planning resulted in abusive dispossession.<sup>[53]</sup>

International practice shows that it is common and accepted to review and repeal such laws in the post-conflict phase and the dispossession decisions that resulted from laws that are either unfair or include provisions not adapted to the circumstances.

The other lesson is that international pressure and monitoring is crucial to the success of the legislative and restitution process, as illustrated by the Kosovo, Bosnia, and Croatia case.

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[51] For an analysis of Syrian laws affecting HLP rights see, among many other sources: TDA, The property issue and its implications for ownership rights in Syria, 2019; Pax/Impunity Watch, Policy brief: Violations of housing, land, and property rights: An obstacle to peace in Syria, March 2020; Pax/Impunity Watch, Legal obstacles to housing, land and property rights in Syria, March 2019.

[52] Syria report, Explained: Amiri lands, March 03, 2021

[53] ILAC, Policy brief: Dispossession of housing, land and property in Syria, publication pending

## 2.3 Addressing the root causes of HLP challenges: a global and transformative approach to HLP issues

A sustainable approach to HLP issues often requires going beyond a reparative approach limited war-time dispossession. Analyzing and reforming the legal and institutional framework related to HLP can help address the root causes of many HLP challenges and prevent future HLP disputes.

The Colombia and Guatemala cases illustrate this comprehensive approach aiming to address wartime HLP violations and pre-conflict inequalities in terms of access to land. Both countries suffered from very unequal access to land prior to the conflict with a small number of large landholders holding a significant proportion of the land and a majority of landless peasants. These inequalities were considered the root cause of the conflict. Both countries included provisions in their peace agreement, adopted laws and created institutions to ensure restitution and reform access to land in a more equitable way. The restitution aspect has been implemented to a certain extent in Guatemala and is still underway in Colombia. However, the land reform has failed in Guatemala and is suffering delays due to a lack of adequate funding in Colombia.<sup>[54]</sup> While the approach was good, political, and economic interests have limited the impact of the reform. In Guatemala, the failure to address these inequalities in the post-conflict phase resulted in the perpetuation of land disputes. In the absence of a strong justice system, unresolved land issues resulted in continued low scale displacement and violence.<sup>[55]</sup>

Despite limited implementation on the land reform side, the Guatemala and Colombia cases present interesting measures. Both countries (Guatemala from 1996 and Colombia since the 2016 peace agreement) intended to improve access to land for small rural landholders. A trust fund in Guatemala and a land fund<sup>[56]</sup> in Colombia were created with the objective to distribute land to landless, vulnerable individuals or victims of the conflict. In both countries, programmes facilitating access to land through subsidies and credits

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[54] By 2021, the “Land Fund” had received less than 7 percent of the 3 million hectares it is supposed to distribute by 2028. Source: WOLA, Policy recommendations: the Peace Accord - Rural reform and the Drug Chapter. July 20, 2021. <https://reliefweb.int/report/colombia/policy-recommendations-peace-accord-rural-reform-and-drug-chapter>

[55] Oxfam, Unearthed: Land, power and inequality in Latin America, November 2016, p.16

[56] The Colombia Land Fund is composed of land obtained further to expropriation, restitution of public State land, land obtained further to the declassification of protected forests, or land donated through international resources. Source: Andres Fuerte Posada, Risks for the peace process in Colombia the land fund and prospects for community and smallholder access to land, paper prepared for Annual World Bank Conference on Land and poverty, 2018

for purchasing land were initiated and combined with technical assistance.<sup>[57]</sup> In addition, these countries linked restitution and compensation to the land reform by ensuring the recognition and registration of informal land rights into the cadastre after restitution. Such measures combine a reparative approach with a transformative one, where restitution is complemented by stronger tenure through the regularization and registration process. This approach is supported by the Pinheiro principles:

**Principles 15.2:** “States should ensure that any (...) pronouncement regarding the rightful ownership of, or right to, housing, land and property is accompanied by measures to ensure registration or demarcation of that housing, land and property, as is necessary to ensure legal security of tenure”

A transformative approach can also link restitution and compensation to reform of land administration registries. Reviewing the status of the land administration system before and after the conflict is the first step to identifying and responding to pre-existing shortcomings. Regardless of its pre-war status and reliability, land administration institutions and registries are usually negatively affected by the conflict as officials may be displaced, and registries may have been damaged, lost, or tampered with. Post-conflict legal and institutional reform related to land administration and registries represents an opportunity to fix both conflict and pre-conflict issues.

The relevance of this approach is confirmed by at least 16 peace agreements which included provisions calling for a reform of or modifications to the land administration framework.<sup>[58]</sup> The reform usually concerns a range of measures to regulate the use and management of land and natural resources and to protect the rights of groups or individuals vulnerable to dispossessions, notable holders of customary or informal land rights. In Guatemala, one of the objectives of the reform was to simplify registration procedures to facilitate access to vulnerable groups. In South Sudan, the purpose was to reinforce social cohesion around the management of land. The peace agreement calls for an in-depth national debate to review the land policy and achieve consensus over land tenure and how to address issues of land grabbing or other malpractices.<sup>[59]</sup>

Kosovo presents an interesting example of how a restitution programme was initiated in

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[57] Mauro, Annalisa, and Michel Merlet. 2003. “Access to Land and Recognition of Land Rights in Guatemala:” International Land Coalition.

<https://humanitarianlibrary.org/sites/default/files/2013/05/kpguatemala03.pdf>

[58] Afghanistan, Burundi, Colombia, Côte d’Ivoire, Darfur (2011), El Salvador, Guatemala, Kenya, Kosovo, Mali, Nepal, Philippines, Rwanda, Somalia, Sudan, and Uganda.

[59] South Sudan peace agreements (2015), Chapter 4. Resources, economic and financial management. Article 4.2.2.1

parallel to the complete reform of the land administration system in the post-conflict phase. Further to its secession from Serbia in 1999, and the conflict that ensued, Kosovo was administered by the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Provisional Institutions of Self-Government in Kosovo (PISG). The pre-conflict land administration had been characterized by weak institutions and legal discriminations restricting the registration of transactions done by Kosovo Albanians. Moreover, the conflict resulted in the destruction or loss of many registries. UNMIK and UNHABITAT, with the support of bilateral donors, provided technical support to the PISG to create the Kosovo Cadastral Agency (KCA) in charge of re-establishing a land cadastre and a functioning property right register.<sup>[60]</sup>

A review of the land administration sector identified the following problems:

- Numerous informal land transactions
- Spread of urban informal settlements
- Lack of security and certainty of ownership
- How to convert possession and occupancy rights into registered rights?
- Need to promote land consolidation in rural areas which were characterized by small and scattered agricultural plots
- Need to introduce a fair and equitable property tax system.

In order to address these problems, the PISG developed a land administration policy involving a wide range of actors and ministries: the KCA, the Ministry for Environment and Spatial Planning, the Ministry of Agriculture, the Directorate for Mines and Minerals, Ministry of Finance and Economy, and Municipal Cadastral Offices. International funding provided technical assistance and training to various officials.<sup>[61]</sup> A lesson learned from the Kosovo example is that the various actors realized that addressing the shortcomings of the land registry was necessary not only for the long-term sustainability of the system but also to support and complement the property restitution process.

The reform of land administration procedures can also contribute to addressing pre-conflict inequalities, notably with regard to women's HLP rights. Several practices have improved women's HLP rights by jointly registering men and women upon transfer and sale of property, or as part of restitution and formalization processes. Positive measures include the

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[60] Bengt Andersson, Murat Meha, Land administration in Kosovo- Practice in cooperation and coordination. Paper produced for the UN/ECE WPLA and FIG Workshop on Spatial Information Management (SIM) for Sustainable real Estate market- best practice Guidelines on Nation-wide Land Administration. Athens, Greece, 28-31 May 2003

[61] Ibid. For more information, see also: D. Todorovski, J.Zevenbergen, P.van der Molen, Conflict and post-conflict administration- The case of Kosovo, 2016. Survey review, 48/350, pp.316-328

recognition of traditional and religious marriages (Mozambique), the systematic registration of women and children on the property title which allows circumventing the problem of unequal inheritance rights (Rwanda), the recruitment of female land registration officers and their participation in information campaigns (India). This last measure resulted in increased requests for registration as women felt more comfortable approaching female officials.<sup>[62]</sup>

The Pinheiro principles support a proactive gender strategy to support women's HLP rights and equal rights in terms of ownership, security of tenure, access to inheritance and housing. It also includes specific recommendations in relation to joint ownership:

**Principle 4.2:**

“States should ensure that housing land and property restitution programmes, policies and practices recognize the joint ownership rights of both the male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.”

**Lessons for Syria:**

The comprehensive approach described above is well suited to the Syria context. A review of the Syrian pre-conflict and wartime HLP legislation should be conducted to identify which laws should be repealed and/or modified.<sup>[63]</sup> The review should include war-time legislation and pre-conflict legislation where relevant.

Considering the wide disconnect between the content of the land registries and the reality of possession, and the number of informal transactions before and during the conflict, it is imperative to review the registration system in a way that allows updating registries through a process of regularization of informal rights. The criteria for this process need to be agreed upon but a simplification of registration procedures would certainly help. Syria presents many problems similar to the ones identified during the review of the Kosovo land administration sector (numerous informal transactions, informal urban settlements, fragmentation of rural land) so a similar coordinated approach with international technical assistance could be beneficial.

Policies and laws related to urban housing, urban planning, and expropriation should also be reviewed to address the serious pre-conflict shortcomings in terms of the provision of urban housing for low-income residents. The informal constructions that resulted from inadequate policies and cumbersome registration process exposed residents of informal settlements to forced evictions without adequate compensation and contributed

[62] World bank Land and conflict: Thematic guidance note 03: Protecting and strengthening the land tenure of vulnerable groups, June 2018, p.14

[63] The reports published within the framework of the “Reality of Housing, Land and Property Rights in Syria” project by the HLP Working Group of The Day After are a good basis for this identification. <https://tda-sy.org/2021/04/15/the-state-of-housing-property-and-land-rights-in-syria/>

to the March 2011 uprising.

A proactive policy to encourage a systematic registration of ownership for both spouses would strengthen women's HLP rights and limit the consequences of unequal inheritance legislation.

When looking at pre-conflict issues, rural land policies and the situation of rural areas could also be reviewed. A reflection around the economic and social impacts of the 1958 land reform and "counter-reform" laws issued in the 2000s is necessary. Indeed, if the land and agrarian reforms improved the living conditions of former landless peasants, it was not an entire success. The degradation of living conditions in rural areas driven by the fragmentation of land parcels attributed to land reform beneficiaries, and the failure of collective farms contributed to the urban exodus and informal settlements. It also triggered a strong feeling of injustice among former large landowners which has remained vivid until today. The legislation protecting tenants was so strong that it only left a very limited margin for the owners to increase the rent or dispose of their land easily. On the contrary, the reforms enforced in the 2000s, aiming at liberalizing and boosting the economy of rural areas, also fed a feeling of injustice among a part of the rural population: Decision 83 of 16 December 2000 which redistributed State farms after their dismantlement enabled a part of former large landowners to get their land back and also contributed to creating a new class of rich agricultural investors who constituted large rural exploitations, which was at the opposite of the Baathist goals with land reform.<sup>[64]</sup> The "counter agrarian reform" Law 56/2004 was also implemented in the context of the liberalization of the economy supported by Bashar al-Assad and aimed at boosting investments in rural areas. It stopped the automatic renewal of tenancy contracts. Thanks to this law, large landowners whose land was illegally occupied since 1970 by some tenants could sue these illegal tenants in civil court while they previously had to go through courts created at the time of the land reform and which were perceived as biased towards tenant farmers. As a consequence, a dozen cases were won by former large landowners. Many others solved their solutions outside of courts and got their land back or were compensated.<sup>[65]</sup> However, it also enabled landowners to cancel sharecroppers' contracts which were previously renewed from one generation to the other.<sup>[66]</sup> The eviction could be done without any compensation in case the contract was only oral. The implementation of the law resulted in the eviction of sharecroppers and led to real estate speculation in rural areas bordering cities and villages.<sup>[67]</sup> This law, therefore, favored large landowners at the expense of tenants, who often had invested this land by planting trees and building houses on this land too. It faced strong opposi-

[64] Ababsa, Myriam: 'Crise agraire, crise foncière et sécheresse en Syrie (2000-2011)', 2014, in Longuenesse, Élisabeth and Roussel, Cyril (eds.) *Développer en Syrie: Retour sur une expérience historique*, Presses de l'Ifpo, Beirut. Available at: <http://books.openedition.org/ifpo/6549>

[65] Gonzalez, Javier. "Land, housing occupation and destruction in a strategic area: The case of al-Qusayr in Syria" in Baumann Hannes (ed.) *Reclaiming Home. The struggle for socially just housing, land and property rights in Syria, Iraq and Libya*, Friedrich Ebert Stiftung, 2019. <http://library.fes.de/pdf-files/bueros/tunesien/15664.pdf>

[66] *ibid*

[67] *ibid*



tion in Syria and Bashar al-Assad amended the text<sup>[68]</sup> one month after the beginning of the uprising in April 2011. Such examples show that a reflection on the consequences of all the land/agrarian reforms and “counter-reforms” laws, at the economic level but also on social cohesion and perception on injustice it triggered, should be studied, and taken into consideration in any design of further HLP reform in Syria.

### 3. Creation of an HLP mechanism

Principle 12 of the Pinheiro Principle stipulates that efficient claim restitution judicial and administrative procedures are instrumental tools to support the implementation of housing and property restitution rights. Addressing HLP disputes resulting from the conflict can either be done by existing institutions, such as the judiciary or the administration, or by an HLP dispute mechanism created specifically for that purpose. Considering the high level of violations committed during the conflict, it is often considered good practice to create a specific HLP dispute resolution to avoid overwhelming the judiciary or the administration.

The creation of a dispute resolution mechanism requires identifying the principles that will guide the process, substantive scope (what types of rights are eligible to restitution and compensation), the temporal scope (what period will be covered by restitution or compensation), and the type of remedy provided and the type of mechanism (administrative, judicial, ad hoc).<sup>[69]</sup> These choices are political choices as much as they are technical. They depend on the capacity of the institution that will process the cases, on the urgency to provide solutions to victims of dispossession, on resources available and on political will. Such choices also require balancing ideal solutions (broad scope of rights eligible, broad period covered, significant compensation rights) with the reality of what is economically and politically feasible in the context.

The choice also depends on the aspirations of the population and what they expect from the process. A participatory transitional justice process is an excellent way to identify violations as well as the reactions and aspirations of the population further to a period of widespread violations. Recording their stories and recommendations can help to shape the HLP dispute resolution mechanism and its substantive and temporal scope. It can also help to identify what remedies would be acceptable to the population.

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[68] The amendment allows sharecroppers to bring verbal evidence of their presence on the land (while before oral contracts were not recognized) to get compensated, but the law still enables the owner to terminate the sharecroppers' contracts if they want to do so.

[69] The content of this section draws from the GIZ report: “Challenges and options for dispute resolution mechanisms: Safeguarding HP rights in the context of the Syrian conflict,” Barbara McCallin, 2021, unpublished

### 3.1 Principles

In accordance with key international standards on HLP gathered in the Pinheiro Principles and the Guiding Principles on internal displacement,<sup>[70]</sup> the restitution process should respect:

- The right to non-discrimination on HLP issues, notably between men and women. Special measures should be taken to ensure that groups or individuals vulnerable to discrimination with regard to HLP should be supported to claim their rights.
- The right to housing and property restitution
- The right to appeal restitution and compensation decisions
- Choice of remedy: victims should be able to choose between restitution and compensation
- The rights of occupants to alternative accommodation should be considered if they cannot provide for themselves, and if an eviction resulting from a restitution claim would render them homeless.
- The restitution and compensation mechanism should be accessible in terms of cost, simplicity of procedures, information, and legal support to assist claimants. It should also allow remote applications (mail or online).<sup>[71]</sup>

### 3.2 Scope

#### 3.2.1 Substantive scope

The HLP dispute mechanism legislation or regulation needs to specify which rights will be subject to restitution. According to the Pinheiro Principles, this includes formal property rights but also customary or informal housing rights which are protected by the right to adequate housing and the right to home. These two rights apply regardless of the tenure status (ownership, tenancy, possession/occupancy). This aspect would be important to include in the Syria context where many properties are held without being registered.

