



# The Role of Transitional Justice (Reparations and Compensation Mechanisms) in Addressing Property and Housing Problems in Syria

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THE DAY AFTER  
Supporting Democratic Transition In Syria

## The Role of Transitional Justice (Reparations and Compensation Mechanisms) in Addressing Property and Housing Problems in Syria



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## Executive Summary

The first section of this report discusses the evolution of transitional justice in international practice. It sheds light on the characteristics of transitional justice and its mechanisms that have been established in international law documents and literature, including truth commissions, prosecution, reparation, compensation, and institutional reform. The section also delves deep into the different forms of transitional justice applications in various countries and addresses its two limits from a theoretical and pragmatic perspective. The association of transitional justice with the concept of democratic transition refers in its broadest sense to the processes and interactions associated with the transition or transformation, from a non-democratic system of government to a democratic system of government, by upholding the rule of law and preventing impunity.

This report focuses on the mechanisms of reparation and compensation, in the return of property and housing, and compensation in cases where the response is not possible, as these mechanisms include direct executive procedures, which play a key role in addressing real estate problems, according to acceptable and satisfactory solutions for those affected, based on achieving justice and effective remedy. It is a process that depends on the conditions and ingredients for its success, on strengthening other mechanisms of transitional justice, such as institutional reform, truth, and prosecution commissions, and providing the requirements for national and societal reconciliation.

The first section focuses on the example of Bosnia and Herzegovina. The report presents the Dayton Agreement (DPA), which ended the conflict in Bosnia in 1995, and its principles included in Annex VII, guaranteeing the rights of refugees and IDPs, based on human rights laws and refugee rights. This relatively successful measurement tool can be used for the Syrian case, particularly the issues of reclaiming the property of displaced, refugees, and ensuring the right of return and housing within multiple options.

The report examines how the restitution of property based on the reparations mechanism is closely linked to Annex VII of the Dayton text, and its implementation through the Inter-Agency Proprietorship Act (PLIP), under the supervision of the Office of the High Representative, the United Nations High Commissioner for Refugees, and the Organization for Security and Co-operation in Europe (OSCE), and the Code of Criminal Procedure. This law of Annex VII established interrelated guarantees, which affirmed the right of all refugees and displaced persons to return freely to their places of origin. The issue of remedial methods for crimes such as ethnic cleansing was also raised through the set of “Principles on Housing and Property Restitution for Refugees and Displaced Persons” of the UN

Subcommittee on Human Rights in June 2005 and was determined as the preferred solution for the return of displaced persons and refugees to their lands and property.

The reparation mechanism, and compensation claims brought by representatives of victims of violations in Bosnia many years after the war had ended, resulting in the passing of comprehensive Bosnian legislation on missing persons in late 2004, which provided financial support for family members of missing persons. While many experts felt that the lack of official response to Rule 150 (related to reparation in international humanitarian law), which states that “A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused” — was one of the reasons that significant groups of displaced persons did not have the trust to return to their places of origin.

One of the main lessons that can be learned from the example of Bosnia, is that the return of property and housing to its owners within reparations programs have contributed to fueling victims’ trust in transitional justice mechanisms in a relatively acceptable manner, compared to other countries. The intervention of the international community that supported the implementation of these programs was a key factor in supporting the response of local institutions, pushing them towards enacting legislation and establishing bodies entrusted with the recovery of the displaced persons, their properties, and homes. and giving victims the freedom to choose their places of return, taking into account the inter-ethnic fears generated during the conflict.

The second section of this report focuses on the problems of property rights and housing from a Syrian perspective, studying the causes and factors that led to their emergence, the accumulation of their manifestations before the war, and their escalation during the war. To understand the implications of these problems, the report delves into the historical context of the Ottoman real estate registration system known as “Tapu Tahrir Defter Leri” (written survey of immovable properties), which includes the processes of registration and transfer of ownership that are carried out according to official documents, and based on the testimony of witnesses proving the ownership of the occupants in the event of loss documents in the event that official documents are not available. The report also touches on the period of the French Mandate, during which a central real estate registry was established in all governorates. However, this register did not cover customary and informal transactions, and the new real estate system gave real estate ownership more stability and accuracy, specifically in facilitating ownership procedures. Following the independence of Syria, reforms to address the gap in land tenure and its distribution were introduced, in order to meet the needs of farmers and the needy. The Syrian Civil Code issued in 1949 played an important role in the development of the current land tenure system.

In addition, the second section of this report traced the causes of the exacerbation of the real estate issues under the Baath regime and how the Government of Syria used the management of land and property as a tool to strengthen the political control of the ruling party, with the objective of meeting the needs of the authority more than working to protect the right of property and provide housing to the population. This was reflected in the laws issued after Hafez al-Assad came into power in 1970, such as expropriation laws, laws regulating the sale of land, and urban restructuring. Those new sets of laws allowed administrative units to confiscate private property under the guise of “public interest,” simultaneously with the failure of the regime’s development policies and plans in that era, to address the problems of makeshift housing, which increased significantly, until half of the housing in Syria at the beginning of the 2000s, were outside urban planning areas, and bordering slums.

After discussing the background and causes of the real estate issues in Syria, the report focuses on the extent of damages, and those affected by the increase of violations of property and housing rights, during the Syrian war. The report clarifies the role of real estate laws and decrees issued by the regime, as well as the organizations, projects, and organizational schemes, that are concerned with the implementation of these laws, and the relevance of laws and other procedures to real estate and property issues. In addition, the report explores the judicial, security, and administrative procedures, which placed significant restrictions on proving ownership, and constituted a flagrant violation of property and housing rights. Mainly because those laws were passed when half of the Syrian population became displaced outside their homeland.

According to the general context of those real estate policies, which are inextricably linked to the demographic change carried out by the regime in the last decade, it becomes clear that the regime’s approach is dangerous. The regime’s objective is to achieve goals with political and authoritarian dimensions, which, if pursued, will lead to the erasure and obliteration of the identity of several towns and cities in the country and will create a radical change in the urban environment and social relations that define the identity of most Syrians. The report reveals the extent of inconsistency and dispersion of the real estate and property rights system and its use of standard policies, which resulted in negative repercussions that were reflected on the rights of property and housing owners and put property owners at the risk of losing their rights in an unprecedented manner. The regime employs all those laws, plans, and real estate projects, for the purposes of robbing and stripping millions of Syrians of their rights to their properties and homes. It is enabling the heads of security services and militias loyal to it and turning a blind eye to the corruption networks affiliated with it, to control and seize private and public properties.



The regime's long-term objective is to impose a new truth on the ground, with the aim of preventing the return of refugees and manipulating the reconstruction process according to selective criteria — all while seizing the property of refugees, displaced persons, and missing persons in the process.

The third section of this report focuses on the challenges and obstacles of transitional justice in Syria, most notably the political unrest that characterized the Syrian war and did not only fail to address the struggle of the Syrian people in its various manifestations and dimensions, but also failed to provide any possible opportunity to agree on fundamental issues, including the safe and voluntary return of refugees, and property restitution and reparation. Among the most significant challenges addressed in this report are the elitism of the culture of transitional justice in Syrian communities, the impact of societal divisions and disagreements, and the complex social and identity heritage. Many Syrian communities perceive the concept of transitional justice as directly related to defending, sectarian, ethnic, tribal, and regional affiliations, and ensuring the rights and interests of these groups. The Syrian regime has worked to strengthen this divisive heritage, by eliminating the concept of citizenship, which is based on the principles of justice and equality among all citizens.