The restitution and compensation process can decide to focus on residential rights or also include business premises. In Bosnia and Herzegovina, it was decided that the process

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[70] See also Handbook: Housing and property restitution for refugees and displaced persons Implementing the Pinheiro principles, 2007 and Brooking's Protecting Internally Displaced Persons: A manual for law and policymakers, 2008

[71] See Pinheiro principle 13 and the guidance documents mentioned earlier in the previous footnote.

would focus on residential property in order to accelerate the resolution of claims. The downside of this choice was that people managed to repossess their homes but had to wait years to obtain restitution of their business which had to go through a regular court procedure. This seriously hindered the capacity of returnees to make a living. In Kosovo, a measure was adopted in order to avoid this problem: the body created to process restitution claims focused first on residential property, and then included restitution of business premises in a second phase. This helped to prioritize residential claims, restitution and return in the first phase, and then to provide a mechanism faster than courts for business premises in the second phase.

### 3.2.2 Temporal scope

There is a need to determine the period that will be covered by the restitution process. This period can be limited to the conflict, but it can also extend to the pre-conflict period in case there have been other waves of displacement and dispossession.

This time period must be defined not only by some formal decisions taken – declaration of a state of war for instance – but by the period during which dispossession, lack of access to the property or other wrongful acts leading to HLP violations (forced displacement, military offensive for instance) were identified as a pattern.

The definition of the period has a significant impact on the ability of displaced people to claim for restitution/compensation. The period chosen will by definition exclude those dispossessed before or after, which can also create further tensions within society. In Iraq, the first HLP dispute mechanism could only decide on HLP violations that took place between 1968 and 2003 – corresponding to the duration of the Baath regime and the fall of Baghdad during the US-led invasion. This decision excluded the Arabs who were forcibly expelled after April 9, 2003, by Kurds or other returnees. They had no other choice but to address their case to Iraqi courts.<sup>[72]</sup> This decision created an imbalance between the different civilian victims of forceful dispossessions. It showed that it is important to have a broad approach based on the redress of violations and not only on formal or political considerations.

The timeframe can sometimes be quite long. In South Africa, the restitution process aiming

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[72] Van der Auweraert, Peter. 2007. "Property Restitution in Iraq." Presentation at the Symposium on Post-Conflict Property Restitution Hosted by the United States Department of State Bureau of Population, Refugees, and Migration; Bureau of Intelligence and Research; Office of the Coordinator of Reconstruction and Stabilization. September 6-7, 2007.

at addressing land dispossession that took place during the Apartheid accepted claims for dispossession/compensation that occurred since 1913. This restitution programme was part of the country's transitional justice process which had as an objective to acknowledge and provide remedy past violations is especially important. <sup>[73]</sup>

In the case of different waves of dispossession, it is important to determine whether these claims will be covered by a single mechanism or different ones. While it could make sense to prioritize recent claims that may be easier and more urgent to address through a particular mechanism and leave the rest to Court, there is also a risk to confuse victims with the multiplication of mechanisms.

In Kosovo, the same HLP mechanism addressed conflict-related claims and claims resulting from pre-conflict discriminatory laws. On the contrary, in Iraq, the restitution process was confusing as different mechanisms were created depending on the period of displacement and dispossession. A quasi-judicial mechanism addressed claims related to displacement perpetrated by the Baathist regime before 2003. An administrative process dealt with displacement that took place between 2006 and 2007. In parallel, restitution claims could also be presented before regular courts. Finally, a compensation scheme was created in 2009. This multiplication of mechanisms combined with a lack of information of potential claimants resulted in confusion and a rather limited number of claims. <sup>[74]</sup>

### 3.3 Remedy

The right of victims to a remedy and reparation can take several forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. <sup>[75]</sup> When used in the context of dispossession of housing, land and property rights, the most frequent remedies included in HLP dispute resolution mechanisms are restitution and compensation. While the principle is that victims should be able to choose between restitution and compensation, restitution may be difficult to implement when dispossession took place several decades ago. In such cases, it might be advisable to consider other types of reparations.

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[73] Brookings, Bern University. October 2008. "Protecting Internally Displaced Persons: A Manual for Law and Policymakers." p.184.

[74] GIZ, Barbara McCallin, Challenges, and options for dispute resolution mechanisms: safeguarding HLP rights in the context of the Syrian conflict, 2021, unpublished, p.49. See also on Iraq: USID, Country profile: Iraq, property rights and resource governance, 2018; IOM, Preliminary assessment of housing, land, and property issues in Iraq's current displacement situation, 2015; USIP, Land, property, and the challenge of return of Iraq's displaced, by Deborah Isser and peter Van der Auweraert

[75] Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, A/RES/60/147, December 2005

Experience shows that victims of displacement are more likely to find durable solutions to displacement rapidly if they have the choice between restitution and compensation. In Bosnia and Herzegovina, although the peace agreement provided that a compensation fund would be set up for those who preferred compensation over restitution, there was never any contribution to the fund as many international actors feared that compensation would lead people to give up on return which would then consolidate ethnic cleansing. While this objective is understandable, it delayed the achievement of durable solutions for many of the displaced who did not want to return but had to apply for restitution and wait for their case to be processed, before finally deciding to sell their property.

The choice between restitution and compensation is important also to avoid pressure on return. At some point, the Bosnia HLP property laws indirectly pressured people to return by linking restitution of socially owned property to return. The non-occupancy and return to a repossessed flat within a certain period could lead to the cancellation of occupancy right on the socially owned flat. Since compensation was not available and authorities knew that many people were still afraid to return, they tried to link restitution right to return to get another opportunity to dispossess displaced people. The Office of the High Representative (the international body in charge of monitoring the implementation of the peace agreement) canceled this provision of the Bosnian law to avoid dispossession.

According to the Pinheiro principles, restitution rights should not be conditioned to return.<sup>[76]</sup> Claimants have the right to repossess their property whether they decide to return or not. The Pinheiro principles consider restitution as a preferred remedy over compensation because it leaves all options open. The claimant can decide to return, rent his property to assess the security situation for a while, or sell the property and use it to integrate elsewhere. Restitution is also put forward by the Pinheiro principles to limit circumstances where States would provide only compensation to dispossessed/displaced people. This can indeed be tempting for States that rewarded their political supporters through the allocation of displaced people's property. Compensation would allow authorities to maintain their political base satisfied while keeping the displaced away from and consolidating the demographic changes resulting from the conflict. In practice, even in countries like Bosnia and Herzegovina where restitution was the only remedy available, restitution did not necessarily result in return. This was due to a range of reasons including the security situation in some areas, the lack of livelihood opportunities, trauma, or the decision to integrate into the place of displacement.

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[76] Pinheiro principle 2.2: "States shall demonstrably prioritize the right to restitution as the preferred remedy to displacement and as a key element of restorative justice. The right to restitution exists as a distinct right and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution."

The Bosnia example shows that it is important to give people the choice between compensation and restitution but also to ensure that returns take place in safety and dignity so that people are not pushed to accept unfair compensation measures instead of restitution. However, the availability of compensation is also linked to the capacity of authorities to dedicate adequate resources to this. Compensation also requires determining a standard mechanism to establish the level of compensation (see below).

The remedy may also differ based on when dispossession took place. The longer ago dispossession took place, the more difficult it is to provide restitution, and the less interested people are in return. If dispossession happened more than 20 years ago, the lost property may have been bought and sold several times to people who acquired it in good faith. Imposing restitution on these buyers without compensation would risk creating a new injustice and have a destabilizing effect on social cohesion. On the other hand, providing compensation to all those who acquired the property in good faith for all these years would represent a huge financial burden.

In contexts of protracted displacement or violations that took place several decades ago, it may be better to envisage compensation of the original owner rather than restitution. In the South Africa transitional justice process,<sup>[77]</sup> victims of dispossession could choose between restitution in the form of alternative State-owned land or monetary compensation for dispossession that took place since 1913. In order to keep social cohesion, the South African state decided to buy land at market price from White farmers rather than expropriating them to distribute land to Black claimants. The cost of this measure considerably slowed down the implementation of the distribution process. When dispossession happened before 1913, only monetary compensation would be available.

Turkish authorities in Northern Cyprus created the Immovable Property Commission in 2006<sup>[78]</sup> to provide a remedy for Cypriots that had been dispossessed of their property further to the occupation of part of Cyprus by Turkey in 1974. The mechanism offered a mix of reparation options: restitution, compensation, or exchange. As of 2021, out of nearly 7000 applications, over 1200 have been solved through friendly settlements and a wide majority of claimants requested compensation rather than restitution or exchange.<sup>[79]</sup> The Iraqi property claim commission dealing with dispossession under the Baath regime offered the choice between restitution and compensation.

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[77] The Restitution of land rights Act of 1994 <https://www.justice.gov.za/lcc/docs/1994-022.pdf>

[78] The Commission was created further to a ruling of the European Court of Human Rights in the case of *Xenides-Arestis v. Turkey*. The ruling requested Turkey to establish an effective domestic remedy for claims related to abandoned properties in Northern Cyprus

[79] Immovable Property Commission <http://www.tamk.gov.ct.tr/english/index.html>

In other cases of long-term dispossession, the reparation can take the form of a political and historical acknowledgement of violations, whereby the violations and the suffering of the victims are recognized through history books, commemorations, but not necessarily monetary compensation.

### 3.4 Categorisation and standardization of claims

The establishment of dedicated mass-claim mechanisms respond to the necessity to process a very high amount of claims in a fast and efficient manner. Establishing a mechanism that gives access to restitution or compensation requires a compromise between what is ideal and what is financially and politically feasible in a reasonable amount of time. The broader the scope of the mechanism, the bigger the number of claims and the more time-consuming the process. Time is an important factor in a dispute resolution process. A post-conflict society tends to be unstable from a security and socio-economic point of view. Therefore, the sooner victims can see proof that their rights are being addressed, the sooner they are likely to be able to resume a normal life and contribute to a stable environment.

One way to accelerate the resolution of claims is to categorize them and standardize processes. Many types of dispossessions may have occurred, and it may be useful to group them and to identify a standardized way to address each category.

The Kosovo property commission addressed pre-conflict and conflict-related issues. Claims were then classified into three categories:

- Category A addressed cases of discrimination: individuals who lost their ownership, possession, or occupancy rights because of pre-conflict discriminatory laws.
- Category B addressed informal transactions between 1989 and October 1999,<sup>[80]</sup> so before and during the conflict: it corresponds to individuals who performed informal transactions as a result of a 1989 discriminatory legislation of residential real property based on the free will of the parties.
- Category C addressed illegal occupation: individuals who lost the rights of ownership, possession, or occupancy due to the illegal occupation of their property since the beginning of the conflict. This last category represented 93% of the claims addressed by owners who were deprived of their property rights.<sup>[81]</sup>

[80] The date of 1989 corresponds to the entry into force of a discriminatory law and October 1999 is the date when UNMIK adopted a regulation to address informal transactions that took place from 1989 until this regulation.

[81] Organization for Security and Co-operation in Europe, Kosovo Mission, "Property Rights Mass Claim Mechanism: Kosovo Experience," June 2020. p.7. <https://www.osce.org/files/f/documents/2/7/454179.pdf>

Examples of categorisation include pre-conflict HLP violations and violations perpetrated during the conflict, residential and business premises, formal and informal property. The categorisation can also correspond to the type of violations: expropriation, confiscation under counter-terrorism law, military law, occupation, forgery of documents. Once the categorisation is done, it is also important to adopt a standardized approach to all these claims and to establish a protocol to be implemented by officials processing such claims. Such a standard approach contributes to ensuring consistent decisions throughout the country. Finally, it is also useful to try and determine the number of claims that will be in each category. This can help to determine priorities and where to put resources. Priorities can be established based on the number of cases or the particular vulnerability of the victims.

Standardization is also useful when addressing compensation claims. Experience shows the necessity to set up a standardized amount for compensation claims. In Turkey, the ‘Law on Compensation for Damage Arising from Terror and Combating Terror’ (Compensation Law), was adopted in 2004 by the Turkish parliament. It intends to indemnify victims of the conflict between Turkish forces and the Kurdish Workers’ Party (PKK), which occurred in the southeast of Turkey from 1984 onward. It offers the possibility of full compensation for material losses arising from displacement. However, the determination of individual amounts generated long delays. The process was much decentralized: more than 2,000 “damage assessment commissions” were appointed to negotiate conciliation agreements between the government and claimants. The political bias of some commissions led to unjustified decrease and discrepancy of compensations amounts,<sup>[82]</sup> which created resentment among people. Human rights organizations, therefore, recommended the adoption of a standard compensation amount per household, calculated based on the number of family members and the number of years of displacement.<sup>[83]</sup>

In Germany, the Property Claims Commission was to compensate victims of Nazi persecution in which German businesses were involved. This scheme aimed at compensating people who suffered from the German economic policies enforced in German-occupied territories of Central and Eastern Europe. The commission was an independent body supported by IOM, which registered and reviewed the claims. IOM provided legal and administrative support to the Commission.<sup>[84]</sup> Because the number of claims was much higher than expected (35,000), the IOM created a mass-claim mechanism relying on a very standardized process to fix the amount of compensation. Indeed, the commission realized that it could not provide an individual evaluation for each claimant, as most of the victims were

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[82] Human Rights Watch, *Unjust, Restrictive, and Inconsistent: The Impact of Turkey’s Compensation Law with Respect to Internally Displaced People*, December 20, 2006.

[83] *Ibid.*

[84] Wühler, Norbert. 2017. “Additional Programs Lines” in Eds. Saathoff Günter, Uta Gerlant, Friederike Mieth and Norbert Wühler. “The German Compensation Program for Forced Labor: Practice and Experiences.” *Foundation remembrance, responsibility, and Future*. p.134. [https://www.stiftung-evz.de/fileadmin/user\\_upload/EVZ\\_Uploads/Publikationen/Englisch/EVZ\\_Compensation\\_Program.pdf](https://www.stiftung-evz.de/fileadmin/user_upload/EVZ_Uploads/Publikationen/Englisch/EVZ_Compensation_Program.pdf)



not able to provide the information necessary to do so. The Property Claims Commission, therefore, created a “valuation matrix” with standardized values used to categorize the losses. About 70 property classifications were listed - related to farms, small or medium businesses, professional practices, bank accounts. The Commission used different factors to determine the standardized values: (1) the values used in prior German compensation programs; (2) historical research; (3) information found in the claims, particularly those in the sample of claims that had high-quality evidence; and (4) other sources.<sup>[85]</sup> The commission also created a point system for each property type, with a value of 145 Euros assigned to each point. This standardized approach is aimed at treating the claims in a consistent way. This particular attention to standardization was also due to the limited amount of funding available to compensate victims. It was not possible to attribute individualized amounts for each claim with an open budget. For the same reason, compensation did not represent the current market values or repurchase values. Using current market values would have meant to grant compensation amounts that would have been way higher than what the fund was allocated for.

Standardization helps to better plan the budget necessary for the compensation commission. In Iraq, law no. 20 of 2009 Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions, amended in 2015 and 2020, provides compensation to Iraqis whose properties have been destroyed. Despite being considered as a well-designed mechanism that the Iraqi population relatively trusts, it is hardly implemented: until 2020 none of the successful claimants had received their compensation. They only received a paper attesting they would receive the money once it is available. The 2020 amendment, therefore, forced each governorate to include a budget for compensation. Since then, some claimants have been paid, but not in a systematic way.<sup>[86]</sup>

### Lessons for Syria

International experience shows that in case of mass-claim violations of HLP rights, it is important to determine the substantive and temporal scope of the HLP mechanism that will address such claims in a way that provides a relatively fast solution to the victims.

In terms of substantive scope (the type of claims that the mechanism will address), Syrians need to determine what should be included in the process, what type of remedy should be provided and whether they want to establish some priorities.

It may make sense to prioritize residential property at the beginning of the process, and then to include the restitution or compensation of business premises in a second phase.

Regarding the type of rights eligible to restitution, it is obvious, considering the Syrian context characterized by widespread informality of ownership, that properties and land

[85] Ibid. p.136

[86] Interview with a key informant. August 2021.

held informally should be reviewed and included in the restitution and compensation process. Since informality in Syria can come for a range of reasons (failure to register succession, lack of building permit, non-respect of zoning regulations), the various case scenarios need to be examined so as to determine the criteria to use when addressing such cases. This is part of the categorisation of claims and standardization of approaches (for instance to decide in which case the informal property can be regularized or not). Once repossessed, there should be a possibility to update the cadastre to regularize ownership.

Discussion on substantive scope should also determine how to address the situation of tenants, holders of social housing or housing cooperative shares, holders of Amiri land, etc.

It will also be necessary to decide how to address formal and informal transactions. The Kosovo example shows that it is possible and desirable in some cases to address informal transactions that took place before the conflict as a result of discriminatory laws, and also those that occurred during the conflict. The practice is usually to confirm pre-conflict transactions after reviewing the circumstances, and to consider a war-time transaction as null and void unless the parties confirm their willingness to maintain the transaction.

In terms of temporal scope, Syrians have to decide whether they only want to address war-time violations of HLP or whether they also want to address historical grievances. Both Syrian Kurds and Arabs have been subject to forced displacement and dispossession before the conflict.<sup>[87]</sup> Since 2004, the various versions of the Border law<sup>[88]</sup> restricted property sales within 25 km of the border and limited the capacity of populations in such areas to formally sell and purchase property. While restitution or compensation seems reasonable in the case of war-time dispossession, the remedy for the restrictions to sale in border areas and the resulting informal transactions that have taken place for almost 20 years could be the recognition of some of the transactions. The remedy for the dispossession of Arabs and Syrian Kurds during the Arabisation policy could be a political and historical acknowledgement of these violations and moral recognition of the facts. The issue of Kurdish dispossession is a controversial issue in Syria and has contributed to tensions between the different communities in Syria who have different perceptions of the past and may ignore each other's suffering. Establishing facts through truth commissions and building a shared understanding of past grievances related to dispossession and displacement is one of the key steps of transitional justice and reconciliation. It also helps to identify the more appropriate remedy. For instance, moral and historical recognition rather than restitution in some cases.

The categorisation and standardization of claims are essential to ensure a fast processing in a context of a mechanism dealing with a massive number of claims.

[87] Seurat, Michel." IV- Les populations, l'État et la société." Raymond, André. La Syrie d'aujourd'hui. Aix-en-Provence: Institut de recherches et d'études sur le monde arabe et musulman, 1980. (pp. 87-141), paragraphe 46. According to Ababsa, Myriam. Raqqa, Territoires et Pratiques Sociales d'Une Ville Syrienne. Presses De L'Ifpo, 2009, p.125-126, the Kurdish farmers were displaced to Damascus, Aleppo and Beirut. See also ibid. paragraphe 47. Source: Human Rights Watch, Group Denial: Repression of Kurdish political and cultural rights, November 2009, pp.11

[88] The border legislation has been amended several times since 2004. See footnote 39

The standardization of the compensation process is also the fairest way to proceed since the use of a transparent method of calculation of compensation amounts will ensure consistency and equity in the level of compensation received. The method of calculation should be determined based on the expected number of compensation claims and the resulting budget necessary to address such claims. Amounts need to be realistic not to raise false expectations and resentment, and resources need to be made available.

### 3.5 Type of institutions

The design of an HLP dispute resolution mechanism in a post-conflict setting faces three major obstacles: the high number of claims (usually several hundreds of thousands) and the related needs in terms of staffing and funding, the strong resistance against restitution by those who benefitted from dispossession, and the lack of trust of claimants in the process.<sup>[89]</sup> The type of institution will therefore need to address these different challenges.

Adapt the HLP mechanism to the political context

Designing a mechanism to address dispossession of HLP rights requires balancing what is fair, with what is practically and politically feasible. A context analysis should be undertaken to assess social and political dynamics at the national and local level, and to anticipate the level of support or obstruction to reparation efforts and ways to avert such obstruction.<sup>[90]</sup>

In a post-conflict situation, tensions are high and those who benefitted from dispossession have much to lose from a restitution process. It is therefore very common for restitution processes to face huge resistance at the design and implementation stage. The opposition to restitution can be at the national or local level, or both. The level of obstruction anticipated should be taken into consideration when determining the type and composition of the HLP dispute resolution mechanism. If the obstruction is at the local level, where mayors or local leaders currently in charge allocated land to their political supporters and risk losing their leadership and position in case of restitution, it would not be advisable to rely on municipalities to process HLP restitution claims unless close monitoring from the State is put in place to ensure implementation.<sup>[91]</sup>

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[89] GIZ, opus cit, p.50

[90] Barbara McCallin, *Vivienda, tierra en propiedad en situaciones de desplazamiento forzado: una llave para la paz, la justicia y soluciones duraderas al desplazamiento*, Revista Latino-Americana de Derecho Internacional (LADI), N°5, December 2016

[91] Barbara McCallin, *Vivienda, tierra en propiedad en situaciones de desplazamiento forzado: una llave para la paz, la justicia y soluciones duraderas al desplazamiento*, Revista Latino-Americana de Derecho Internacional (LADI), N°5, December 2016

In Guatemala for instance, authorities in charge of implementing restitution were the same as those who actively dispossessed the displaced by allocating their land. This created “an entire network of local property and political relations inherently hostile to the displaced persons’ return.”<sup>[92]</sup> In Colombia, one of the key obstacles to property restitution is the connection between local politicians and the interests of big landowners, companies, and armed groups. Since these actors benefitted from dispossession, they tend to contribute to a climate of insecurity against returnees or activists defending land rights which slows down restitution. In Bosnia and Herzegovina, municipal officials processing restitution were subject to threats. Depending on the capacity and willingness of the State to impose its authority at the local level and support the restitution process, it may be necessary to look into measures to convince power-breakers to comply. This can be done through incentives such as financial support to compliant municipalities for reconstruction or other assistance, and improved salaries for officials processing claims. Alternatively, a hard approach can be used with sanctions against opponents to the restitution process, to end impunity and show the strength of the political will.<sup>[93]</sup>

#### Addressing the risk of corruption and inconsistent management of claims

Another risk to implementation is the culture of impunity and corruption which can result in biased or delayed decisions. In Iraq, the Iraqi Central Committee for Compensating the Affected (CCCA) is the current compensation mechanism addressing post-2003 claims related to property damages. To be eligible, the property needs to meet the degree of damages specified by the CCCA. The definition of the damages considered as significant enough is vague and relies on the subjectivity of the sub-committee’s decision.<sup>[94]</sup>

The lack of skills and training of officials processing claims can also be a source of inconsistent decisions, particularly if the procedures regulating the process are unclear and not sufficiently enforced and monitored at the central level. In Iraq, the Central Committee for Compensating the Affected (CCCA) suffered from several drawbacks which hinder its efficiency. It was responsible for compensating property damages that occurred after 2003. The lack of coordination between the central committee and the regional sub-committees combined with the lack of adequate training of staff and insufficient budget seriously compromised the fair implementation of decisions. The limited number of committees that could take claims limited the access of claimants who had to travel long distances and

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[92] Rhodri Williams, *The contemporary right to property restitution in the context of transitional justice*, ICTJ, May 2007, p.40

[93] Barbara McCallin, *Vivienda, tierra en propiedad en situaciones de desplazamiento forzado: una llave para la paz, la justicia y soluciones duraderas al desplazamiento*, *Revista Latino-Americana de Derecho Internacional (LADI)*, N°5, December 2016

[94] Protection cluster, HLP sub-Cluster Iraq. “Advocacy Note on Property Compensation Scheme in Iraq. Challenges and Recommendations.”

[https://www.sheltercluster.org/sites/default/files/docs/advocacy\\_note\\_on\\_property\\_compensation.pdf](https://www.sheltercluster.org/sites/default/files/docs/advocacy_note_on_property_compensation.pdf).

It leads to bribery practices, hindering the right to fair access to compensation rights.

bear additional costs. The lack of adequate training and coordination with clear instructions resulted in a lack of coherent and consistent decisions throughout the country.<sup>[95]</sup>

### **Good practices include:**

- ensuring a sufficient budget to adequately remunerate officials in charge of restitution
- provide processes to report corruption and increasing sanctions in case of reported corruption.
- establish clear guidance on criteria and procedures guiding the decision-making process on claims.
- Resources should also be budgeted to ensure an adequate number of offices, personnel, and training.

### **Choosing the type of mechanism**

Identifying the best format of the HLP dispute resolution mechanism depends on the analysis of the factors mentioned above. The options are as follows:

- A judicial process: providing a lot of legal and procedural guarantees to the claimant but which will likely result in slow processing of claims and overwhelm the judiciary due to the high number of HLP claims.
- An administrative process which usually facilitates faster processing of claims. Contrary to courts, administrative offices tend to be present in most municipalities, which can facilitate access of claimants.
- A mixed process combining an administrative and judicial process
- Alternative dispute resolution mechanism (ADR): ADR refers to dispute resolution methods using mediation or arbitration to address disputes. These methods are usually informal while in countries like Syria, some forms of arbitration are regulated by law and can result in a judicial validation of the arbitration decision. In many countries, disputes related to HLP are often addressed according to traditional practices involving religious or respected figures within the community. This is also the case in some areas of Syria where there is a strong tradition of tribal or customary justice.

The advantage of these mechanisms is that the perceived legitimacy and authority of the traditional leader usually ensures an easy implementation. They are also present throughout the territory and issue decisions much more rapidly than other processes. The downside is that these institutions often follow patriarchal and community rules which are detrimental to women and outsiders to the community. These mechanisms may therefore not be the most adapted to address the HLP rights of women and IDPs

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[95] IOM. 2020. "Access to durable solutions among IDPs in Iraq: Experiences applying to compensation."

(for instance when IDPs occupy properties but have no other housing alternative). The conflict may also have weakened their authority, either because they took side with one party or another, or because they are powerless when violations are committed by lawless military factions like in Syria. Because of their accessibility, they can be used as an informal first instance where people can try to seek redress in case of HLP violations. And if people cannot get a satisfactory solution, they can then approach a formal dispute resolution mechanism. This could then alleviate the burden on formal dispute resolution mechanisms by removing the claims which could be resolved through mediation or arbitration.

- Whether they are administrative, judicial or a mix of both, these processes can rely on existing structures (judiciary, administration) or on the creation of a body specifically created to process these claims.
- This dedicated body can be run exclusively by nationals of the country or by a mix of national and international staff.
- If the circumstances indicate very strong opposition to restitution from authorities, it is recommended to ensure international monitoring and supervision.

**The examples below highlight the pros and cons of each approach:**

### **3.5.1 Ad-hoc mechanisms under international supervision**

The Pinheiro principles specify that States should request the support of international agencies to establish such a mechanism, especially when a general breakdown in the rule of law or where States are unable to implement the procedures by themselves.<sup>[96]</sup> Indeed, in post-conflict settings, the diverse parts of the conflict tend to distrust each other. Judicial systems or the administration are usually weakened by the conflict, often lack independence, or are considered untrustworthy by the population. In such contexts, creating a mass claim ad-hoc mechanism under the supervision of international authorities is a way to treat a large number of claims in a quick and efficient way. It also allows circumventing obstruction from authorities and other actors who benefited from dispossession.

In order to be fair and lead to sustainable solutions regarding HLP rights, the mechanism should be independent of the political power, impartial and compatible with the existing laws. The legal design of the mechanism is essential as it affects the efficiency of the solutions to which it gives access.

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[96] Pinheiro principle 12.4 see footnote 35

**Bosnia:** from a powerful internationally administered ad-hoc mechanism to an administrative domestic process under close international monitoring

In Bosnia, the post-conflict property resolution mechanism created in 1995 is often considered as a success and a source of inspiration for the creation of further property mass-claim mechanisms. The strong international political will support the property restitution process in Bosnia, as well as the financial means made available to implement it, are some of the factors that explain the efficiency of the mechanism, the most important one being the exercise of binding powers by the international community against officials obstructing the implementation of the 1995 Dayton Peace Agreement, notably the property restitution aspect. Since authorities had been actively pursuing dispossession during the conflict, they were discredited to implement restitution. The Peace agreement, therefore, recommended the creation of a Commission for Real Property Claims (CRPC) with the mandate to address HLP issues that took place during the conflict (involuntary transfer and dispossession).<sup>[97]</sup> This body followed an administrative process that allowed faster processing of claims. It had a mixed composition with 3 international members, and 6 national members ensuring a balance between the various groups (Bosnian Muslims, Bosnian Croats, and Bosnian Serbs).

The CRPC issued 300,000 decisions during the course of its 1996-2003 mandate.<sup>[98]</sup> Considering the damage and loss on land registries and the loss of documents by claimants, claims could be submitted without evidence so one of the CRPC's roles was to collect evidence on behalf of the claimant. Using its access to various land registries CRPC developed its in-house cadastre and land survey database to confirm the ownership of claimants. In order to carry out its mandate, CRPC took on several tasks: verification of ownership for restitution or to confirm eligibility for reconstruction, and creation of a database in cooperation with municipalities to avoid double occupancy of people who kept occupying the property after having repossessed their own. During its mandate, CRPC had offices in several countries hosting Bosnian refugees as well as mobile teams in countries of Former Yugoslavia to facilitate access to claimants.

Although CRPC issued binding decisions, it had no enforcing powers. One of the difficulties faced by CRPC was that, as an ad hoc body, it was not integrated within the national system and there was no guidance on how municipalities and the police were supposed to enforce these decisions. Authorities used this as a convenient excuse not to implement CRPC decisions. CRPC's role and databases were transferred to national authorities in 2003.

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[97] General Framework Agreement for Peace, Annex 7, Chapter Two

[98] CRPC received over 240 000 claims which resulted in 300 000 decisions called CRPC certificates. This represented a beneficiary population of nearly one million people, out of the 2.2 million refugees and displaced persons uprooted by the conflict. CRPC, End of mandate report (1996-2003), 2004

In parallel to the work of CRPC, municipal authorities also started processing claims according to an administrative process further to the adoption of restitution laws in 1998. As could have been expected, the process was confronted with fierce resistance at the local and national levels. It, therefore, required the intervention of another international institution, the Office of the High Representative (OHR), to finally unlock the restitution process.

The OHR, in charge of monitoring the implementation of the Dayton Peace Agreement, was given binding and legislative powers to support its mandate. It for instance pushed for the adoption of the 1998 'Property restitution laws.' Amendments promulgated in 1999 by OHR unified the process across entities and facilitated the enforcement of the CRPC decisions by requiring that administrative authorities give the same effect to CRPC decisions than to their own.<sup>[99]</sup> OHR's power to dismiss local officials accused of obstructing the property resolution process was also extremely efficient in order to obtain compliance from reluctant officials. OHR dismissed 22 officials, among them 19 refused to enforce the property legislation or hindered the return of refugees and displaced.<sup>[100]</sup>

Another key to the success of the Bosnia restitution process was the coordination and unity of the international community behind the Property Legislation Implementation Plan (PLIP), created in 1999 by OHR. The PLIP was a coordination mechanism gathering OHR, UNHCR, the Organization for Security and Cooperation in Europe (OSCE), CRPC and the UN Mission to Bosnia and Herzegovina (UNMIBH). The purpose was to ensure a joint strategy to secure the implementation of property restitution laws and to ensure that the international community would speak with one voice. On the one hand, PLIP provided support in the form of capacity-building on property laws, provision of computers and budgetary support. On the other hand, it created a monitoring mechanism led by the PLIP cell (representatives of each PLIP member's organization). The field offices of the various international agencies involved in the PLIP could follow up with the 140 municipalities<sup>[101]</sup> in charge of property restitution throughout the country or report higher up to the central PLIP cell in case they were alerted about HLP obstruction and violations, or by particular capacity-building needs. The UNMIBH's supervisory power over domestic police forces was used to oversee the presence and attitude of the local police during evictions of occupants.<sup>[102]</sup> This was important as one of the common obstruction methods was for the

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[99] Williams, Rhodri C. 2005. Post-conflict property restitution and refugee return in Bosnia and Herzegovina: Implications for international standard-setting and practice. *International Law and Politics* 37: 441–553, p.45.

[100] Hastings, Lynn. 2001. "Implementation of the Property Legislation in Bosnia Herzegovina." *Stanford Journal of International Law*, vol. 37, no. 2, Summer 2001, p. 221-254. Hein Online.

[101] Office of the High Representative, PLIP Inter-Agency Framework Document, accessed on September 15, 2021, at [http://www.ohr.int/ohr\\_archive/plip-inter-agency-framework-document/](http://www.ohr.int/ohr_archive/plip-inter-agency-framework-document/)

[102] Rhodri C. Williams Post-conflict property restitution and refugee return in Bosnia and Herzegovina: Implications for international standard-setting and practice. *International Law and Politics* 37: 441–553, 2005, p46.



police not to show up to enforce evictions which meant that the occupant could take advantage to remain despite a decision for him to vacate.