The report discusses the difficulties of reaching an accurate, objective assessment that determines the proportion and size of the societal, civil, and political forces that support the demand for transitional justice in Syria. However, the most salient factor is the flexibility in which Syrians interact with the concepts, ideas, and examples of transitional justice, which is reflected in the discourse, activities, and programs of Syrian CSOs active in this field. For the Syrian Interim Government, however, it is limited to being a concept that serves as an annex to its political discourse, rather than being part and parcel of it. Perhaps the review of the performance of CSOs that work in the field of transitional justice - as discussed in this report - clearly indicates that some of them focus on accountability and prosecution mechanisms. While others focus on transitional justice education and awareness programs, in addition to a primary mechanism of transitional justice, such as the one related to property and home restitution (HLP). While most organizations make transitional justice a primary goal, their documentation activities support only one or two components of transitional justice, which are usually represented within judicial mechanisms, while reparations and restitution of HLP rights attract less attention and resources from CSOs.

The report proposes, as a basic conclusion, taking into account the challenges and problems of achieving transitional justice, the need to work on the maturation of Syria's approach to transitional justice, based on basic guiding determinants that stem from Syrian discourse on transitional justice. This discourse will involve representative frameworks of the forces of the revolution, the Syrian opposition, and CSOs. There must be a consensus on the terms used that are best able to address property and housing issues, and there must be programs that guarantee the recovery of property and housing rights, at the core of the transitional process, and an evaluation of the level of efficacy of property and housing reparation programs. The report also presents a number of solutions, based on the recognition of individual and collective rights, so that the former includes qualified property owners who have documents to prove ownership, or who are able to prove ownership by available legal means. The latter includes the recognition of group rights.

The report concludes with proposals that define the general and procedural framework for the return of property and housing, to be incorporated into a final agreement in Syria, in accordance with international laws and legislations, and based on examples of other countries (mentioned in this study). The report suggests an independent annex to the agreement similar to Annex (7) of the Dayton Accords on Bosnia and Herzegovina and suggests integrating it with a program that ensures the right of voluntary and safe return for all Syrian refugees and displaced persons and protecting those laws and regulations from attempts of politicization in the Syrian political and negotiating process. In addition, the report suggests detailed and procedural tasks that contribute to advocating for the rights of Syrians to housing, land, and property, from legal, technical, and political perspectives, by consulting with Syrian and international experts who are prepared to train Syrians. This initiative will leverage CSOs to put pressure on the relevant parties to bring forward the property recovery and reparation issue to the forefront and will also support initiatives that work on documentation and awareness programs on real estate and civil rights, that protect and defend those rights.

The report further suggests engaging women in all initiatives and programs related to property recovery and reparation and addressing the restrictions imposed on the transfer of ownership that affects their rights to property and housing. In addition, building a Syrian network that includes civil, political, and human rights actors active in transitional justice issues, with the objective of unifying the Syrian discourse on transitional justice, is crucial to the development of concepts, plans, and programs that enhance adherence to transitional justice, and motivate victims to participate in initiatives and programs related to the recovery of property and housing.

## Introduction

There are urgent reasons and motives for discussing the role of transitional justice in addressing the problems of property and housing in Syria. It is challenging to talk about a post-conflict period in Syria, without knowledge of the violations that affected property and housing owners, as a result of the broad and systematic policies related to real estate and property rights that were, and still currently, carried out by the regime. The regime carries out those laws through projects, and procedures that are directly and indirectly relevant to real estate and property rights. Those laws passed by the regime have undermined the real estate and property rights system in Syria and justified the confiscation and seizure of Syrian property illegally and under false pretenses.

In the context of explaining the role of reparation and compensation mechanisms, addressing the challenges of the real estate system in Syria, and suggesting solutions to ensure justice for those affected, the first section in the report discusses the concept of transitional justice in international practice and extrapolates the experiences of other countries, to better understand programming for property recovery and compensation. As was the case of Bosnia and Herzegovina, which this report presented as a successful measure for learning about similar cases of transitional justice, and the potential of applying many of its programs and mechanisms in Syria.

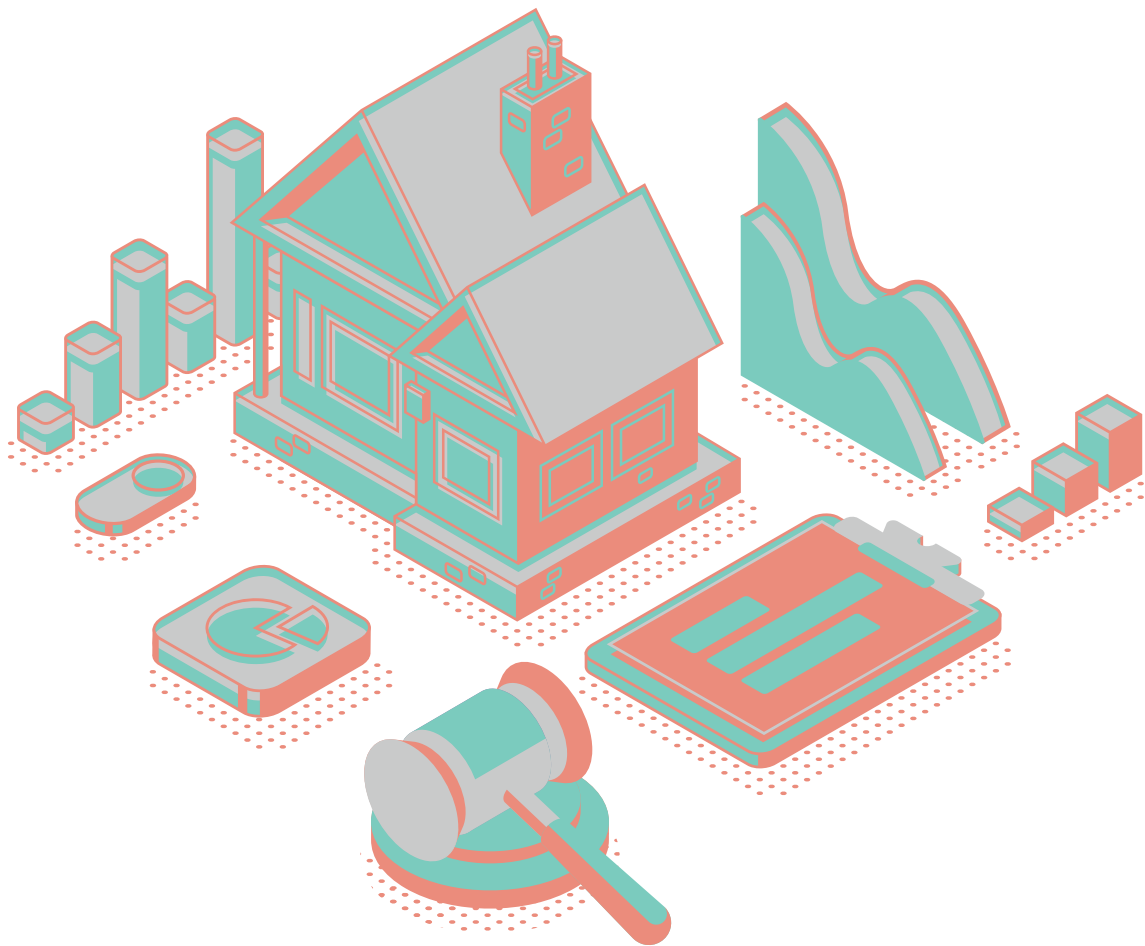
The second section of this report focuses on the forms of violations of property and housing from a Syrian perspective, examining real estate registration systems since the formation of the modern Syrian state, and investigating real estate problems that have steadily accumulated under the Baathist rule. Those real estate and property rights laws legitimized the confiscation of private property under the guise of “public interest,” and also demonstrated the failure of the successive Syrian regime governments to address the problems of informal/makeshift settlements in Syria. The Syrian regime passed a number of laws after 2011, camouflaged as formal procedures and real estate and property projects, that hinder the return of refugees, place security restrictions on absentees’ properties, and are a demographic and societal danger to the characteristics of Syrians’ identity. These laws have a current and future impact on the loss and waste of property of millions of refugees and displaced and missing persons.

The third section of this report explores the challenges and obstacles of transitional justice in Syria, which are evident in the continued political unrest over the last decade, and the international community's failure to reach a just solution to the Syrian crisis, thereby increasing the risks of citizens losing rights to their property and homes. The report delves into the subjective reasons that limit the rooting of transitional justice in the Syrian collective consciousness, especially the elitism of the culture of transitional justice, and its oscillation between the limits of partnership and parity among civil initiatives active in the transitional justice domain.

In its general summary, the third section proposes a grassroots approach to solving property and housing problems in Syria, based on guiding and basic determinants, steps for possible solutions, and a general and procedural framework for the recovery of property and housing, and its inclusion in any agreement for a final solution in Syria — all in accordance with international laws and examples covered in this report. The report further suggests the establishment of coordination and cooperation mechanisms between the Syrian political and civil forces, and up taking a unified discourse of transitional justice, as a necessary societal demand to resolve property and housing issues in accordance with standards of justice and effective redress.

## Section One

# Reparations and Compensation Programs in Transitional Justice Applications



## First: A cognitive and analytical introduction to transitional justice

The concept of transitional justice is a convention and falls under international law. However, the definition of transitional justice remains ambiguous due to its various adaptations that suit societies undergoing a stage of political transition and vary in their ruling systems, levels of development, and the nature of their problems and their challenges.

### 1- The origin of transitional justice

The term “transitional justice” emerged in the last century, to describe the woes, tragedies, and grievances experienced in conflicts. And therefore, the search for non-traditional mechanisms in dealing with the effects of wars and internal conflicts began. The general notion was to develop principles of justice that serve as the main cornerstone in dealing with the challenges of moving towards sustainable peace and finding mechanisms of redress for victims and those affected. Those mechanisms push the processes of transition and political change in conflict areas, towards providing the requirements for recovery, stability, and democracy, in a way that guarantees and encourages human rights in those countries.<sup>[1]</sup> In the mid-1990s, a number of American academics coined the term to describe the different ways in which countries dealt with the problems of new regimes coming to power and confronting the massive abuses of their predecessors. Therefore, there are many definitions for transitional justice according to the perspective from which it is viewed.

Among the most noteworthy of these definitions, is former United Nations Secretary-General, Kofi Annan’s, who described transitional justice as “comprising the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation. Central elements of this ‘formula’ include prosecutions, reparations, truth-seeking, institutional reform and vetting, or a combination thereof.”<sup>[2]</sup>

The definition of the International Center for Transitional Justice gives a clearer definition with a focus on the past and defined Transitional Justice as “a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy.”<sup>[3]</sup>

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[1] For more information, please read the document issued by the Security Council on the rule of law and transitional justice in conflict and post-conflict societies - August 23, 2004 - Last seen Sep 16, 2021 <https://www.ohchr.org/en/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>

[2] Kieran McEvoy -Beyond Legalism: Towards a Better Understanding of Transitional justice. Journal of law and society- 2007- P 439.

[3] ICTJ - What is transitional justice <http://www.ictj.org> Last seen: Sep 17, 2021

According to these definitions, the concept of transitional justice is closely associated with the concept of democratic transition. In its broadest sense, the process encompasses a transition from a non-democratic regime to a democratic regime, by upholding the rule of law and preventing impunity. On this basis, the principles of transitional justice were determined, jointly with international political, economic, and social transformations, by the United Nations since 1996, following reports submitted to the High Commission for Human Rights. The reports were adopted by the Security Council in 2004 as a mechanism for the democratic transition of countries, from war to peace, on the basis of reconciliation and preservation of the rights of the affected groups, and based on the principles of truth and dignity, in order to build a state of law, human rights, social justice and sustainable development.<sup>[4]</sup>

Transitional justice is based on the idea that the demand for punitive justice is not an absolute — given that it must be balanced by the need for community peace, democracy, balanced development and the rule of law — particularly with reference to the experiences of peoples who went through transitional circumstances, and were faced with several limitations, including: lack of human and material resources, the lack of independence or unity of the judicial system, the fragility of the democratic transition, and a large number of human rights abusers in positions of power. This all enmeshed with a large number of victims of human rights violations, and the difficulty of dealing with legal obstacles or constitutionalism that encourages punitive justice, such as the adoption of laws that grant amnesty and immunity for perpetrators and a statute of limitations for violations.<sup>[5]</sup>

In light of the political, legal and societal implications that contributed to building elements and criteria for transitional justice, the impact of the experiences of countries that tested different forms of transitional justice was evident in rooting their concept between two ends on a spectrum: the absolute theoretical and the relative practical, which is what created varying results among countries experiencing a transitional justice process. The Arab Spring, for example, developed a conceptual framework for transitional justice, with the growing need for its application in the transitional stages. For example, the Basic Law of Transitional Justice in Tunisia defined it as “an integrated path of mechanisms and means adopted, to understand and address past human rights violations, by revealing their truth and holding those responsible to account, and reparation and rehabilitation for victims that achieves national reconciliation, preserves and documents collective memory, and establishes guarantees of non-repetition, and the transition from a dictatorship to a democratic system, all which contribute to the consolidation of a human rights system.”<sup>[6]</sup>

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[4] Document issued by the Security Council on the rule of law and transitional justice in conflict and post-conflict societies - August 23, 2004 - previous reference

[5] Samia Yatouji - Transitional Justice as a Source for Strengthening Normative International Protection for Human Rights - PhD Thesis - Mohamed Khider Biskra University - Algeria - p. 84-85

[6] Abdul karim Abd - Transitional justice experience in Morocco - Cairo Institute for Human Rights Studies - 2013 - p. 16



There are methodological problems in the concept of transitional justice, raised by research trends, which believe that framing the concept from a purely liberal perspective has often led to the preponderance of global centralization that defined the principles and rules of the transitional justice system, at the expense of the roles of local communities. This led to the emergence of large voids because of the pure focus on the future, without looking to address the roots of the conflict. Therefore, in recent years, we find that there has been focus on supporting societal resilience and supporting civil structures that contribute to the transitional stage, as well as highlighting voices in conflicts, understanding citizens' problems and demands, and their willingness to engage in activating transitional justice mechanisms, with maximum flexibility and positive interaction.<sup>[7]</sup>