The publication of monthly statistics at the municipal level on restitution progress proved effective. It showed the population that things were moving and created a positive competition as compliant municipalities tended to be rewarded with international assistance. The Return and Reconstruction Task Force, an inter-agency body gathering international organizations, encouraged donors to support such municipalities with reconstruction and other assistance. Sadly, one of the factors that obstructed the restitution process, is that municipalities quickly realized that restitution would not necessarily result in return, which for some of them was the main reason why they were obstructing restitution.<sup>[103]</sup> By 2004, less than 10 years after the end of the conflict, over 90% of the claims for property restitution had been addressed.<sup>[104]</sup>

**Kosovo:** an internationally led process combining an administrative and a judicial phase

In Kosovo, the restitution process was also led by the international community at the beginning. An international civil administration established as part of the peace process created institutions addressing property issues that arose during and before the conflict. The process followed two phases implemented by two entities: In the first phase, an administrative body (the Housing and Property Directorate) received and investigated claims. After the instruction of the claim, a mediation process was initiated to see if an agreement could be concluded between the parties. In case of failure of the mediation, the case is sent to a quasi-judicial commission (the Housing and Property Claims Commission), in charge of taking decisions on the claims.

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[103] Rhodri Williams, Post-Conflict Property Restitution in Bosnia: Balancing Reparations and Durable Solutions in the Aftermath of Displacement, TESEV International Symposium on “Internal Displacement in Turkey and Abroad”

Istanbul, December 5, 2006, p.9

[104] Charles Philpott, From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina, International Journal of Refugee Law, Volume 18, Issue 1, March 2006, Pages 30–80

## Lessons for Syria

The Bosnia example can be considered a success although restitution did not necessarily result in return. However, much of this success is due to the binding powers granted to the OHR which allowed this institution to dismiss officials, adopt restitution laws and gather behind him a united international community to implement the PLIP. Granting such powers to an international body seems difficult to replicate in the Syria context. It is hard to see who would be the countries capable of imposing this on Syria and what type of leverage would make the current Syrian authorities accept international monitoring of its restitution process.

Otherwise, the Bosnia example confirms the relevance of administrative processing to rapidly process a massive number of claims.

The use of an international mechanism like CRPC with a mixed composition in the first few years after the conflict could be a solution for Syria. This would allow a few years to ensure that the process is progressing and on track until a handover to national authorities can be done.

### 3.5.2 Quasi-Judicial mechanism in Iraq and Colombia

In Iraq, an international authority, the Coalition Provisional Authority (CPA) created in January 2004 a commission to address claims related to displacement that occurred before 2003, during the Baathist era: the Iraq Property Claims Commission (IPCC). In 2006, the Iraqi Transitional National Assembly replaced the IPCC with the Commission for the Resolution of Real Property Disputes (CRRPD). These bodies followed a quasi-judicial process. The CRRPD is almost exclusively Iraqi with some IOM experts providing technical advice. In the context of a high number of claims, the characteristics of the quasi-judicial process proved very time-consuming. The organization of hearing for each case with all the parties present (claimant, property occupant, ministry of Finance) considerably delayed the process.<sup>[105]</sup> The unlimited right to appeal provided to all the parties involved slowed the process down and delayed enforcement. This has been a major obstacle for the enforcement of the decisions on claims. While the CRRPD decided on 77,000 claims out of the 153,000 received, the number of decisions that were final and enforceable has been much lower. Because of the appeals to the Cassation Commission, only 30,000 decisions were final in 2009.<sup>[106]</sup>

[105] Van der Auweraert, Peter. 2007. "Property Restitution in Iraq." Presentation at the Symposium on Post-Conflict Property Restitution Hosted by the United States Department of State Bureau of Population, Refugees, and Migration; Bureau of Intelligence and Research; Office of the Coordinator of Reconstruction and Stabilization. September 6-7, 2007.

[106] Isser, Deborah and Peter Van der Auweraert. 2009. "Land, Property, and the Challenge of Return for Iraq's Displaced." Special Report. United States Institute of Peace.

This was also due to the low capacity of the Cassation Commission which did not have enough judges to process all the appeals.

### Lessons for Syria:

A quasi-judicial mass-claim mechanism is not necessarily adapted for a high number of claims and when the financial and human resources trained and available are limited. Leaving the courts responsible for addressing such a massive number of claims would also negatively impact their ability to solve non-HLP claims.

The process should ensure that the right of appeal is limited to what is strictly necessary to avoid delays and obstruction to restitution.

**Colombia:** a two-phase process combining administrative and judicial mechanisms

The Colombia dispute resolution mechanism tried to satisfy two criteria simultaneously. The first phase is administrative, with the Unidad de Restitución de Tierras (URT) preparing and investigating claims and a second judicial phase where judges decide whether to register or reject the claim. To support socio-economic integration upon restitution, technical assistance is provided through vocational training and financial support for returning farmers. However, this requires a good level of coordination between the URT and the Colombian institution in charge of that technical assistance. As a result, even when a claimant gets a decision, he may not be able to receive the full assistance he is entitled to. The Colombian restitution process is also remarkable by the efforts made to include women and indigenous people without formal land rights in the restitution process. However, overall, the process has proven quite time consuming, and results have been slow in coming.

In addition to these institutional aspects, the security situation in the place of origin and attacks against land rights activists and returnees has considerably limited the success of restitution. As of 2021, at least 48 claimants have been killed, as well as police members escorting land restitution teams.<sup>[107]</sup> The relative impunity of perpetrators resulted in a lack of trust in authorities implementing the process. Lack of information on how to apply may also have influenced the number of claims. The number of applications has been very low in comparison with projections made in 2011 when the law passed. As of August 2021, only 740,000 acres out of the 5 million of stolen land have been reclaimed.<sup>[108]</sup>

[107] Garcia, Sara. 2021. "Land Restitution: A Dangerous Job in Colombia." Insight Crime. June 08, 2021. <https://insightcrime.org/news/criminal-groups-trail-land-restitution-efforts-colombia/>

[108] The Borgen Project. 2021. "Land Restitution in Colombia." August 16, 2021. <https://borgenproject.org/legitimizing-property-ownership-in-colombia/>

## Lessons for Syria

The example of Colombia shows that the best mechanism design will be inefficient if security, trust in local authorities and rule of law are not restored. In order to claim their properties, displaced people need to be able to trust local authorities where claims have to be filled out and feel they can do so without risking their lives.

### 3.5.3 Alternative dispute resolution

In Kosovo, the property restitution mechanism included a mediation phase to try and decrease the number of cases reaching the second phase. In Iraq, some local dispute resolution initiatives had a positive impact on restitution and return. The Baghdad neighborhood of Sadiya created in 2007 a Support Council gathering representatives of the Shia and Sunni communities to try and limit the influence of sectarian militias and improve access to services. Supported at the national level by the Implementation and Follow-Up Committee for National Reconciliation (IFCNR), the council supported the restitution of returning families. The Support Council checked ownership documents submitted by returnees and liaised with local security forces to facilitate restitution. The Support Council used tribal elders to help resolve disputes and negotiate agreements or rental contracts between owners and occupants. The key to its success was the good security environment and the fact that the neighborhood had remained mixed. These examples highlight the relevance of local solutions to contribute to reconciliation and sustainable return. Interestingly, the success of this example resulted in the adoption of a regulation, Order 101, which seems to draw from the Sadiya practice and extends the approach to the rest of the country. <sup>[109]</sup>

#### Lessons for Syria: Synthesis on types of mechanism

- The type of HLP dispute resolution mechanism should be a compromise between what is fair and what is politically feasible
- Considering the high number of claims that are likely to be submitted, and the lack of trust of people towards State institutions which actively participated in dispossession, a Syria HLP dispute resolution mechanism should be a specific mechanism independent from the political power or from the judicial and administrative institutions.
- International monitoring or supervision of the process would contribute to building trust and facilitate implementation.
- An administrative process should be preferred to a quasi-judicial one in order to

[109] D.Isser, P. Van der Auweraert, Land, property, and the challenge of return for Iraq's displaced, USIP, Special report 221, April 2009, p.10

accelerate the processing of claims. The process should categorize claims and use a standardized approach to ensure consistency of decisions throughout the country.

- Clear guidance on rules and protocols to follow should be provided. Close coordination between the various institutions at the national and local levels dealing with restitution is required to ensure adequate and consistent guidance.

- Sufficient resources should be allocated to the process to support:

- a sufficient number of offices in-country and in foreign countries hosting refugees to facilitate the access of claimants to the process
- launch of a public information campaign and provision of legal assistance to claimants
- adequate training of personnel implementing restitution
- o adequate salaries for restitution officials and increased penalties in case of corruption incidents

- Alternative dispute resolution mechanisms can be used either formally or informally to try and reduce the number of claims addressed to the formal mechanisms. However, people who have used ADR mechanisms should always have the possibility to apply to another dispute resolution mechanism.

#### **4. Adopt a set of facilitated procedures to accelerate the processing of a massive number of claims by the new mechanism**

In the context of a massive number of claims, the adoption of facilitated procedures is instrumental to rapidly processing claims. Judicial procedures are defined for situations where violations of the law are the exception rather than the rule. When a violation is alleged, the burden of proof is on the claimant, who has to prove that his right has been violated by the defendant. In the context of massive human rights violations, displacement, and situations of conflict, it would be extremely difficult for the victim to gather the proof of the violation, and this would be considered an excessive burden on victims, and it would seriously delay the restitution process.<sup>[110]</sup>

Transitional justice aims to address human rights violations that are “so numerous and so serious that the normal justice system will not be able to provide an adequate response.”<sup>[111]</sup> Facilitated procedures pursue the same objective and take the form of transitional measures

[110] GIZ, Barbara McCallin, Challenges, and options for Dispute Resolution Mechanisms: Safeguarding HLP rights in the context of the Syrian conflict, 2021 unpublished, p.52

[111] ICTJ website, “What is transitional justice?” Accessed 06/09/21

derogating to the regular legislative and judiciary rules to address the exceptional circumstances created by the conflict. Facilitated procedures consist of a range of substantial and procedural measures aiming at expediting proceedings, reducing the evidentiary burden on the victim, and protecting his rights. They can take various forms.<sup>[112]</sup>

### **Presumption of violations**

■ Based on identified patterns of violations, the restitution process can decide to make certain general assumptions that will not need to be demonstrated. It can be considered for instance that all displacement that occurred during the conflict period was involuntary, or that all fraudulent sales or sales made under duress during the conflict period are null and void. Such presumptions have been used in Bosnia and Darfur.<sup>[113]</sup> The German restitution process dealing with claims of Jews dispossessed during the Second World War considered that the buyer of a Jewish property could not claim good faith if the purchase was done during the conflict.<sup>[114]</sup> This approach corresponds to a presumption of duress.

Another presumption is to consider that during the conflict no effective remedies to dispossession were available or accessible. Therefore, the statute of limitations<sup>[115]</sup> to appeal administrative and judicial decisions should not apply or be considered as suspended during the conflict and displacement period. This means that dispossession decisions that became final due to a lack of appeal could be re-open and subject to appeal.

■ Based on the presumption of involuntary displacement, holders of tenure rights conditioned to continuous use should not be penalized for their absence during their displacement, which should be considered as a force majeure event.

■ Reverse the burden of proof on the defendant: In case a transaction took place during the conflict, there is a presumption that it might be under duress. If a claimant alleges that his sale was done under duress, it will be up to the buyer to prove that there was no duress.

■ The force majeure represented by the conflict and forced displacement should also justify the review or cancellation of dispossession based on the incapacity of people to

[112] Brookings-Bern University, *Protecting IDPs: A manual for law and policymakers*, October 2008, Chapter 12 on property and possessions, pp.169-188

[113] Bosnia and Herzegovina, Dayton peace agreement, Annex 4. Constitution Article 2(5): “any commitments or statements relating to such property made under duress are null and void.” Darfur, 2011, Chapter IV. Compensation, return of refugees and IDPs, Article 52.264: “The PCRC shall not recognize as valid any illegal property transaction including any transfer that was made under duress or made without free and informed consent.” The PCRC is the Property Claim and Restitution Committee.

[114] ILAC. December 2020. *Resolving the Property Issue in Syria Technically Possible, Politically Challenging and Central to Accountability*. p.27.

[115] A statute of limitations is a law setting the maximum time after an event within which legal proceedings or appeal may be initiated.

fulfill certain contractual obligations related to loan reimbursement, mortgage or rent.<sup>[116]</sup>

## **Simplified procedures**

- Determine the eligibility criteria to restitution in terms of period and type of property
- Make authorities and officials of the restitution mechanism responsible for finding evidence of ownership and possession through their access to land registries and various administrations with information on the pre-war address of claimants.
- Ensure that pre-displacement and conflict laws with a discriminatory effect on displaced people are not implemented and that they are reviewed, amended, or repealed.
- Facilitate remote application (online or by mail), legal assistance, the free application process, mobile offices registering claims in isolated areas, to ensure easy access of claimants
- Facilitated procedures with an impact on property rights can derogate to existing domestic laws, or the provision of these laws should be interpreted in a way that takes into account the involuntary displacement and the impossibility for the displaced to respect certain deadlines and statutes of limitation.
- Consider including informal HLP rights into the restitution process and validating and regularizing informal pre-conflict sales. As previously mentioned, the Kosovo process adopted this approach. It reviewed and regularized informal sales that resulted from pre-conflict discriminatory laws. These laws pushed many Kosovo Albanians to sell their properties informally to circumvent the restrictions to a property sale. If the property owned was occupied, holders with an informal sale contract could also apply to restitution.

Similarly, in Bosnia, lawful possessors who were not registered owners were allowed to claim for restitution: “Owner of real property declared abandoned shall have the right to file a claim for the return of the real property at any time. Exceptionally, claims for repossession of real property may also be made by persons who were in unconditional possession of the real property at the time it was declared abandoned.”<sup>[117]</sup> This was a pragmatic decision taken to take into account the fact that many people in Bosnia failed to notify land registries when they inherited, as a result, many properties were in the name of a great grandfather.

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[116] GIZ, opus cit. p.53

[117] Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property, Official Gazette of the Federation of Bosnia and Herzegovina, No. 11/98, Article 4.

■ Accept lower evidentiary threshold to confirm ownership or possession by accepting alternative formal or informal evidence. Pinheiro Principle 15.7<sup>[118]</sup> states that “in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession (...), administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.” In addition to formal property records, a variety of evidence types may be admissible in restitution/compensation procedures.

In Kosovo, the Housing and Property Directorate (HPD) allowed claimants to submit a wide range of evidence to claim ownership. They could submit cadastral documents but also building and occupancy permits, court records and decisions, contracts on use or maintenance of an apartment, contracts on sale/transfer (verified or unverified), public housing enterprise records, allocation right holder’s records, real property tax records, utility bills, evidence of acquisition through inheritance, decisions issued by administrative organs, and identity documents indicating the address (e.g., passport, UNMIK ID card, birth certificate etc). They could also submit any other written document that provided evidence of possession or ownership of the habitual residence. Evidence of an informal property transaction was also accepted. Outdated official documents could be also considered as proof of a property right at the time period relevant to the claim if the claimant also provided documents that proved he occupied the property at or around the relevant time.<sup>[119]</sup>

In Turkey, witnesses such as neighbors, or a village chief could confirm rights through a form of social documentation.

Alternative evidence should also be accepted in relation to civil documentation establishing the identity of the claimant, as this is key to processing the claim. In Iraq, the failure to accept alternative identity documents resulted in the rejections of numerous claims by the Central Committee for Compensating the Affected (CCCA), which was responsible for compensating property damages that occurred after 2003.<sup>[120]</sup>

These procedures can be applied by existing administrative or judicial bodies or by ad hoc commissions specifically created to address dispossession. Complementary measures include the creation of a database of claims to help identify the various categories of claims and those that require to be prioritized. Publications of regular statistics as per the model of the PLIP statistics in Bosnia and Herzegovina also contributes to transparency and is a good way to measure progress.<sup>[121]</sup>

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[118] “States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.”

[119] Displacement Solutions and NRC. 2018. “Housing, Land and Property Rights and Peace Agreements: Guidance for the Myanmar Peace Process.” February 2018. p.19.

[120] IOM. 2020. Access to durable solutions among IDPs in Iraq: Experiences applying to compensation.

[121] Ibid, p.177



## Lessons learned for Syria

Most of the facilitated procedures above are relevant to the Syria context. The presumption of involuntary displacement during the conflict can help ensure that holders of Amiri land or other rights linked to continuous use are not canceled on the basis of absence and non-use of land.

The presumption of duress and irregularity in the case of sales that took place during the conflict will address the situation of those who had to sell for a very small amount because of the circumstances or those who were victims of fraudulent sales. If both parties confirm the validity of the transactions, the transaction can be upheld.

Since there is an identified pattern of violations of HLP rights by the State through abusive expropriation, seizures, and confiscation, the HLP dispute resolution mechanism for Syria could consider that there is a presumption of violation for dispossession that took place during the conflict (particularly in the case of administrative and court decisions) and that all such decisions should be either reviewed or considered null and void.

All the measures facilitating access of claimants to the restitution and compensation process should be used in the Syria context, notably the possibility to apply online or remotely without having to go through a security clearance or power of attorney.