## 2- Characteristics of Transitional Justice

Transitional justice acquires its distinct characteristics from traditional justice, in that it is concerned with the "transitional era" in the sense of moving from a state of internal armed conflict or civil war to a state of peace and democratic transition. Or from the state of the collapse of a legal system to its reconstruction, and the transition from a dictatorial rule to a democratic one. However, there are important characteristics that are restricted to transitional justice; transitional justice must be applied in gradual phases, with a clear timeline, with a will from citizens and all stakeholders involved to participate and cooperate. It must include a comprehensive and integrated approach in dealing with the legacy of grave violations, as it does not stop only at investigating crimes, identifying, and holding those responsible accountable, but also working on taking measures to ensure that citizens do not repeat harm, rebuild trust and redress between the citizen and the state, as well as promote peace and democracy. Transitional justice is characterized by achieving the required balance, and serving the various aforementioned objectives, according to the characteristics of each community and with consideration to the existing state of affairs and parties in power.<sup>[8]</sup>

Transitional justice is also characterized by adopting a victim-centered approach, rehabilitating the victim is one of its most significant objectives. This calls for maximum effort so that the transitional justice process carried out by a state supports the victims, and their involvement in its process. It is worth noting that resorting to transitional justice usually takes place in a country that has known grave violations of human rights, and therefore it is required to address what happened in past periods to achieve the desired stability. Given the fragility of the domestic conditions that characterize the transitional stages, as well as the existing authorities, it is necessary to define priorities according to the situation of each country and each stage, which are all different and vary in experience.<sup>[9]</sup>

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[7] Philipp Kastner-A resilient Approach to transitional justice - Journal of Intervention and Statebuilding -ISSN: 1750-2977 (Print) 1750-2985- <https://www.tandfonline.com/loi/risb20> Seen on Sep 20, 2021

[8] Judge Adel Maged - Transitional Justice and Successful Administration Post-Revolutions - International Political Journal - Issue (192) (in Arabic) - Cairo - April 2013 - p. 10

[9] Judge Adel Maged - Transitional Justice and Successful Administrations Post-Revolutions - previous reference



The challenges of democratic transition also include addressing the legacy of violations and overcoming their effects. The past and the pressures of the present while ensuring peace and security and moving towards the future, through reforming state institutions and legislation, building democracy, achieving development, and ensuring the rule of law<sup>[10]</sup> — all remain challenges that need to be addressed. Above all, having the will to resort to this approach requires political navigation on the part of the state, a minimum level of consensus between the political parties in the country, and the involvement of CSOs, the media, and representatives of the victims and their families in this process.

According to the aforementioned perspective, transitional justice strives to reduce impunity, and to balance achieving justice, success in human development projects, and social and economic recovery. Reparations and compensation programs should be viewed as a legal solution equally available to all victims of wrongful expropriation.

### 3- Transitional Justice Mechanisms

Transitional justice is based on judicial and non-judicial mechanisms, which consist of integrated and complex processes to facilitate implementation in reality. The more experiences derived from other countries, especially successful ones, the more the process meets its required standards. Nevertheless, recent experiences of transitional justice have revealed the differences in the mechanisms of transitional justice, due to “relational breaks.” As revealed in other countries’ experience with transitional justice, many theories that were developed have focused in recent years on finding a balance between the principles transitional justice and its flexibility in applying its mechanisms according to the specifics of each case, in a way that ensures the involvement of local and international actors, and achieves their desired goals. These basic mechanisms are as follows:

**Truth Commissions:** They are formal, non-judicial commissions established for a specific period of time, and aim to determine the facts, causes and results of past human rights violations, by giving special importance to the testimonies of victims. Truth commissions can also contribute to prosecutions and redress through findings and recommendations, as well as helping to achieve institutional reforms, to avoid new abuses<sup>[11]</sup>. There are multiple elements on which the effectiveness of truth commissions depends, the most important of which are the selection process of their members; by giving consideration to correct representation, experience, the powers granted to them, and their credibility through

[10] Dr Habib Balkush - Transitional Justice: Concept and Mechanisms (in Arabic) - Publications of the Arab Organization for Human Rights 2014 (in Arabic) - p.40 and 41 <http://aohr.net/portal/wp-content/uploads/2014/05/%D9%83%D8%AA%D8%A7%D8%A8-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%84%D9%8A%D8%A9.pdf> Last viewed on Sep 21, 2021

[11] Howard Varney, Edward, Gonzalez, and others - The Search for Truth: Elements for Creating an Effective Truth Commission - International Center for Transitional Justice - 2013 - p. 12

gaining the trust of communities and support for their work from local notables and stakeholders. Many other countries have known dozens of truth commissions, especially since 1974 until the present day.

**Prosecutions:** Prosecutions are aimed at holding perpetrators of serious crimes and abuses accountable and are a central component of any transitional justice strategy. They are carried out in national, international, or mixed courts. These trials help restore trust among citizens about the rule of law. They also contribute to establishing private or public deterrents that condemn criminal behavior, achieve justice and dignity for victims, and rebuild trust in the relationship between citizens and state institutions, in order to consolidate democracy in its best form.<sup>[12]</sup> In many cases, especially in countries that witnessed the commission of war crimes, genocide and crimes against humanity, the assessment of the transitional justice process may depend to a large extent on the success of the prosecution mechanism in achieving justice and the rule of law, as an alternative to ‘blood feuds’, which explains the association of the concept of transitional justice with criminal justice in many countries.

**Reparation and Compensation:** The concept of reparation for harm includes several meanings, including direct compensation for damage or lost opportunities, moral support for the victims, and the restoration of what they lost as much as possible. Reparation aims to ensure that each of the victims receives some form of benefit from that program. Forms of reparation and compensation include: (a) Reinstatement: by returning the victim to their same position before the violation took place. (B) Pay compensation for any damage in proportion to the extent of the violation and the circumstances of each case. (c) Guarantees of non-recurrence through institutional reforms that strengthen the independence of the judiciary and civilian oversight over military and security institutions. Compensation can be in-kind, such as granting money and material incentives, and providing free or preferential services such as health, education, and housing. The compensation can be moral; and might include issuing an official apology or encouraging and building solidarity with the victims and others.<sup>[13]</sup>

**Institutional Reform:** Reforming public institutions is an essential task in the transition stages from authoritarian rule to democracy. The philosophy of reforming these institutions seeks to achieve two main goals: The first is to establish effective and equitable institutions that play a decisive role in preventing future violations. Second, reforming executive institutions, such as the army, the security apparatus, and the judiciary, would

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[12] Judge Adel Maged - transitional justice and successful administrations post-revolutions - previous reference - p. 14

[13] Office of the United Nations High Commissioner for Human Rights - Rule of Law Tools for States emerging from conflict - (Reparations Programs) United Nations - New York 2006 - p. 15

restore the people's trust in their state of citizenship and the rule of law.<sup>[14]</sup> All of this depends on the availability of a comprehensive approach in restructuring state institutions that were complicit in acts of violence and abuse, in compliance with constitutional and international standards. An example of institutional reform that was carried out in Iraq after 2003, when the new government issued the decision of dissolving the Iraqi army, was subject to many criticisms, because it was perceived as retaliatory collective punishment, which violates the principle of integrity through unfair procedures. However, there remains a close link between the concept of national reconciliation and transitional justice, and achieving peace and stability requires revealing the truth about violations of human rights and holding perpetrators accountable. There is no peace without justice as seen in many post-war contexts. Perhaps progress in national reconciliation, through a political, social, and civil process, is associated with securing an environment of acknowledgment of the truth, and the best way to do that is to break the pattern of the past with all of its evils and tragedies.

## **Second: Reparations and compensation programs “The Case of Bosnia and Herzegovina”**

Among the transitional justice mechanisms that were previously addressed, all issues related to addressing property and housing problems are associated with the extent of effective application of reparation and compensation programs, while other mechanisms contribute to creating an appropriate environment, to increase trust in the feasibility of transitional justice policies. If these policies achieve an acceptable level of standards of justice, that will enable victims of violations to return to their pre-conflict condition. This approach that was adopted by the United Nations is reflected in strengthening the principles of reparation, so that they are commensurate with the gravity of the violations and harm caused to the victims. The approach is classified into four main factors, and they are: refund, compensation, rehabilitation, and satisfaction, and guarantees of non-repetition.<sup>[15]</sup> From a practical perspective, states that have known various forms of transition have seldom adhered to these principles and standards, even in cases that are included in numerous peace and cessation of hostilities agreements. Reparations programs were not given their due importance, as we have seen in examples like Mozambique, Guatemala, Chile, Morocco, Colombia, Sudan, Argentina, and others.

The most significant example however, which presents a relatively successful measurement tool in the post-war context, is the example of Bosnia and Herzegovina, which can benefit the Syrian case. In particular the issues of recovering property of displaced persons and refugees and guaranteeing the right of return and housing. The example of Bosnia was rife with major pitfalls and challenges, and was indeed, affected by the political

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[14] International Center for Transitional Justice - previous reference

[15] Office of the United Nations High Commissioner for Human Rights - previous reference

climate that followed the end of the conflict. However, the will of the international community contributed greatly to supporting transitional justice programs, even if they were not implemented within a clear strategy in many cases.

### **The Bosnia and Herzegovina case**

The conflict that broke out in Bosnia and Herzegovina from 1992 to 1995 was characterized by a pattern of ethnically motivated attacks on the civilian population and was eventually deemed ethnic cleansing/genocide. The population of Bosnia consisted of Bosniaks (43.7%), Bosnian Serbs (31.3%), Bosnian Croats (17.3%) and numerous minorities like the Roma and Jews. The motive behind the attacks carried out by the Serbian army was the expulsion of all non-Serb ethnicities from the areas of Bosnia and Herzegovina, during which serious violations of international humanitarian law and human rights, such as genocide, arrest, torture, and rape were committed, in addition to the forced displacement of Bosnian Muslims, which was later determined to be ethnic cleansing. As a result, more than 1.2 million of Bosnia's four million population were internally displaced, and more than a million became refugees, and approximately 200,000 were killed.<sup>[16]</sup> The war ended with formally signing the Dayton Peace Accords (DPA) in Paris at the end of 1995, according to which 51% of the Bosnian territory was to be administered by the Bosniaks and Bosnian Croats, and 49% administered by the Serbs. Hence the Federation of Bosnia and Herzegovina was founded, consisting of ten cantons, 149 municipalities, and the self-governed Brčko District. The legal framework of the peace agreement included a number of human rights and humanitarian law treaties that are directly applicable to Bosnia and Herzegovina. Other treaties such as the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the Geneva Conventions are also directly applicable to Bosnia and Herzegovina and trump all domestic laws. Furthermore, pardons for war crimes were not passed.<sup>[17]</sup>

Although the conflict ended, the transition from war to peace was slow. During the first two years after Dayton, the conflict continued to simmer due to the failure to implement the Convention's key provisions on human rights, the return of refugees and the resuscitation of central institutions. In response, the international community began to take a tougher approach towards people accused of war crimes, and in subsequent years, through the International Criminal Tribunal for the former Yugoslavia, several Serbian leaders implicated in genocide and ethnic cleansing were prosecuted. The restoration of freedom of movement and the visible return of displaced persons and refugees also led to a significant improvement in relations between the main ethnic groups. As an indication of these developments, and in the context of the justice sector reform, the Ministry of Justice approved in early 2000 a transitional justice strategy supported by the European Union and

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[16] Payam Akhavan "Punishing War Crimes in the Former Yugoslavia: A Critical Juncture for the New World Order," *Human Rights Quarterly* 15, no. 2 (1993)

[17] *Ibid*

the international community.<sup>[18]</sup>

## 1- Property recovery and returnee challenges

The Dayton Peace Accords in its seventh annex included an agreement on refugees, and displaced persons. Article (1) of the annex states that “All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.” The return of refugees as soon as possible was a critical factor in ending the conflict in Bosnia and Herzegovina. All parties agreed to allow refugees who have fled their places of origin to return, including those who have been granted temporary protection from other countries.<sup>[19]</sup> The DPA article contributed to establishing the return and restoration of property, and with compensation provided only in the event that it was not possible to restore property, or in the event that owners were unwilling to return.

The DPA also included in Item (4) of Article I of Annex 7: “Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees’ choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life.<sup>[20]</sup> The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.” From reading Items 1 and 4 of Article I of Annex 7 of the DPA, it is clear that the rights of refugees are closely related. Refugees should have the right to return to their places of origin from which they were displaced, and not only to their country of origin, in connection with their right to reclaim property. In addition, refugees’ return to their place of origin must be voluntary, especially if their return entails returning to their homeland, and not to the same place from which they were displaced.

Although refugees have the right to return and to recover property, these rights can be exercised jointly or separately, which was also included in paragraph “3” of Article (2) of the Constitution of Bosnia and Herzegovina, which included the right to property, liberty of movement and choice of residence.<sup>[21]</sup>

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[18] Amaya al-Arza - Durable and Just Solutions: Lessons Learned from the Experience of Bosnia and Herzegovina (in Arabic) - BADIL Center for Citizenship Rights - Issue (70) - November 2018 -(70) – October 2018 – <https://www.badil.org/ar/publications/haq-al-awda/issues/items/3465.html> Last seen Sep 25, 2021

[19] Ibid

[20] Summary of the Dayton Peace Agreement on Bosnia-Herzegovina - University of Minnesota- <https://web.archive.org/web/20151017082412/http://www1.umn.edu/humanrts/icty/dayton/daytonsum.html> - Last viewed on Sep 26, 2021

[21] Core document forming section of state party reports “Bosnia and Herzegovina” - International Human Rights Instruments - HRI/CORE/BIH/2011 - Feb 22, 2011

The restitution of property was closely related to the Annex VII of the Dayton Accords text, and its implementation through the Inter-Agency Proprietorship Act (PLIP), overseen by the Office of the High Representative, UNHCR, OSCE, and the Code of Criminal Procedure. This law established interrelated guarantees that affirm the right of all refugees and displaced persons to return freely to their places of origin. It also obligated the contracting parties to work to facilitate the return of families and individuals (refugees and displaced persons) and re-establish their lives and livelihoods in local communities, in accordance with the plan prepared by the United Nations High Commissioner for Refugees and other organizations that focus on the principles of “Item 4” of Article I of Annex. For this purpose, an independent commission for the affairs of the displaced and refugees was established under Article 7 in the Annex, with its headquarters in the capital, Sarajevo, and branch offices in other cities, to facilitate the return and reintegration of refugees and displaced persons. The commission is concerned with receiving requests and claims related to real estate ownership in Bosnia and Herzegovina, with regard to real estate transfers that took place since April 1, 1992, and which the complainant claims were illegal, provided that the complainant is not in possession of the property at the time of the claim. The claim may be based on the property’s value (see Article 11), in a manner that guarantees the restoration of the property, whether to the owners or the beneficiaries, as was the case before the conflict.<sup>[22]</sup>