The acceptance of alternative evidence to prove ownership and identity is a must for Syria since many people lost their documentation or did not have formal documentation in the first place. Considering that land registries do not reflect the reality of HLP ownership in Syria, limiting restitution to people who can present proof of registered ownership would exclude a huge part of the victims of dispossession. A 2017 survey by the Norwegian Refugee Council reported that 70% of refugees surveyed by NRC claim that their property is registered in somebody else's name.<sup>[122]</sup> It is therefore necessary for a Syrian HLP dispute resolution mechanism to accept claims corresponding to non-registered or informal properties regardless of the reason why they are not registered (built without a permit, built on agricultural land, etc). If the ownership of the possessory right of the claimant is recognized, the next step will be to regularize and register the property in the cadastre.

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[122] NRC, Reflection on future challenges, May 2017

### III. Lessons learned on specific HLP issues

There are typical issues common to post-conflict settings that need to be addressed. This part presents these challenges, as well as corresponding lessons learnt.

#### 1. Occupation

##### 1.1 Rights of occupants, conditions for eviction

Secondary occupants are “persons who take up residence in a home or on land after the legitimate owners or users have fled due to, inter alia, forced displacement, forced eviction, violence or threat of violence, natural or human-made disasters.”<sup>[123]</sup> Under international human rights laws and standards, secondary occupants have a right to adequate housing. This means that in case they need to be evicted to allow the repossession of a claimed property, this eviction should not render them homeless. Secondary occupants are sometimes displaced themselves and unable to repossess their original houses. When they do not have the means to afford housing, they should be assisted with alternative accommodation so as not to delay the restitution process (see below).

The Pinheiro principles also protect the rights of people who bought the property in good faith without knowing that they were not buying from the lawful occupant. In such cases, States should consider compensating the third parties who bought the property from a secondary occupant.

Peace agreements and HLP mechanisms often support secondary occupants who are evicted to vacate the property for the original owners. In Bosnia and Herzegovina, the timeframe to vacate the occupied properties varied depending on whether the occupant had an available alternative property or not. If the occupant was a double occupant (occupying a property while his original property is available), he would have two weeks to vacate the property. Otherwise, occupants had a maximum of three months to leave, and the municipality had a responsibility to provide alternative accommodation if secondary occupant could not afford it. A database documenting double occupancy was created as part of the Property Legislation Implementation Plan to identify the status of occupants. The database helped to identify whether the occupant had repossessed his own property

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[123] OHCHR. 2007. “Housing and Property Restitution for Refugees and Displaced Persons. Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles.’” p.81. [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

(in which case he would be considered a double occupant) or whether his property was still occupied or destroyed. The database would also help to identify if the occupant was entitled to alternative accommodation.

Alternative housing can take the form of financial subsidies. In Iraq, Council of Ministers Decree 262 of July 2008 (see section 1. b) provided rental assistance (three hundred thousand Iraqi dinars per month) for six months for displaced families that were occupying the homes of the returnees.

In case of protracted displacement, the rights granted to secondary occupants tend to increase as they may have occupied the place for decades and invested in it. Evicting them after so long to the benefit of the owner would risk creating a new injustice and social unrest. The Burundi peace agreement takes into consideration the delicate equilibrium to find between restitution right and social cohesion in a post-conflict context: “The objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.”<sup>[124]</sup>

In Syria, the displacement situation is relatively recent, but the notion of protracted displacement and the right of secondary occupants in this context is relevant if the process envisages restitution or compensation for the loss of property that occurred during the Arabization policies in the 70s. In protracted settings, restitution is very difficult, as the properties have often been sold multiple times which means that the occupant may have bought the property in good faith. In such cases, compensation would be more adapted than restitution.

In Iraq under the Baathist regime, the authorities also implemented an Arabization policy resulting in massive displacement of Arab populations to areas inhabited by minorities as well as displacing political opponents, especially Kurds. The Iraq Commission for the Resolution of Real Property Disputes (CRRPD) stipulates that third parties which have to reconstitute the property to the original owner should receive a compensation equal to the property’s market price value at the time the claim was submitted.<sup>[125]</sup> The Commission also considers that the party who sold the house after the confiscation or unlawful seizure should pay the compensation. In most cases, this was the Iraqi State. However, this measure was almost never implemented as the Ministry of Finance appealed all CRRPD decisions requesting the Iraqi State to pay compensations or return properties to the original owner.<sup>[126]</sup>

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[124] Burundi, Article 8. k). The sentence is included in the list of principles guiding the Land commission in charge of addressing disputes.

[125] Ibid, p.83.

[126] Van der Auweraert, Peter. 2007. “Property Restitution in Iraq.” Presentation at the Symposium on Post-Conflict Property Restitution Hosted by the United States Department of State Bureau of Population, Refugees, and Migration; Bureau of Intelligence and Research; Office of the Coordinator of Reconstruction and Stabilization. September 6-7, 2007. p.5.

The Cyprus 2004 peace agreement, which addresses a displacement of more than 30 years at the time, contains very detailed provisions on the rights of occupants and encourages compensation rather than restitution. Compensation is offered at current market value while the entitlement to restitution is limited to one-third of the value and one-third of the area of their property, the remaining two-thirds being received in the form of compensation bonds.<sup>[127]</sup> The peace agreement proposes a range of options in case the occupant is himself/herself a dispossessed owner such as buying the property back from the original owner at current market value, exchanging the property, or compensating the occupant for improvements made on the property. Although the peace agreement was never implemented since it was rejected by referendum, it still provides interesting ideas on how to protect the rights of occupants in protracted displacement situations.

## 1.2 Allocation of abandoned housing

In many contexts of conflict-induced displacement, authorities are confronted with the need to house massive waves of displaced persons. They often do it through the allocation of houses left empty by other displaced people. Although this responds to a real housing need, there are often political motivations behind it, as allocating these properties can make the return of the displaced difficult, which is sometimes a key objective of the conflict.

Rwanda,<sup>[128]</sup> Bosnia and Herzegovina, Croatia and Guatemala authorities allocated abandoned land to displaced people. They even tried to cancel the HLP rights of the original owners after a certain period (10 years in Rwanda and Croatia). These war-time laws were canceled in Bosnia and Guatemala after the conflict, which facilitated restitution. Although it creates a source of obstruction to return and restitution, the allocation of abandoned property according to a formal process is preferable to random occupation. A formal process can include safeguards such as the establishment of an inventory and a contract of use fixing the conditions under which the property can be used and should be vacated in case of the return or restitution claim of the original owner. Kosovo provides a good example of how this can be done.

The Kosovo Property Agency (KPA) was responsible for administering abandoned properties.<sup>[129]</sup> It could allocate them on a temporary basis for humanitarian reasons. In the first case, the KPA administers properties with the agreement of the claimant whose ownership has been recognized. The KPA administration and location of the property ends when the

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[127] Cyprus, The Comprehensive Settlement to the Cyprus Problem, 2004, Article 10.3.b.

[128] OHCHR. 2007. "Housing and Property Restitution for Refugees and Displaced Persons. Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the 'Pinheiro Principles.'" p.82. [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

[129] "Abandoned" in this sense means "any property which the owner or lawful possessor and the members of his/her family household have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied." See Section 1, UNMIK Regulation 2000/60.

claimant wants to repossess it (to return or to sell it for instance). In that case, the KPA has to hand over the property within 90 days. In the second case, the KPA administers houses that were vacant or occupied but whose occupants did not claim the property.<sup>[130]</sup> Since 2006, KPA created a rental scheme through which occupants pay rent to displaced people who gave the administration of their property to the KPA. The asset of this solution is that it provides displaced people with an income and protects their properties. This could be also a tool for economic development: agricultural investors could rent land plots belonging to various displaced people who would benefit from an income.<sup>[131]</sup>

### 1.3 Provision of alternative accommodation

The provision of alternative accommodation is an established good practice corresponding to the right to adequate housing which provides that no one should be rendered homeless by an eviction. Alternative accommodation can be provided in the place of displacement, the place of origin, or to another location. This depends on whether the occupant wishes to return or not. In Bosnia and Herzegovina and Kosovo, alternative accommodation was to be provided by the municipality where the occupant lived.

Providing alternative housing to occupants is a duty of authorities if the occupant does not have appropriate means to provide himself with an accommodation. The process would have to determine what is the level of income that renders somebody eligible for alternative accommodation. In Bosnia and Herzegovina, this was calculated by comparing the income of the person or family with the cost of a basic consumer basket in the city where people were displaced.

The provision of alternative accommodation by authorities can also be used as a way to delay restitution. This can be a dilemma in a post-conflict situation where there is a real housing shortage. In the Bosnia context, the international community insisted that the failure of the municipality to provide alternative housing should not result in delaying restitution. On the contrary, the Cyprus peace agreement provides that restitution cannot take place until adequate alternative accommodation has been provided to the occupant.<sup>[132]</sup> This difference of approach corresponds to the fact that the Cyprus situation deals with a very protracted displacement situation where occupants probably developed strong links to the new location and the urgency of the owner's return is less pressing than in other post-conflict settings.

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[130] OSCE, Mission in Kosovo, Department of Human Rights, Decentralization and Communities. 2007. "Eight years after Minority returns and housing and property restitution in Kosovo." p.29.

[131] Ibid, p.29.

[132] Cyprus, 2004, Section on main articles: 10.3.f

The notion of alternative accommodation concerns occupants. However, in some countries, the denial of restitution resulted in authorities providing alternative housing to original owners, rather than the occupants. Croatia denied the right to restitution to holders of socially owned apartments (SOA) and allowed occupants to purchase these flats. The only concession they accepted was to provide alternative housing to the holders of SOA in a location nearby their previous residence.

In Rwanda, returnees who came back more than 10 years after their displacement were not allowed to repossess their pre-conflict property, allegedly to avoid tensions between occupants and owners (nota bene, this is not considered a good practice!). They were resettled and provided alternative housing in new villages on unfertile land with very limited access to livelihood opportunities and services.<sup>[133]</sup> Moreover, the households evicted from the areas where the resettlement villages were built were not properly compensated. In this sense, the option proposed in Rwanda did not respect the right to adequate housing. It did not contribute to durable solutions as the resettlement process did not seek to maintain or recreate the social fabric of previous villages.

### Lessons for Syria

Alternative accommodation should only be provided to occupants who do not have the means to afford housing. Delays for eviction have to be reasonable and provide a balance between the need to respect the right to restitution and return, and the right to adequate housing of the occupant. Delays can vary depending on the situation, but 3 months seems to be a reasonable time if the occupant does not have housing immediately available (for instance if his own house is occupied or destroyed). The eviction of the occupant can be done by force as long as due process is followed (prior notice, alternative accommodation if needed, supervision by the police). Occupants who feel strongly supported by authorities tend not to leave of their free will, so showing the commitment of authorities to eviction is also essential to the restitution process.

The provision of alternative housing to owners who cannot repossess their property because this right has been denied or because the property is destroyed should ensure that the right to adequate housing is respected in terms of secure tenure, safety, quality, access to livelihood and services. This requires relocating individuals to areas where they have fair living and housing conditions as well as sufficient economic opportunities. This is a costly process, which requires it to be evaluated and budgeted.

Ideally, alternative housing for returnees should be provided near the place of origin to limit the social and demographic effect of displacement and rebuild the social fabric.

[133] IDMC, NRC. Submission from Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council to the Human Rights Committee in its 89th session to be held in New York, 12-30 March 2007, related to the discussion of the country situation in Rwanda in the absence of the State Party's report.

It is important to be aware that the location where alternative housing is provided can have a political and demographic impact, even when it responds to urgent housing needs. Operations Peace Spring and the Olive Branch carried out in 2018 and 2019 by the Syrian National Army in the North of Syria led to the displacement of many Kurdish residents from their original areas. Some of their agricultural land and houses were then occupied by fighters<sup>[134]</sup> as well as people forcibly displaced from Ghouta<sup>[135]</sup>. While there is no doubt that displaced people from Ghouta needed urgent accommodation, the allocation of housing and land should be done on a temporary basis so as not to obstruct the capacity of the displaced owners to return or dispose of their occupied property. Finally, other non-State armed groups such as SDF<sup>[136]</sup> and HTS<sup>[137]</sup> have also perpetrated HLP violations and forced displacement for ethnic, sectarian, or political reasons, while allocating property to their fighters and displaced people.

## 2. Frauds

Forgery is a widespread phenomenon during the conflict. Forged transfers occur when the identity documents of the original owner, or when the documents necessary to operate a transaction to a third party, are falsified. The fraud can be done by an indelicate buyer or seller. It can also be done by land registry officials who knowingly modify records or accept to register fraudulent sales. In Yemen, 30 percent of the claims submitted to the mass claims restitution program are fraudulent.<sup>[138]</sup>

The context of displacement and the absence of some of the parties to the sale facilitates fraud. In Kosovo, if a Kosovo Serb displaced in Serbia wanted to sell his property, he would have to present an authorization validated before Serbian courts for a third party to sell the property on his behalf. Many of these authorizations were falsified in Kosovo to

[134] Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/42/51 para 62, 15 August 2019. [A/HRC/42/51 - E - A/HRC/42/51 -Desktop \(undocs.org\)](#)

[135] Thomas McGee. “Nothing is ours anymore’ – HLP rights violations in Afrin, Syria” in Reclaiming Home. The struggle for socially just housing, land and property rights in Syria, Iraq and Libya (Ed. Hannes Baumann), Friedrich-Ebert-Stiftung. September 2019. [15664.pdf \(fes.de\)](#)

See also: Daa Odeh, Nour Dalati and Mohamed Homs, Enab Baladi. “Amid three forces: Afrin residents chose silence”. 19 September 2019. <https://english.enabbaladi.net/archives/2018/09/amid-three-forces-afrin-residents-chose-silence/>

[136] Enab Baladi. “Accusations against “SDF” of seizing civilians’ property in Syria’s al-Tabqa”, 25 October 2020. <https://english.enabbaladi.net/archives/2020/10/accusations-against-sdf-of-seizing-civilians-property-in-syrias-al-tabqa/> See also: Amnesty International. “Syria: ‘We had nowhere to go’ – Forced displacement and demolitions in Northern Syria”. 13 October 2015. <https://www.amnesty.org/fr/documents/mde24/2503/2015/en/>

[137] Syrian For Truth and Justice. “HTS Confiscates no less than 550 Homes and Businesses Belonging to Christians in Idlib”. Thematic report. 14 January 2020. [https://stj-sy.org/en/hts-confiscates-no-less-than-550-homes-and-businesses-belonging-to-christians-in-idlib/#\\_ftn2](https://stj-sy.org/en/hts-confiscates-no-less-than-550-homes-and-businesses-belonging-to-christians-in-idlib/#_ftn2)

[138] Unruh, Jon. 2016. “Mass Claims in Land and Property Following the Arab Spring: Lessons from Yemen.” Stability: International Journal of Security and Development, 5(1).

support fraudulent sales without the owner's knowledge or consent.<sup>[139]</sup> This practice was also encouraged by the lack of direct communication and cooperation between Kosovo and Serbian institutions. To put an end to this practice, the UNMIK Department of Justice issued an instruction to all Municipal Courts in Kosovo to refer to the Department any letter of authorisation for a property transfer issued in Serbia for verification.<sup>[140]</sup> This created huge delays because of the communication issues with the Ministry of Justice in Serbia.

### Lessons on Syria

There have been numerous instances of forgery of documents reported in Syria. Some of these sales have resulted in fraudulent transactions that should be subject to review as a presumption of irregularity or duress can be applied to transactions that occurred during the conflict.

Forgery is more likely to happen when the claims' collection occurs once the conflict is over, at a time it is difficult to dissociate claimants who were displaced from those trying to benefit from the system.<sup>[141]</sup> The researcher Jon Unruh developed an online application to support a mass-claim restitution programme. To reach this objective the application allows victims of dispossession to upload a wide variety of evidence in support of their ownership or possessory claim. Many of these documents do not represent formal proof and could be subject to false allegations. In order to address this issue, the researcher suggests two approaches. First, refugees should be approached as soon as possible, while the war is still ongoing, directly to their areas of resettlement – in camps for instance. This enables them to directly target those who have been displaced. Secondly, the claims should be cross-checked through digital techniques and the participation of claimants who validate claims with their testimonies.

Digital tools, social networks and other online means of communication contribute to documenting HLP claims but can also be very helpful in finding the whereabouts of absentee defendants in property disputes, thus ensuring their access to a fair trial.