The initial returns were termed “majority returns,” and entailed the return of refugees to areas where their ethnic groups constituted the majority of the population. It was relatively easy for these returnees to settle in their homes, if they were not destroyed, and posed no security risks to them. Most of the “majority returns” took place in the early stages after the war ended until 1997. The majority of returnees chose to settle in areas where their ethnic groups constituted the majority of the population. Out of 400,000 refugees, only 35,000 of them settled in areas where they constituted an ethnic minority.<sup>[23]</sup> The return to areas with a different ethnic majority was almost non-existent in the first years after the Dayton Accords. There were no guarantees for the safety of the returnees, which resulted in some cases of harassment and attacks, and caused the deaths of some in explosions and arson attacks. The importance of incorporating refugee rights into domestic legislation came to the attention of the International Criminal Tribunal in 1998, which recognized that old laws that have perpetuated the ethnic cleansing that took place during the war, made property restitution almost impossible to implement. In addition, the enactment of legislation that established a standardized approach to property restitution across the country of the 1999 Property Act, was implemented in coordination with various international bodies, and introduced relevant practical changes. The property restitution process included awareness-raising and education campaigns on the rights associated with property resti-

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[22] Summary of the Dayton Peace Agreement on Bosnia-Herzegovina – Previous source

[23] Bosnia and Herzegovina – JICA Research Institute-March 2014 – available at: [https://www.jica.go.jp/jica-ri/publication/workingpaper/property\\_restitution\\_and\\_return\\_revisiting\\_the\\_case\\_of\\_bosnia\\_and\\_herzegovina.html](https://www.jica.go.jp/jica-ri/publication/workingpaper/property_restitution_and_return_revisiting_the_case_of_bosnia_and_herzegovina.html) Last viewed Oct 1, 2021



tution, training for local housing staff, and support for housing authorities when needed.<sup>[24]</sup> By 2003, 200,000 families were able to reclaim their homes and possessions, while more than 1 million returns were officially registered. It is estimated that about 317,000 properties were reconstructed after the war, and a very high percentage of displaced persons chose to sell or exchange the restored properties, and opted for local integration within a climate in which they are an ethnic majority.<sup>[25]</sup> During that period, efforts were made to implement Annex 7 in relation to mass returns, and concerns about abandonment of the return process became focused on the international community, who recognized that return was linked to post-restitution factors.

Those who have chosen to be resettled are usually less interested in returning, or because they are unable to return, due to unfavorable economic, security, and health conditions. Although there were a number of agreements to accept reciprocal quotas of returnees negotiated between the parties to the peace agreement, it was difficult to monitor the levels of commitment to the quotas, given the adherence of local authority figures to maintaining ethnically driven politics within communities and state institutions. As a result, there was pressure to enforce the international initiative to facilitate return as stated in Annex 7 of the DPA. Solutions for crimes such as ethnic cleansing were also raised via the “Principles on Housing and Property Restitution for Refugees and Displaced Persons” adopted by the UN Subcommittee on Human Rights in June 2005 and were determined as a potential solution for the return of displaced persons and refugees to their lands and property.<sup>[26]</sup>

That shift was accompanied by a growing awareness among victims of displacement of the freedom available to them, whether to stay in place, return to their pre-war homes or resettle to a third location. The approach aligned well with emerging standards such as the Guiding Principles on Internal Displacement, which called for the participation of IDPs in influencing processes, as well as their individual autonomy in making decisions about how and where to reintegrate themselves into society. It also reflects recognition of their rights to their property and assets, as well as to houses belonging to them.<sup>[27]</sup>

The success of these steps was clear. In 1999, the rate of implementation of the property restoration decisions was 4%, but increased after a year to 21%, and reached 93% by June

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[24] Bosnia and Herzegovina – JICA Research Institute - Previous source

[25] Massimo Moratti and Amra Sabic- el-Rayess- Transitional Justice and DDR: The case in Bosnia and Herzegovina – Research Unit International Center for Transitional Justice – June 2009

[26] The UN Secretary General endorsed the “restoration of property rights, or just compensation where this cannot be done” as a component of post-conflict reparations in his 2004 report on “The rule of law and transitional justice in conflict and post-conflict societies,” paragraph 54

[27] Rhodri C. Williams - Post-Conflict Property Restitution in Bosnia Balancing Reparations Durable Solutions in the Aftermath of Displacement - TESEV International Symposium on “Internal Displacement in Turkey and Abroad – Istanbul, Dec 5.

2005. Accordingly, illegal residents of homes were forced to leave, and original residents returned to their homes. However, many cases of return in Bosnia and Herzegovina did not last long, as a large number of cases were documented in which refugees returned temporarily, for many reasons, the most important of which are the lack of job opportunities, and discrimination against minority returnees. In addition, agricultural land and companies were not restored despite homes being restored. Moreover, the outcome of restitution in Bosnia remains controversial on a number of levels. It is difficult to precisely ascertain the extent to which the Dayton Accords was implemented, especially with regard to the objective of achieving both returns and property recovery for all victims of displacement. Statistics indicate that those who have actually returned did not exceed half the number of displaced persons. It was expected that many challenges would arise when implementing reparations programs in complex post-displacement conditions.<sup>[28]</sup>

The right of return and restitution of property must be rooted in the principle of the rule of law. In Bosnia, in the initial stages of return, many political agreements included plans for the return of refugees, which were not translated into reality, except when the international community intervened via the High Representative and the European Union representative in Bosnia. The establishment of clear mechanisms was crucial for displaced persons to return and reclaim property according to the principles of the rule of law, rather than political whims.

## 2- Compensation problems

International law distinguishes between three types of compensation for losses, property and land, and they are: 1) Restitution, which refers to measures which “restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred,” for example, restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property. 2) Compensation which “should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law,” such as lost opportunities, loss of earnings and moral damage and 3) Rehabilitation which “should include medical and psychological care as well as legal and social services. It can sometimes come in the form of a letter of apology or holding memorials for victims.”<sup>[29]</sup>

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[28] Massimo Moratti and Amra Sabic- el-Rayess- Transitional Justice and DDR: The case in Bosnia and Herzegovina - previous source

[29] Legislative and Judicial Legal Determinants of the Return of Refugees and Displaced Persons (in Arabic) - A group of researchers - Harmon Center – May 02, 2021 - <https://www.harmoon.org/researches/%D8%A7%D9%84%D9%85%D8%AD%D8%AF%D8%AF%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D9%82%D8%B6>  
Last seen Oct 6, 2021



While the focus was on return and property restitution, compensation was largely marginalized in Bosnia and Herzegovina. The international community did not establish mechanisms or mobilize the necessary funds for compensation. The prevailing belief at the time was that facilitating the Bosnian refugees and displaced persons' access to compensation, could lead to their reluctance to return. Accordingly, European countries did not seek to establish compensation mechanisms, to achieve their greater interests, by only repatriating Bosnian refugees, but not taking the responsibility of their settlement in European countries.

Claims for compensation filed by representatives of victims of abuse in Bosnia many years after the end of the war resulted in the passing of comprehensive Bosnian missing persons legislation in late 2004, providing for the establishment of a financial support fund for family members of missing persons. Later, when the Bosnian Constitutional Court reviewed the combined cases for hundreds of families of missing persons from all over Bosnia. Although the court incriminated those responsible for the violations, it did not order compensation for the claimants, and instead ordered the Bosnian authorities to work on activating the fund, allowing the victims to obtain compensation under the law, but the disputes over how to finance the fund, and determining its headquarters, prevented the fulfillment of the objectives for which it was established.<sup>[30]</sup> From another perspective, and despite the court's decision to compensate the victims of the Srebrenica massacre perpetrated by Serbian forces led by Ratko Mladic on Jul 11, 1995, which was carried out in collusion with the Dutch peacekeeping forces, and claimed the lives of nearly 8000 Bosnian Muslims, reparation was not granted individually. Rather, it was granted for the benefit of all victims, and one million euros was allocated for the preparation of a memorial and cemetery for the victims of the massacre and the forcibly disappeared.