## 3. Women's HLP rights

In many societies, women have limited ownership or inheritance rights, by law or as a result of social norms. In many situations, only men have their names on the property documents, leaving women with limited access to restitution. The conflict exacerbates

[139] OSCE Department of Human Rights and Rule of Law, Legal System Monitoring Section. June 2006. "First Review of the Civil Justice System" p. 21.

[140] OSCE, Mission in Kosovo, Department of Human Rights, Decentralization and Communities. 2007. "Eight years after Minority returns and housing and property restitution in Kosovo." p.33.

[141] Unruh, Jon. Evidence for Land and Property Restitution in Syria: Preparing for Mass Claims During the War. p.8.



the pre-conflict situation as many of these women and girls may have become orphans, widows, or have missing husbands. If they are not registered on the title deed or sale contract, exercising their property rights means that they will have to prove their relation to their male relative, which may be difficult when civil documentation is missing, or if the woman was married religiously or customarily without legal recognition. When inheritance rights are regulated by religion, any evolution of minds on this is rendered more difficult.

Principle 4 of Pinheiro Principles reaffirms the right to equality between men and women. According to this principle, housing and property restitution legislation must not discriminate against women and should ensure that equality between men and women is respected. Principle 4.2 recommends providing women with joint ownership of both male and female heads of household as an explicit component of the restitution process. This is also supported by several peace agreements as previously mentioned. <sup>[142]</sup>

The Pinheiro principle 4.2 encourages restitution programmes, policies, and practices to reflect a gender-sensitive approach. This can include for instance a presumption that the woman living in the same household as a missing or dead person should be entitled to apply to restitution for that property. In Bosnia and Herzegovina, restitution laws provided that socially owned flats could be repossessed by surviving spouses or dependents of a deceased occupancy right holder, who would be issued a new contract of use. <sup>[143]</sup>

Applying a gender strategy can also be done by giving equal ownership rights to women and by ensuring equal inheritance rights in order to protect the widow's right to restitution. In post-conflict contexts, it is quite common to see male members of the family claim inheritance rights for the property owned by the dead husband. Widows do not necessarily have the right to inherit the property of their dead husbands. They face homelessness and landlessness, leaving them without resources and increasing their dependency on male relatives.

While social norms and practices are often deeply entrenched and hardly open to evolution, the conflict and the social changes associated with it can sometimes provide an opportunity for minds to evolve. In France, the United Kingdom, and the USA, the first World War led many women to assume tasks previously assumed by men. This sparked a movement that led to the right to vote of women which did not exist before in some of these countries. Similarly, the role assumed by women during the Syrian conflict, with many of them becoming head of household, could be the basis for a reflection on a more equal access to HLP.

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[142] See section I. Peace agreement, political settlement and constitution, p. 15

[143] UNHABITAT, Housing and property rights in Bosnia and Herzegovina, Croatia and Serbia and Montenegro, 2005, p.43

Rwanda adopted a proactive gender strategy after the conflict to address the root causes of women's unequal access to land. After the 1994 genocide, many widows faced difficulties returning and repossessing their houses, owned by their deceased husbands. The Rwandan Patriotic Front (RPF) government decided to adopt a gender-balanced approach. In 1999, the law n° 22/99 of 12/11/1999 provided equal inheritance rights for both the girl and boy child. This decision also reflects the central role widow women play in the post-genocide era, as a lot of them took on the role of heads of household after the death of their husbands. In 2004, the government enforced the Land Tenure Regularization Program (LTRP), often considered as the most ambitious land reform in Africa. It put an end to customary rights in the country's land policies. Laws issued in 2004 and 2013 guarantee the right for women to own land individually and, in case of official marriage, to be equal shareholders with their husbands.<sup>[144]</sup> The LTRP is reported to be quite a success; however, its implementation is still a challenge. Rwandan men have been quite resistant to the reform, which deeply disrupted traditional social habits. It also presents some gaps. Land rights of women who are not legally married, their children, as well as women involved in polygamous marriages, are not protected by the LTRP.<sup>[145]</sup>

**See examples of positive practices related to women's HLP rights in section (III. 3.)**

### Lessons for Syria

In Syria women have increasingly endorsed the role of household heads over the course of the conflict in the absence of their male relatives who were either fighting, detained, missing, or killed. They have often become the main provider of the family but are at risk of losing their HLP rights over the family house if the property was only registered under the husband's name. It is therefore important to ensure that the restitution programme allows women to claim for the restitution of their husband's family house regardless of whether her name is included on the title deed or not, as this was done for socially owned apartments in Bosnia. The restitution of the family house can be considered as a component of the right to home.

The Rwandan case shows that changing the law is often not sufficient to ensure women's access to property rights. The Syrian inheritance law based on Sharia often provides for unequal inheritance rights to women but is difficult to amend due to the religious source of this rule. Many prevailing social norms are even more detrimental to women's inheritance than Sharia, women are pushed to renounce their inheritance rights. Information campaigns

[144] Rwanda Initiative for Sustainable Development (RISD) Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) Action Aid Rwanda (AAR). February 2017. Parallel Report to the United Nations Committee in the Elimination of Discrimination against Women. Rwanda, 66th Session (Feb 13, 2017 - Mar 03, 2017), p.3. [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RWA/INT\\_CEDAW\\_CSS\\_RWA\\_26607\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RWA/INT_CEDAW_CSS_RWA_26607_E.pdf)

[145] Ibid, p.5.

should be done to ensure that these practices contrary to Sharia and human rights are progressively eradicated. Until an inheritance law providing equal rights to women is adopted and implemented, focusing on systematic joint registration of ownership at least for the family house, could be a way to ensure that women can at least get their share of the house in case of her husband's death.

Consensus must be found between actors of a political transition to adopt a gender-sensitive approach to HLP-related legislation, which has not been successful until today.<sup>[146]</sup> When restitution is not possible, women should be entitled to housing assistance either through the allocation of social housing or reconstruction. Equal access to housing and reconstruction for women is specifically mentioned in the Guatemala and Darfur 2011 peace agreements.

#### 4. Recognition of civil or HLP documentation from de facto entities

As a result of the Syrian conflict, the country is divided into several areas administered by different political entities: the Syrian regime, the Syrian Interim Government, the Autonomous Administration of North and East Syria, and the Syrian Salvation Government. The Syrian regime does not recognize any of the administrative or judicial decisions issued by these entities, this includes civil or HLP documentation such as identity documents, death certificates or sale contracts. The non-recognition of these documents can complicate restitution claims if people do not have other documents. It is, therefore, useful to examine how similar situations have been addressed in other contexts.

One part of Ukraine is not under the control of the Government. One problematic issue was the status of property transactions that took place in non-government-controlled areas. The draft law On the Principles of the Public Transitional Policy issued by the Government of Ukraine on August 4, 2021, recognizes property transactions between individuals that occurred in non-government-controlled areas (NGCA). Until now, these transactions have been considered null and void by the government. Such a decision is part of a transitional justice policy that considers that recognizing these transactions is the best way to make sure that properties located in NGCA areas will be registered once and if NGCA areas are retaken by the government.<sup>[147]</sup> The draft law plans to recognize property transactions between individuals only.<sup>[148]</sup> It still considers that property transactions involving “occupying forces, occupation administrations of the Russian Federation,” or legal entities controlled by Russia are null and void.<sup>[149]</sup>

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[146] Amr Shannan. 2020. “HLP in the Syria peace process,” unpublished report.

[147] Interview with a key informant, August 2021.

[148] Article 5, point 13. Ukraine Draft Laws on the Principles of State Policy of the Transition Period.

[149] Ibid, article 5. Points 11 and 12.

## Lessons for Syria

Although there is a presumption of illegality and duress for sales that occurred during the conflict, there should be a possibility to uphold the contract if both parties wish to do so.

The Ukraine example is interesting because it seems to presume that it is more likely that duress or illegality is involved when State or military actors are involved, than when individuals are involved. In the Syrian context, it is clear that illegality and duress can involve all types of buyers and sellers. Instead of full recognition, one possibility would be for Courts or an HLP mechanism to consider the documents issued by de facto entities as an element of proof, which, combined with other evidence, can confirm whether the transaction should be considered valid or not. Based on the Ukrainian example, it could be considered that transactions involving military factions or authorities have a presumption of irregularity.

A post-conflict mechanism will therefore have to decide on the status of these documents

## 5. Tenancy and occupancy rights

One of the key points of the Pinheiro principles is the affirmation that restitution and compensation are not limited to formal property rights and that it extends to possessory rights held by tenants and other types of users' rights (customary). By referring to the rights of those who have been "arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence," Pinheiro principle 1 underlines that all forms of tenure should be subject to restitution and compensation. This can be explained by the fact that the Pinheiro principles are based on the right to property but also the right to adequate housing and home, which is not necessarily linked to formal ownership. Although expanding restitution rights to tenants may be sometimes difficult to implement, it is worth looking into the issue as there are many different forms of tenancy and use. Some of them have characteristics providing very strong tenure rights which are almost equivalent to ownership. Because each context is specific, the examples below need to be interpreted in light of the Syrian context.

Some HLP dispute resolution mechanisms provide non-owners with equal rights to restitution and compensation. In Bosnia and Herzegovina, there were two main types of property: private property and socially owned property.<sup>[150]</sup> The socially owned property provided very strong tenure rights. Once they received an occupancy right, the holders of such right could stay for an indefinite period of time. Members of the household could inherit from the main occupancy-right holder, even if their name was not on the occupancy document

[150] Socially owned properties were located in buildings administered by state-owned companies or other public bodies. They were allocated to employees of companies who contributed to a fund giving access to the building.

or if the person would stop working for the company that allocated the apartment. Despite these characteristics, the two political entities in Bosnia and Herzegovina (the Federation and the Serb entity) tried to cancel occupancy rights or deny restitution rights because it was not private property. The Serb entity decided to implement a provision of the Law on Housing Relations (article 47) stipulating that the holder would lose his occupancy right if he would be absent from the house for more than six months without a good cause.<sup>[151]</sup> In the Federation, an amendment to the ‘Law On Abandoned Apartments’ gave only seven days to occupancy rights holders to return to their flats after restitution, otherwise, their rights would be permanently canceled. In reaction to such decisions, the OHR repealed these conditions and gave the original occupancy-right holder the same rights as those granted to private property owners.

Several countries (Colombia, Guatemala, Philippines, Darfur, Uganda, Sudan, and South Sudan)<sup>[152]</sup> have made indigenous land’s rights and customary users’ land rights eligible for restitution and compensation. In South Africa, the South African Land Reform Program for Restitution of Land Rights also granted restitution to labor tenants and holders of share-cropping rights who had been arbitrarily dispossessed. It also recognized rights related to customary practices, such as the right to extract water and minerals from the land, to graze as well as to gather wood.<sup>[153]</sup>

### Lessons for Syria

It would be useful to establish an inventory of the various types of occupancy, user and tenancy rights that exist in Syria. The main characteristics of these rights and the laws regulating them should also be listed to have a better idea of how the restitution or compensation for these rights should be done.

In Syria, several social housing projects are built by state-owned entities with the aim of providing low or mid-price housing to the population. They either provide extensive occupancy rights to holders (labor housing, employee housing) or subsidize the access to ownership for low-income households which acquire property titles after a few years of installment payments (popular housing, saving housing, youth housing and government housing).<sup>[154]</sup>

The conflict and displacement can affect these rights in different ways: people may lose

[151] Philpott, Charles B. 2006. “From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina.” *International Journal of Refugee Law*, vol. 18, no. 1, 1 Mar. 2006, p.34.

[152] World Bank, Policy note: Human rights-based approaches to land rights, peace, and stability, 2021, not published

[153] OHCHR. 2007. “Housing and Property Restitution for Refugees and Displaced Persons. Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles.’” p.80. [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

[154] For more details on these different types of housing, see: The Syria Report, Explained: Social housing programmes in Syria, March 03, 2021

their housing rights if it was linked to their job,<sup>[155]</sup> or if they failed to pay installments during the conflict.

In al-Maasaraniyeh neighborhood in Aleppo city, the General Housing Establishment (GHE)<sup>[156]</sup> canceled half of the applications of a youth housing project when beneficiaries did not pay their monthly installments between 2012-2016<sup>[157]</sup> further to their forced displacement. Youth housing requires a first down payment of 30 per cent, and then monthly installments. Several years can elapse between the first payment and the construction of the building.<sup>[158]</sup> Despite the sum already engaged, the GHE had not planned to compensate or grant them alternative housing.<sup>[159]</sup>

Some holders of housing cooperatives labeled as pro-opposition have also lost their membership. Cooperative housing is another housing scheme enabling employees from a given sector to fund the construction of a residential building at a low price. The creation of cooperatives is done under the umbrella of the State branch organizations, for instance, the professors, lawyers, or peasants.<sup>[160]</sup> They are therefore under the control of ministers to which these organizations belong. The candidates to housing cooperatives form a group who will ask the State for land. That land will usually be granted for free or at a very low cost. The price of the construction is also at cost price. Selected participants have to pay the first installment when the land is purchased. Then, they have to pay installments for several years before the property is built and before they get a property title (Tabou Akhdar).

In some cases, the conflict interrupted the process: a participant for instance could be evicted from the housing cooperative after paying the first installment but before reaching the stage of the flat distribution. In other cases, opposition-labeled participants have been expelled from the cooperative housing projects for not paying their financial installments although they had not been informed that the construction of the cooperative housing projects had resumed after 2018. Neither did they receive warning notices before the cancellation of their right, contrary to what Legislative Decree n.99 of 2011 stipulates.<sup>[161]</sup> According to the decree, members of housing cooperatives who fail to pay their financial dues should receive a warning.<sup>[162]</sup> The failure to answer this warning leads to the cancellation of the housing allocation as well as its registration in the land registry.

[155] Employee housing is linked to the person's employment, if an employee was dismissed because he was displaced, he risks losing his housing right. See The Syria Report, Explained: Social housing programmes in Syria, March 03, 2021

[156] The General Housing Establishment is a body affiliated to the Ministry of Public Works and Housing in charge of the implementation of most of Syria's social housing projects.

[157] The Syria Report. April 7, 2021. "IDPs Cut off from Government Housing Scheme in Aleppo Neighbourhood." <https://www.syria-report.com/idps-cut-government-housing-scheme-aleppo-neighbourhood>

[158] The Syria Report, Explained: Social housing programmes in Syria, March 03, 2021

[159] Ibid.

[160] Interview with a key informant, Istanbul, August 2021.

[161] The Syria Report. April 7, 2021. Are Regime Opponents Losing Their Rights in Housing Cooperatives? <https://www.syria-report.com/are-regime-opponents-losing-their-rights-housing-cooperatives>

[162] Ibid.

In 2011, the cooperative and social housing sector represented 23% of the construction sector in Syria.<sup>[163]</sup> This means that the cancellation of housing cooperative rights has the potential to impact a significant number of citizens. It is therefore essential to study carefully the various case scenarios and the loss sustained to assess to what extent restitution or compensation should be granted in such cases.

It is also unclear what happens to the rights of those who are still in the process of paying installments but whose social housing has been damaged or destroyed by the conflict.

It would also be useful to look into the situation of tenants to determine to what extent some contracts adopted under the old tenancy law are still unresolved. According to the new tenancy law, the old tenancy contract had to be settled between the owner and the tenant, with one or the other buying the share of the other party. Under the old tenancy law, tenant rights were extremely strong, but tenants had to pay a significant amount of money at the beginning, followed by regular installments. For the old contracts that have not been ended through buying the other party's share, it is unclear how both parties should be entitled to compensation and restitution.

Such dispossession strategies have also been used by the government for agricultural land. There have been numerous reports of usurpation<sup>[164]</sup> of agricultural land in Hama and Idlib where organizations linked to the Baath party took control of 6000 hectares belonging to displaced persons and organized public auctions to allocate these lands for one season. The ground for this seizure of land was that the land belonged to people displaced to areas held by terrorist groups, or because owners had not paid their debt to the Agricultural Cooperative bank.<sup>[165]</sup> The cancellation of these rights should also be included in the restitution and compensation process.

Similarly, it would be useful to determine if, and to what extent the Syrian regime actually used a provision of the law on Amiri land (public land allocated to individuals for agricultural use) that provides to cancel the rights of those not cultivating their land for more than 5 years.<sup>[166]</sup>

It is important to use the principle of presumption: in case property rights are based on the continuous use of the property or the payment of regular installments, the HLP mechanism should presume that individuals who abandoned their property were displaced because of war-related circumstances. This would then justify the absence or

[163] The Syria Report. "Explained: Syria's Cooperative Housing Sector." March 31, 2021. <https://www.syr-ia-report.com/directory/political-institutions/ministries/ministry-labour-and-social-affairs>

[164] Usurpation corresponds to a type of dispossession "where the individual or entity taking control of a property acts as if he had the legitimate authority to dispose of the property by arranging for its rental, occupation or sale." Quote from ILAC, Policy brief: dispossession of housing, land, and property in Syria, 2021, to be published in 2021

[165] The Syria report, Northern Hama's pistachio farmers restricted from their lands during latest harvest, August 26, 2020; The Syria report, Hama and Idlib: Farmlands owned by displaced residents go up for auction, October 28, 2020

[166] Syria report, Explained: Amiri lands, March 03, 2021.

the non-payment of installments and guarantee that individuals have the right to return. As a result, cancellation of rights on the basis of absence or non-payment should be considered null and void and beneficiaries of these state-supported projects should be considered eligible for restitution or compensation.