The failure to grant individual compensation relayed a negative message for most survivors. Even when a Dutch court ruled that Dutch forces were responsible for killing 300 victims in Srebrenica, the court refused to consider requests for reparation from the victims' representatives.<sup>[31]</sup> When Bosnia sued the International Court of Justice over Serbs' responsibility for the massacre, the International Court of Justice held Serbia responsible for failing to prevent the genocide in Srebrenica, but at the same time refrained from granting reparation to Bosnians. Bosnian institutions that have opened the doors to compensation, such as the Local War Crimes Commission, have been able to respond to only hundreds of requests for reparations, mainly due to insufficient resources.<sup>[32]</sup>

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[30] Locating and Identifying Missing Persons: A Guide for Families in Bosnia and Herzegovina available at -available at - <https://www.icmp.int/wp-content/uploads/2014/08/locating-and-identifying-missing-persons-a-guide-for-families-in-bih.pdf>

[31] Constitutional Court of Bosnia and Herzegovina, 2004, Decision on Admissibility and Merits in the Appeal of Ms. M.H. et.al., case no. AP-129/04

[32] Constitutional Court of Bosnia and Herzegovina - Previous source

Many experts considered that the lack of official response, with regard to rule (150) related to reparation in international humanitarian law, which obligates the state responsible for violations of international humanitarian law, to make full reparation for the violations and harm caused by the perpetrators, was one of the reasons that did not increase the trust of displaced persons to return to their places of origin. One of the central lessons that can be learned from the Bosnian example, is that the recovery of property and housing for its owners within reparations programs has contributed to fueling victims' trust in transitional justice mechanisms in a relatively acceptable manner, compared to other countries. The intervention of the international community, which supported the implementation of these programs, was a key factor in supporting the response of local institutions, pushing them towards enacting legislation and establishing bodies entrusted with restoring displaced persons' properties and homes, and giving victims the freedom to choose their places of return, taking into account the inter-ethnic reservations generated during the conflict. As for reparation, it can be an important mechanism in achieving the best standards for the concept of reparation, in the event that the survivors' demands for individual compensation are implemented, in addition to collective compensation.<sup>[33]</sup> The Bosnia and Herzegovina example highlighted the issue of the absence of principles determining monetary reparation, in the event of the impossibility of implementing the restitution in-kind, for an act that violates international law. and exploring solutions on a larger scale, especially with the increasing areas of overlap between property and housing recovery and compensation for victims of violations. Bosnia's relative success in reparation programs commensurate with the harm inflicted on the victims and was an indication that it was moving forward on the path of durable solutions, to restore the displaced persons to their original situation before displacement, to include their personal independence, material security and economic independence.

The institutional reform between 2002 and 2004 had noticeable effects in supporting reparations programs, which was evident after the judicial system underwent major restructuring. This reform included the dismissal of all judges, followed by their re-nomination to their previous positions. Candidates were asked to document their qualifications and compliance with the laws of property, political affiliation, and activities during the war years. Upon receipt of the completed applications, the Supreme Council of Judges and Prosecutors was tasked with making the reappointment decisions. It was not clear whether the Council took into account gender and ethnic considerations in its decision-making process. It appears that many of the programs that were implemented, such as disarmament, demobilization, and reintegration, were separate from the implementation of transitional justice in a specific and systematic strategy.<sup>[34]</sup>

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[33] Amaya al-Arza - Durable and Just Solutions: Lessons Learned from the Experience of Bosnia and Herzegovina - Previous source

[34] International Humanitarian Law Database - [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule150](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule150) Last viewed Oct 9, 2021

The Second Section

## Violations of property and housing rights in Syria



This section focuses on the problems of property rights and housing in Syria and studies the causes and factors that led to their emergence, their manifestations before the war, and the inflation curve caused by that particular crisis during the conflict. Huge damage affected real estate and housing, resulting in large-scale displacement. The real estate issue, which was exacerbated under the Baathist rule, became a full-blown crisis during the years of conflict in Syria. Real estate laws and decrees issued by the regime, or via institutions and projects responsible for applying those laws, and the impact of laws and other procedures that included estate/property elements, resulted in the justification of the seizure of private and public property, and revealed the inconsistency and dysfunction of the real estate and property rights system in Syria. The system compounded the misapplication of property and housing laws, and put the property owners of displaced people, refugees and the forcibly disappeared, at the risk of losing their rights in an unprecedented manner.

## First: Causes and backgrounds of real estate and property issues

### 1- History of property registration systems

To understand the nature of the real estate and property system in Syria, this report gives a quick overview of the type of real estate systems that regulated land titles before the emergence of the modern Syrian state. Lands were distributed between public lands and privately owned lands. The Ottoman real estate registration system, known as (Kuyud-u-Hakani), included the registration and transfer of ownership carried out according to official documents, and in the absence of official documents, ownership was confirmed based on the testimony of witnesses proving ownership of the original occupants. During the French Mandate, a real estate registry was established under the Land Registry in all provinces. However, this register did not cover customary and informal transactions, and the new real estate system made real estate ownership more stable and accurate, specifically when facilitating ownership procedures.<sup>[35]</sup> Under the supervision of the real estate judge, under Resolution No. 186 of 1926, which defines the determination of property as: a cadastral drawing of a real estate in which the shape and borders of this real estate are determined from all its sides, as well as the real estate in its vicinity, and the placement of fixed stones on its borders. As for written records, they are prepared in a document proving ownership and showing the status of the property, the names of the owners and their shares, and the legal status of the property. As a result of the identification and documentation process, a report is produced.<sup>[36]</sup> As for the properties that were not identified and documented, they remained subject to the procedures of the Ottoman Tapu Register.

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[35] Housing, Land and Property in the Syrian Arab Republic - July 2016 - Norwegian Refugee Council - <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf> Last viewed Oct 12, 2021

[36] The system of identification and documentation issued by Resolution 186 in 1926 (in Arabic) <http://aniskfoury.com/uploaded/details/files/11.pdf> Last seen Oct 15, 2021

Despite the importance of these updates, which contributed to the establishment of a central registry for land administration in Syria, land ownership remained unequal, especially since most farmers were working for a few owners of large farms, under informal lease contracts.

Following the independence of Syria, the attitude toward reforms began to take a new approach, and reforms were introduced to address the gap in land distribution and meet the needs of farmers and those living below the poverty line. The Syrian Civil Code of 1949 was crucial in the development of the current land ownership system. The civil law divides lands into five categories: private lands, public lands, annexed lands, protected lands, and bare lands. In 1958, during the Syrian-Egyptian union, the laws of nationalization and agrarian reform were issued. Although they succeeded in reducing the class gap in Syrian society, benefiting farmers to a large degree, they led - according to its critics and historians alike - to problems of squatting on private lands, and using those laws discriminately. Furthermore, with Syria's population growing at a quick pace during the second half of the twentieth century, problems of random housing, disputes over ownership, and the inability to build a unified real estate system that addresses property and housing issues, began to appear.