The 1958 land reform amended in 1963 and mostly implemented in the 1960s led to the distribution of nationalized land to landless farmers. The State mostly retained the ownership of the land. Land reform beneficiaries obtained occupancy-rights that can be transmitted to their children as long as they respect the conditions stated by the State.<sup>[167]</sup>

The Land Reform law provides a large margin of maneuver and legal interpretation to the Ministry of agriculture to cancel the land attribution to opposition-labeled beneficiaries who fled Syria during the conflict. According to the text, the executive committee of the organization of the agrarian reform can cancel the beneficiary's contract if he does not respect the instructions given by the law, the repartition of the land, the instructions of the Ministry, or if he is late to cultivate his parcel.<sup>[168]</sup> Many beneficiaries try to find ways to keep on paying their electricity bills while they have left their land, in order to have proof that they still are working on their land, but the law can actually enable the government to strip beneficiaries from their land reform parcels legally and easily. Although the scope of the problem is unknown, there are several reports of absentee land being taken over and cultivated by others either further to a former allocation or illegally. More research should therefore be undertaken on this issue.

Taking into account the consequences such a law can have is essential in a post-conflict setting and in case a restitution/compensation mechanism is created. It is indeed important that the beneficiaries keep their access to their parcels to make sure that they won't lose access to their source of livelihood. It is therefore important to proceed to the assessment of the number of beneficiaries of the land reform parcels across the country, as well as checking if the State has officially reattributed some parcels.

The necessity of the reform law is a debate within the Syrian opposition. One of the points discussed is whether the former feudal owners should get the land confiscated during the land reform. Canceling the land reform seems challenging as it enabled a more equitable distribution of land across the country.<sup>[169]</sup> While it may have made sense at the time, this idea should be put in perspective with numerous issues that need to be addressed in a post-conflict situation. Considering the cost of such a compensation measure, Syrians would have to determine whether this should be a priority. One option could be to consider a symbolic reparation and a historical recognition of the wrongs

[167] Interview with Key Informant, Istanbul, August 2021.

[168] Decree 1109 of 1963 Executive Regulations of the Agrarian Reform Law 161 of 1958, article 8. <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=9434&ref=tree&>. Accessed September 10, 2021.

[169] According to an Interview with a Key Informant in, Istanbul, August 2021, in 2004, the Syrian government and the European Union started to work on a project envisaging to provide property titles to land reform beneficiaries while the former feudal owners would have been financially compensated for their land loss. The project was stopped after the assassination of Rafic Hariri. Unfortunately, we have not been able to find another online source confirming this.



done at the time.

It is, therefore, necessary to assess the number of claims that could be related to these social housing and land reform parcels. For instance, it is unclear what is the proportion of land allocated under the land reform that remained under-occupancy right or that became private property.

## 6. Informal settlements

### 1.1 Regularizing or redeveloping informal settlements?

Informal settlements are a common feature of most cities in the developing world where the urbanization rate surpasses the availability of formal affordable housing. They refer to residential housing built in violations of city planning, building regulations and/or property rights. Informal settlements and housing tend to increase during the conflict as displaced people join previously existing settlements or create new ones. By definition, informal settlements or informal housing violate certain rules: they are built on public or private land without authorization, they may violate urban regulations, not respect building specifications, houses are built in an area zoned for agricultural use or in a hazard-prone area. In other cases, the person owns the land but never registered the building on it. Whatever the reason, these irregularities expose residents of such areas to evictions if the State or the individual who owns the land reclaims it. A typical question to address after a conflict-induced or disaster-induced displacement is the future of informal settlements and whether they should be rebuilt, regularized, or razed to the ground and their inhabitants relocated.

States confronted with this problem need to identify the criteria that will guide their decision. In Iraq, between 2013 and 2016, the number of informal settlements grew to 3.687, which represents a 138 per cent increase compared to 2013.<sup>[170]</sup> The country adopted several policy documents to address the issue. The 2010 National Housing Policy used a nuanced approach to informal settlements taking into account the diversity of situations in various locations. In many cases, informal settlements are deliberately built in a way that resembles formal settlements in terms of street layout and standard plot size. Many of them are also connected to electricity, and piped water supply. These characteristics make regularization easier. The National Housing Policy suggests a case-by-case approach. Based on the characteristics of the informal settlement, authorities will upgrade and regularize the informal settlement or subject the area to redevelopment. The upgrade consists of physical improvements to the infrastructures of the neighborhood (water supply, sanitation, drainage, roads, and power) and the regularization of the land tenure. Re-

[170] UNHABITAT, *Informal settlements in the Arab region*, February 2020, p.26

development means that most or all existing buildings will be removed and replaced by new ones. In practice, it leads to the relocation of part or all of the existing residents, with some schemes providing new on-site dwelling units. The 2018-2019 National program for rehabilitation and regularization of informal settlements supports the upgrading of IDP settlements and the securitization of tenure. The policy acknowledges the contribution of informal settlements to the housing stock and the fact that their destruction would aggravate the current deficit.

The criteria identified to determine whether the informal settlements will be upgraded and regularized or redeveloped are:

- Suitability of the proposed upgrading area for long-term residential use
- Redevelopment potential comparing the economic return of other uses with economic return generated by the informal settlement
- Preference of affected communities for upgrading or relocation
- Institutional capacity of the public or private sector to undertake an upgrading or re-development project.

While there is little information on the extent to which these various policies have been implemented, the approach and the criteria identified to address the situation of informal settlements can provide useful guidance in the Syrian context.

In Colombia, the Transitional Solutions Initiative (TSI), a joint project by UNHCR and UNDP, adopted a global and neighborhood-based approach to regularize and upgrade informal settlements where IDPs were living in informal settlements along with other urban poor. Instead of intervening at the individual level, the project worked on the entire settlements, therefore, benefiting both the local population and displaced people. In addition, the project provided vocational training based on needs identified by companies from the areas. This provided income-generating activities to many residents of the settlement.<sup>[171]</sup>

In Somalia, a significant number of IDPs had settled on the outskirts of the city of Bosaso during the conflict. Most of them were renting from private landlords and were often at risk of evictions when landlords would increase the rent. UNHABITAT negotiated with the municipal authorities of Bosaso to expand the scope of services to the outskirts of Bosaso. A public campaign encouraged owners to donate a portion of their land to the

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[171] IDMC, Home Sweet Home: housing practices and tools that support durable solutions for urban IDPs, 2015, p.47

municipality in exchange for the connection to urban services such as water, sanitation, and electricity. The increased value of the land resulting from this compensated for the loss of the land. The donated land was used to settle IDPs who received a serviced plot of land under a mechanism of incremental tenure. For the first 15 years, IDPs benefited from free rental contracts and their tenure security improved with time as they built housing and extensions on their plot of land. After 15 years, they obtained full ownership.<sup>[172]</sup> This example shows how temporary camps or informal settlements can be regularized with the cooperation of landlords and the municipality.

## 1.2 Documenting housing rights in informal settlements

In order to facilitate the restitution, compensation or reconstruction of informal settlements, it is necessary to identify who was living where and what type of rights people had. This may be particularly difficult when the level of destruction is very high, the original population dispersed, and where personal documentation or HLP related documentation is missing, only informal or never existed. Different techniques exist to document informal ownership rights. The ones presented below are a mix of participatory approaches and technological solutions. Community mapping based on pre-conflict or pre-disaster satellite images helps to facilitate the identification of pre-existing buildings in cases of heavy destruction and to identify their owners or possessors. Individual declarations of tenure can be complemented by supporting documents and pictures uploaded into a database.<sup>[173]</sup>

The reconstruction of Nahr al-Bared (see example below under the reconstruction section) included interesting forms of participatory documentation of HLP rights. Community mapping of HLP rights has also been used on several occasions after natural disasters such as the 2004 tsunami or the Haïti 2010 earthquake. In Haïti, Habitat for Humanity used participatory enumeration (a form of community mapping) in an informal neighborhood of Simon Pelé to identify housing rights and the location of pre-disaster homes. The purpose was also to agree with the community on the improvements that could be made to the settlement as part of the reconstruction. Based on a methodology established by Slum Dwellers International (SDI), HFH created a house-numbering system based on satellite imagery, reference points and local knowledge.<sup>[174]</sup> Interviews with former residents helped to identify the pre-earthquake locations of various housing plots and link them to inhabitants. Enumerators working with the community mapped houses but also streets,

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[172] IDMC, Home Sweet Home: housing practices and tools that support durable solutions for urban IDPs, 2015, p.41

[173] Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez Damary, Housing, land, and property in the context of displacement, A/HRC/47/37, April 21, 2021, para.54

[174] Senat Rachel, Renee Barron, Camillo Boano, Estella Carpi, Barthelemy Louis Mary Leon, and Mike Meaney. 2017. Making Community Engagement a Priority: A Case-Study on Earthquake Response in Simon Pelé, Haiti. Summary Report. Urban Crises Learning Partnership (UCLP).

<https://pubs.iied.org/sites/default/files/pdfs/migrate/G04285.pdf>

and public spaces in the neighborhood. The community mapping was followed by discussions on possible areas of improvement in terms of access to services and resilience to earthquakes. This enumeration system, which relied on community participation, created a sense of community, legitimacy and ownership for inhabitants used to face significant challenges related to land tenure and living conditions.<sup>[175]</sup>

Land tools used in development contexts to help countries improve land information systems can also help to document the HLP rights of displaced people. One of these tools, the Social Tenure Domain Model (STDM) has been adapted to post-disaster and post-conflict displacement. In Iraq, it has been used to support the informal land rights of returning Yezidis. STDM is a participatory method based on the use of the GIS system and beneficiaries' collaboration to document formal and informal ownership or possession. Individual declarations of tenure can be complemented by supporting documents and pictures uploaded through the Model database. In Iraq, potential beneficiaries were interviewed and asked to provide any possible informal documents that can prove that they previously occupied land and/or buildings.<sup>[176]</sup> Meetings with community members and local authorities then helped to cross-check and validate the occupancy rights of the project's claimants.<sup>[177]</sup> The claimants then delimited the boundaries of their plot in the field in presence of local authorities and UN-Habitat. These defined boundaries were then reported on the satellite image used in the social tenure domain model software. The successful beneficiaries finally received certificates of occupancy signed by themselves, local authorities, the municipality, two witnesses and UN-Habitat.<sup>[178]</sup> These certificates endorsed by local authorities improve tenure security and can be the first step toward the issuance of full ownership titles.

The use of information and communications technology can significantly facilitate the involvement and participation of the displaced in the documentation of their HLP rights. A secure online platform has been used in the Colombian transitional justice process to encourage the participation of the population in documenting patterns of human rights violations and claims, notably on housing, land, and property.<sup>[179]</sup>

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[175] Senat Rachel, Renee Barron, Camillo Boano, Estella Carpi, Barthelemy Louis Mary Leon, and Mike Meaney. 2017. Making Community Engagement a Priority: A Case-Study on Earthquake Response in Simon Pelé, Haiti. Summary Report. Urban Crises Learning Partnership (UCLP).

<https://pubs.iied.org/sites/default/files/pdfs/migrate/G04285.pdf>

[176] It included water, electricity and garbage-collection bills, leases, photographs, and videos. United Nations Human Settlements Programme, UN-Habitat, Global Land Tool Network, International Institute of Rural Reconstruction. 2018. "Lessons from The Field on Conflict Sensitive Land Governance and Peacebuilding." p.64. <https://gltn.net/download/land-and-conflict-lessons-from-the-field-on-conflict-sensitive-land-governance-and-peacebuilding/?wpdmdl=13040&ind=0>

[177] Ibid. p.64.

[178] Ibid. p.65.

[179] Jean-Marie Chenou, Lina P. Chaparro-Martínez and Ana María Mora Rubio, "Broadening conceptualizations of transitional justice through using technology: ICTs in the context of Justicia y Paz in Colombia," International Journal of Transitional Justice, vol. 13, No. 1 (March 2019).

Generally, the new forms of socio-spatial and digital media technologies enable an upgrade of the techniques used for supporting HLP rights restitution.<sup>[180]</sup> These techniques also allow cross-check and accelerate the documentation of ownership and possession.

### Lessons for Syria

Informal areas represent a significant part of the Syrian urban fabric. They hosted between 30 and 40 percent of urban inhabitants before the conflict<sup>[181]</sup> Their growth was linked to the failure of urban housing policies to provide affordable housing to low-income and middle-income populations in a context of increased urbanization. The lack of official and formal property documentation exposes residents of informal settlements to forced evictions, notably in the context of urban renewal projects. The planned evictions from several informal settlements contributed to the 2011 uprising and legislation adopted during the conflict on urban planning and expropriation risks being used to justify the demolition of informal settlements and its replacement by luxury housing. This will prevent the return of displaced residents.

The way the situation of informal settlements will be addressed in the post-conflict phase will be a good indication of whether Syria is working towards a sustainable peace supporting return, or whether it just aims to consolidate the displacement that resulted from the conflict. There will be a need to determine whether and which informal settlements should be regularized, upgraded, or demolished and their inhabitants relocated. The first step is to determine who was living where, which ownership or possessory documents they have, and the second step is to identify the criteria based on which the settlement should remain and be regularized, or which should be demolished.

The participatory techniques mentioned provide guidance for the first step. They could be used in the Syria context which presents similar characteristics: high level of destruction, the effect of the rubble removal law which makes it difficult to identify pre-conflict locations of the property, and lack of formal documentation confirming HLP rights. The combination of a collaborative approach with online technology allows the participation of the displaced from wherever they are. Participatory mapping cannot be limited to those still present on the ground otherwise they would be at risk of false claims at the expense of the displaced.

While the dispersion of IDPs and refugees can be a challenge, people from the same area tend to be displaced in similar regions or camps. And for those who are not, linkages between former neighbors can help to reach out to others displaced from the same

[180] John Unruh details which technologies can support upgraded timing, awareness-raising, database construction, screening, the establishment of evidence patterns and categories, and use of matching and non-party evidence. Unruh, John, Emily Frank, and Matthew Pritchard. 2017. "A Digital Advance for Housing, Land and Property Restitution in the War-Affected States: Leveraging Smart Migration." *Stability: International Journal of Security and Development*, 6(1), p.15. DOI: <http://doi.org/10.5334/sta.562>

[181] *The Day After*, The property issue and its implications for ownership rights in Syria, by Khaled Al Helou, Riyad Ali and Anwar Majanni, 2019, p.14

area. This participation then contributes to building a more comprehensive picture of HLP rights in the area of origin. Concerns have been raised regarding the time and cost associated with the collaborative mapping of rights. This is where information technology can accelerate and facilitate the collection and processing of evidence, for instance by mutualizing the data gathered from different displaced communities and grouping the information by area of origin. <sup>[182]</sup>

Several initiatives aiming at protecting and documenting pre-war ownership and possession of Syrians are currently ongoing. <sup>[183]</sup> UN-Habitat has launched an STDM project to document the HLP rights of more than 4300 Syrian refugees in Lebanon and Iraq. <sup>[184]</sup> The project collects declaration of ownership and possession, formal and informal evidence into a database that could be used to support a restitution or compensation process. A donor initiative has supported the safeguarding of 700 000 records of pre-conflict registries collected by various actors from various governorates. A mapping of these initiatives should be done to avoid duplication, identify potential gaps and standardize the process based on lessons learned from each project. Another promising project proposes to engage displaced people in documenting their HLP claims by uploading information on a mobile application. The application provides suggestions of alternative evidence that can be used. This participatory process allows displaced persons to actively contribute to their claims during the conflict and can prepare the ground for future restitution or compensation initiatives. <sup>[185]</sup>

One major obstacle to the use of these techniques in the Syrian context is the widespread lack of trust and fear of the society that the information collected might end up in the hands of the Syrian regime. This defiance concerns UN organizations but also Syrian NGOs who also tried to put in place online platforms collecting HLP evidence.

The Iraqi National Housing Policy provides examples of criteria to help determine whether the settlement should be regularized or not. The Colombia example illustrates the value of a global and area-based approach combining upgrade, regularization, and income-generating activities.

According to international standards, the relocation is always considered as a last resort, after all, alternatives have been explored because they tend to break socio-economic networks. <sup>[186]</sup> In the context of conflict, they could also reflect a deliberate policy to deny return to certain groups or individuals considered as opponents.

[182] One key informant involved in the Nahr al-Bared project for instance underlined that if the mapping process was very time-consuming back then, it would actually be much faster in 2021 thanks to new technologies having been developed in the meantime.

[183] The Day After. 2020. "Housing, Land and Property and Access to Documentation Outside of Regime-Held Areas in Syria. Case Studies of Six Areas in Syria." The reality of Housing, Land, and Property Rights in Syria. HLP Working Group. <https://tda-sy.org/wp-content/uploads/2021/04/HLP-02-Access-to-Documents-Outside-of-Regime-Held-Areas-in-Syria-ENG.pdf>

[184] Key Informant Interview, August 2021.

[185] A/HCR/47/37, paragraph 76

[186] UN Special Rapporteur on adequate housing, Miloon Kothari, UN Basic principles and guidelines on development-based evictions and displacement, A/HRC/4/18, February 2007

The issue of the informal settlements that appeared during the conflict will also have to be examined. Many transactions have occurred with real estate agents buying privately-owned land on which they built properties or entire neighborhoods which are then sold to displaced people. These houses do not have any official documentation. Some new urban informal settlements built from scratch in Turkish-held areas<sup>[187]</sup> or attempts from some local councils to regulate construction<sup>[188]</sup> may be challenging to dismantle after the conflict. The Somali example gives an example of how such a situation can be solved in a way that supports the interest of the original owners and the displaced.

Mapping of new informal settlements should be undertaken to identify on which type of land they stand (public or private), whether the land has been acquired legally, the safety of the building and access to services. The mapping should also include information on whether the settlement has been built on land belonging to displaced people, and if owners would rather return or be compensated. The risk of consolidating demographic engineering by keeping or removing the settlement should also be taken into account.

Keeping an informal settlement built during the conflict risks blocking return. Demolishing it creates a responsibility for authorities to provide alternative housing for the evicted people, which can be very challenging in the context of housing shortage exacerbated by the conflict.

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[187] AA News. "Turkish group to build 6,000 houses for the needy in Syria." March 31, 2021. <https://www.aa.com.tr/en/turkey/turkish-group-to-build-6-000-houses-for-needy-in-syria/2194304>

[188] Hardan, Mohammed. "Aleppo expands as the displaced population grows." Al-Monitor. April 08, 2021. <https://www.al-monitor.com/originals/2021/04/aleppo-expands-displaced-population-grows>

## 7. Reconstruction

Post-conflict reconstruction can have a positive or negative impact on return depending on the types of HLP rights considered eligible to reconstruction or the modalities of reconstruction. Eligibility to reconstruction often requires the owner or possessor of the property to present proof of his HLP rights. The restitution or compensation process, which identifies ownership or possessory rights could also be used to validate the eligibility to reconstruction. This is another reason why informal housing and land rights should also be included in the restitution process.

Displaced people with informal land rights are frequently excluded from reconstruction programmes. Humanitarian actors involved in shelter and reconstruction activities are now well aware of the problem, and guidelines have been developed at the global level to limit the risks of their activities violating HLP rights. The Global Shelter Cluster published Shelter and due diligence guidelines<sup>[189]</sup> and another set of guidance dedicated to urban settings.<sup>[190]</sup> The documents provide tools to identify and respect existing formal and informal land rights when carrying out shelter activities.

Reconstruction does not necessarily lead to ownership but can result in the provision of adequate housing with secure tenure. In Kosovo, the neighborhood of Roma Mahalla was largely destroyed. While the municipality initially refused to rebuild the neighborhood alleging that the residents did not have formal documentation, pressure from the international community on the Mitrovica municipality allowed for the regularization of the situation. Owners who had property titles with the registration in cadastral books had their houses rebuilt. Those who could not prove ownership were relocated to apartment buildings located on formerly socially owned land allocated by the municipality in the same area.<sup>[191]</sup> Beneficiaries received a 99-year lease with a very low rent, which provided strong security of tenure.<sup>[192]</sup> The project also included improved access to services, access to a health centre and new economic opportunities to make return sustainable.

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[189] See [www.sheltercluster.org/sites/default/files/docs/4.2\\_gsc\\_land\\_rights\\_and\\_shelter\\_the\\_due\\_diligence\\_standard.pdf](http://www.sheltercluster.org/sites/default/files/docs/4.2_gsc_land_rights_and_shelter_the_due_diligence_standard.pdf). See also Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 4th ed. (London, Shortrun Press, 2018), in particular the chapter on shelter and settlement.

[190] Norwegian Refugee Council and others, *Security of Tenure in Urban Areas: Guidance Note for Humanitarian Practitioners* (London, International Institute for Environment and Development, 2017).

[191] Republic of Kosovo. 2008. "Strategy for the Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015." P.41. <https://www.refworld.org/pdfid/5a8418dc4.pdf>

[192] Williams, Rhodri C. 2011. "Beyond Squatters' Rights: Durable Solutions and Development-Induced Displacement in Monrovia, Liberia." <https://www.nrc.no/globalassets/pdf/reports/durable-solutions-and-development-induced-displacement-in-monrovia-liberia.pdf>



The destruction brought by conflicts often raises the interest of investors and authorities who see an opportunity to invest in prime city locations through reconstruction projects. In this context, expropriation or relocation of former residents becomes a convenient way to transform certain areas, notably informal settlements, into high-end residential or commercial areas. Under the guise of economic recovery, these projects often represent a form of development-induced displacement which will displace current residents and prevent the return of those already displaced.<sup>[193]</sup> It can therefore consolidate the demographic effects of the conflict.

The reconstruction of central Beirut under the Solidere project<sup>[194]</sup> in the 1990s shows how reconstruction can become a tool to reward the elite at the expense of previous owners' property rights. The private company Solidere was granted by the Lebanese government the exclusive right to redevelop Beirut's central district after 15 years of conflict. The government allowed Solidere to expropriate properties situated in the city center. Owners could either swap their property in exchange for shares in Solidere or sell for a value less than the property. A few owners were allowed to keep their property but only if they committed to rebuilding it in line with Solidere's expensive standards. Many properties were demolished unofficially, and reconstruction permits were systematically denied by the government. Analysts consider that the project was allegedly used to pursue certain political objectives and ensure that certain communities would keep out of the area.<sup>[195]</sup> Historic neighborhoods of the city center were razed down to the ground. There was also strong collusion between Solidere, the government and various political factions. Prime Minister Rafic Hariri was one of the main shareholders in Solidere, and he owned one of the companies implementing the reconstruction. Public funds dedicated to reconstruction were distributed to various political allies such as former warlords, militia leaders and other elites through Solidere. The Solidere project displaced a significant number of central Beirut's residents and prevented the return of many. The similarities between the Marota city project in Syria and Solidere show the risk that Syria will follow a similar path.

At the opposite of Solidere's example, good practices in terms of reconstruction are characterized by the involvement of current and former residents in the design of the reconstruction project. In order to best contribute to social cohesion and return, post-conflict reconstruction must, to the extent possible, maintain the pre-conflict social, urban and architectural fabric of the area.

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[193] UN Special Rapporteur on adequate housing, Miloon Kothari, UN Basic principles and guidelines on development-based evictions and displacement, A/HRC/4/18, February 2007

[194] The information on Solidere is taken from The Tahrir Institute for Middle East Policy, demolishing human rights in the name of reconstruction: Lessons learned from Beirut's Solidere for Syria, Noor Hamadeh and Krystel Bassil, September 16, 2020

[195] Ibid.

In Nahr al-Bared, the second-largest Palestinian camp in Lebanon,<sup>[196]</sup> inhabitants helped by volunteers managed to contest the initial plan of reconstruction which intended to completely modify the architecture of the area. Inhabitants refused to be relocated to high towers where their former social relationships with their neighbors would have been completely dislocated. They managed to obtain that reconstruction would be conducted based on the initial family distribution within the camp. The project used a collaborative approach where volunteers mobilized inhabitants' collective memory to reconstitute the plan of the camp as it was before its destruction. This collaborative approach was necessary because most residents did not have formal ownership titles to their houses, so there was no possibility to use land registries to identify owners or the location of buildings. The debate and participation of the inhabitants limited the risks of fraudulent allegations of ownership.

The success of the project was due to several factors. The technical support of Lebanese urban planning activists allowed them to produce a detailed map indicating the location, and size of each property, as well as the names of dwellers and owners. The creation of a professional and rigorous alternative land registry provided a very strong basis to advocate for the inhabitants' demands. The presence of 'community mobilizers' who are well known and trusted in the camp was key to ensuring a certain representation of participants and encouraging inhabitants to participate in the discussion. The political and logistical of UNRWA with staff having extensive knowledge of Palestinian camps in Lebanon played a great role in convincing authorities to review their reconstruction plan. One of the downsides of the Nahr al-Bared project was that owners were not allowed to participate in the reconstruction project themselves.<sup>[197]</sup>

Maintaining the social fabric does not necessarily mean that reconstruction should replicate exactly the pre-conflict situation. The Haïti example illustrates the concept of "building back better." It shows that the participatory approach allowed to carry out reconstruction in the same area for previous residents while at the same time accepting some changes to improve living conditions in the informal settlement. Discussion with residents allowed them to identify areas of consensus around some necessary improvements which required some modifications to the pre-disaster setting. The need for improved resilience to earthquake, access to services, and the creation of common space such as square, market area<sup>[198]</sup> was included in the reconstruction design. Because it had been discussed, changes were largely accepted. One of the features of the project was to reduce the footprint of each house to free space for wider streets which could include water pipes and garbage collection. The space lost on the ground floor was compensated by the addition of an extra floor.

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[196] In mid-2007, the Nahr al-Bared refugee camp in northern Lebanon was destroyed by the Lebanese army while fighting Fatah al-Islam Islamist group. This conflict displaced around 30,000 Palestinian refugees.

[197] Arab Reform Initiative, Activism in the context of reconstructing Nahr al-Bared refugee camp: Lessons for Syria's reconstruction, September 2021

[198] IDMC/MIT, home sweet home: Housing practices and tools that support durable solutions for urban IDPs, March 2015, p.43-44

Owner-driven reconstruction is considered a good practice. It is a participatory decision-making process allowing owners to actively contribute to the reconstruction process, to determine the design and manage reconstruction.<sup>[199]</sup> To be successful, owner-driven reconstruction requires adequate technical and financial assistance. The Iraqi Housing reconstruction strategy supports self-help housing reconstruction. Research reviewing the policies of 111 countries over 70 years in relation to informal settlements concluded that in post-conflict and insecure contexts characterized by massive housing needs, and weak private and public sectors, the best interim solution is to acknowledge and support informal construction activities. The study concludes that the countries that succeeded in addressing their housing shortages have either used intensive public sector interventions or informal private construction.<sup>[200]</sup>

### Lessons for Syria

Authorities and donors supporting reconstruction projects should ensure that these do not result in depriving the displaced of their return and restitution rights. Construction projects such as Marota city, a luxury development project in southwest Damascus, present some similarities with the Solidere reconstruction of Beirut. Syrian legislation adopted during the conflict encourages this type of project. Decree 66 from 2012 allowed redevelopment areas occupied by informal settlements around Damascus to replace them with a new urban neighborhood. Law 10/2018 expanded this approach to the whole of Syria. These laws complement pre-conflict legislation which facilitates eviction of residents from informal settlements while providing inadequate compensation. Moreover, procedures to claim, appeal valuation decisions or allocation of shares, include deadlines that are not adapted to the situation of conflict, displacement and insecurity that currently prevail in Syria.

As a result, many residents of informal settlements risk losing their HLP rights without any compensation. For those who would succeed in following the procedure, the best they are likely to obtain are shares in the new building. Considering the fact that the valuation is done based on the value the property had before the construction plan, the shares will likely not be sufficient for owners to remain in the area. The Marota reconstruction model, therefore, risks resulting in new displacement or in denying the return and HLP rights of previous inhabitants. Investors and donor countries interested in reconstruction should exercise due diligence to ensure that their activities do not have adverse human rights impact.<sup>[201]</sup>

Interestingly, the population of Qaboun, Damascus, mobilized itself against a similar project in that city and filed 2000 complaints against the new urban planning. People protested against the alleged level of destruction, lobbied the Chamber of Commerce and the Prime

[199] <https://www.sheltercluster.org/sustainable-solutions-working-group/library/owner-driven-approaches>

[200] Habitat International, *Assessing housing approaches for Iraq: Learning from the world experience*, by Omar Al Hafith, B.K Satish, and Pieter de Wilde, 2019.

[201] Syrian Legal Development Programme, *Reconstruction, and human rights: the Syrian challenge*, 2018

Minister. As a result, the master urban plan was put on hold.<sup>[202]</sup> While this mobilization gives hope that citizens can sometimes impose their participation, it will probably be much more difficult to reproduce in areas where most of the population is already displaced and would not dare to protest.

In a post-conflict situation, reconstruction should be designed in a way that contributes to social cohesion. The best way to do this is to facilitate the participation of inhabitants, including the displaced, so that their aspirations can be heard and integrated into reconstruction. Preserving the social fabric of the city has implications in terms of the architectural choices made. It does not necessarily exclude measures improving access to services, transport, and economic activities. Since the conflict and destruction typically reduce economic activities, reconstruction projects should include in their design the presence of areas for commercial activities and be inserted in broader development projects that ensure economic opportunities to the returnees and other inhabitants of the area.

Given the scope of reconstruction needs, Syria should take into account lessons learned from other areas and acknowledge and support a certain level of informal reconstruction to respond to housing needs.

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[202] Online events: Involving communities in the reconstruction debate, organized by the Arab Reform Initiative, September 13, 2021

## Conclusion

International experiences that have addressed post-conflict HLP issues provide several approaches for Syria. Adopting a comprehensive approach to HLP issues should form the fundamental basis to address violations perpetrated before and during the conflict. HLP issues such as tenure insecurity result from the widespread informality of tenure and unregistered transfers. Inadequate housing policies and cumbersome registration procedures contributed to this informality. Laws then took advantage of these procedures – which were irregular and largely ad hoc in nature – to carry out evictions and expropriations under the pretext of urban development models that focus on high-income citizens. The conflict exacerbated these issues; the destruction of certain areas provides a convenient opportunity to re-develop them in a way that risks denying thousands of families' their HLP rights and their right to return. Addressing the root cause of informality in Syria will require reflecting on a variety of issues such as land registration procedures, urban housing and planning policies (particularly the state's failure to introduce effective regulatory procedures during periods of rapid urbanization), and the failure of land reform.<sup>[203]</sup>

Syrians need to decide how they want to address the various forms of informality that exist in their country. This includes informal transactions that occurred before and during the conflict, and the situation of informal settlements. Indeed, there will be a need to determine what can be regulated, and how and according to which criteria. Property restitution and a compensation mechanism can be an opportunity to process these cases. The objective of the mechanism would be to determine the legitimacy of ownership or possession. Once the rules determine which type of informal property should be eligible for restitution, a second step will be to regulate and register the properties. Moreover, documenting informal property, through the use of alternative evidence or proxy proof, should be supported. The use of technology-based participatory mapping offers promising solutions to document HLP violations and pre-conflict informal ownership, provided that these methods are trusted by the public/residents.

The review of the different mass-claim mechanisms has shown that regardless of the design's efficacy, it will fail in the absence of a political will, security, adequate legislation, skilled, sufficient, and impartial staff, and an adequate budget. International monitoring is another key element of success. The massive number of claims will likely require the creation of a specific mechanism to avoid overburdening the existing administrative and judicial system, and to simultaneously build trust in an independent mechanism. The mass-claim mechanism will need to have a standardised approach, and a database to handle the expected claims. Various types of properties will be determined for eligibility of private

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[203] The failure of the land reform resulted in small and unsustainable land plots that contributed to rural exodus and urbanization.

or social housing, residential housing, as well as agricultural and commercial property. The types and timeframe of HLP violations will also be included in the restitution/compensation process (discriminatory laws, occupation, destruction, expropriation, confiscation, forgery, etc). Finally, efforts should be made to categorize and quantify the expected number of claims in each category to adequately estimate the budget required for the practice.

The design of such a mechanism will be conditioned by the political dynamics and will of the actors involved in the conflict, and signatories of a political agreement. This report focused on best practices that conform to international standards, which should translate into practices that will assist displaced Syrians in proving ownership of their homes and property, regardless of their current location, and in ways that are transparent and secure.











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