## 2- The Exacerbation of the Real Estate Problem Under the Baathist Rule

Under the Baathist rule in Syria, the Syrian governments used the management of land and property as a tool to consolidate political control of the ruling party. The 1973 constitution regulated property rights in Articles (14, 15 and 16) within objectives that meet the interests of the authority more than working to protect property rights and provide housing. Article (14) divides ownership into three types: A - People's ownership B - Collective ownership C - Individual ownership — the latter includes the property of individuals, and the law determines its social function in the service of the national economy and within the framework of a development plan, and the law must not conflict with the interests of the people. Article (15) of the Constitution also provides for the protection of the right to property and stipulates that individual property shall not be expropriated except for the public benefit and in return for fair compensation in accordance with the law. Public confiscation of funds is prohibited, and private confiscation shall not be imposed except by a court ruling. However, confiscation is permissible in return for fair compensation. And finally, Article (16), states: "The law sets the maximum limit for agricultural ownership that guarantees the protection of the farmer and agricultural worker from exploitation and increases production."<sup>[37]</sup>

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[37] For more information, you can review the articles of the Syrian Constitution of 1973 - Publications of the Syrian Parliament

The constitutional laws that dealt with property rights, did not include any constitutional text related to housing rights, rather, several administrative laws were issued that included real estate and property elements from the past five decades, and hence contributed greatly to the arbitrary confiscation of property. These laws granted executive bodies and administrative units' great powers in the acquisition of land and real estate in exchange for very low compensation, including the Expropriation Law No. 20 of 1974. It was later replaced by Expropriation Law No. 20 of 1983, without the latter correcting or amending any injustices in the previous law, especially since the determination of compensation on the basis of the fixed value of the expropriated real estate, was much less than its actual value. This fueled resentment against the expropriation laws which violated private property laws, and which government agencies allowed to use, with utter disregard to the public benefit emphasized by those laws.<sup>[38]</sup>

Other laws were also issued in that era under the cover of urban planning and reorganization, including the Law of Division and Urbanization of Cities No. 9 of 1974, the Law Regulating the Sale of Lands of 1976, and Legislative Decree No. 59 of 2008, which includes the removal of violating buildings and treatment of building violations (it was later abolished by Legislative Decree No. 40 of 2012). If we examine the repercussions of these laws on the real estate situation in Syria, we will see that the inflation of the real estate market, resulted in the wealth of real estate dealers and brokers, at the expense of the groups most in need of housing, who were groups that came from areas with no urban regulation. Although the Land Sale Regulation Law No. (3) of 1976 was issued to prevent land trade and limit the rise in its prices, its application resulted in freezing large areas of land, due to restrictions the law imposed on selling lands before completing construction on them, which prompted owners to evade the law's provisions in various ways.<sup>[39]</sup> Furthermore, the free deduction and compulsory distribution, which were stipulated in many of the organizing laws in that period, amounted to infringements on the rights of the owners, due to losing part of their property shares during the sorting and allocation processes. While some laws that covered informal housing remained limited to addressing this problem from its roots, which intensified during the eighties and nineties, and more so in the early 2000s, until half of the population in Syria were living in slums. Official statistics published by the Central Bureau of Statistics in Syria in 2007 showed that 50% of the total housing in Syria is informal and is outside the boundaries of urban planning areas.<sup>[40]</sup> The delay of administrative units in implementing the executive and detailed plans allowed by many city planning laws, has left the problems of slums without any viable solutions, and without providing alternative housing in most cases of slum rehabilitation.

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[38] For more information, please refer to the expropriation laws - Publications of the Syrian Parliament

[39] The real estate problem and its repercussions on property rights in Syria (Law No. 10 of 2018) - Researchers Group - June 2019 - The Day After Organization and the Peace, Justice and Documentation Association - <https://tda-sy.org/wp-content/uploads/2020/04/Property-Issue-and-its-Implications.pdf> Last viewed Oct 20, 2021

[40] Yassin Swehat - If Fascism Spoke, slums in Syria as an example (in Arabic) - AlJumhuriya Net - Dec 19, 2012, <https://www.aljumhuriya.net/ar/203> Last seen Oct 20, 2021



In addition, bodies created by some laws, that were established to address the problem of informal housing, were a complete failure. Such as the case of the General Authority for Development and Real Estate Investment, which was established under Law No. (15) of 2008, which was established to address the failure of the system's development plans (five-year and ten-year) to provide decent housing.<sup>[41]</sup> Additionally, rental laws which imposed restrictions on the rights of owners remained in force from 1952 until their amendment five decades later. These laws included statutory lease extension, setting maximum rental prices, in addition to limiting eviction cases. All of this reflected negatively on housing, and these laws became outdated with the economic and social developments that occurred in Syria during those decades, until their amendment with Law No. (6) of 2011 and onwards.

The Land Reclamation Law No. (3) of 1984 was harmful to agricultural landowners, and converted those lands to public lands, and granted significant powers to the Minister of Irrigation and Agriculture to reclaim any area in Syria according to reasons of public interest.<sup>[42]</sup>

The causes of the real estate problem in Syria did not depend only on the restrictions placed by real estate laws on property and housing rights. There were other factors that exacerbated the issue, including the various ways of fixing real estate rights, especially in cases where property descriptions in the real estate registry differed from their existing condition on the ground. In addition, judicial agencies and judicial rulings established rights to own lands in equity shares. In addition, the impact of exceptional laws that addressed property and housing rights violations, were in fact, mechanisms for property confiscation, and prevented property owners from selling their property. The emergency law issued since 1963, until its abolition after the start of the Syrian revolution, was replaced by other exceptional laws, such as the Anti-Terrorism Law and others, are an example. In turn, the real estate judiciary in Syria addressed ownership of property and legal disputes, in a way that resulted in the administrative authority overpowering the judicial authority. The real estate judiciary is not included within the judicial structure as stipulated in the provisions of the judiciary under Law No. 98 of 1961. The legislator also called it "the judiciary" without following the other rules stipulated in the Judicial Authority Law. The process also included the appointment of judges, their immunities, promotions, dismissals, and transfers. Defining and issuing real estate and property sentences in districts or governorates is under the jurisdiction of a magistrate, who is also authorized to issue all sentences related to real estate and property. However, magistrates may be replaced by temporary real estate judges to carry out the operations of issuing sentences related to real estate, and immovable property in districts or governorates, based on the identification and ownership processes

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[41] For more information, you can review the articles of Law No. (15) of 2008 - Publications of the Syrian Parliament

[42] The real estate problem and its repercussions on property rights in Syria (Law No. 10 of 2018) - previous reference

described in Resolution 186 of 1926. In this case, the demarcation process is handed over from the magistrate to the temporary real estate judge,<sup>[43]</sup> who is appointed by the Minister of Justice based on a proposal from the Minister of Agriculture. He is called the real estate judge. Therefore, the decisions of the real estate judge are administrative, as they do not issue any sentences regarding the origin of the right, but rather determine the possessor, and not the owner. As for the decisions of the temporary real estate judges, they have judicial capacity and determine the origin of the right. Even during the demarcation process, if it is made by the permanent real estate judge, the objection is accepted, because its decisions are administrative and do not have the authority in judicial decisions. The fragile state of independence of this authority is one of the loopholes in the real estate judiciary in Syria.<sup>[44]</sup>

## Second: Forms of property and housing violations during the conflict

Informal settlement belts, in Damascus, Aleppo, Homs and Latakia, were among the areas that revolted against the regime, and were among the areas most affected by widespread destruction and displacement, even ten years into the Syrian war. The facts and proceedings of the violation of property and housing rights have become, by virtue of its wide urban and real estate scope, and the large segment of those affected in Syrian society, one of the severest repercussions of the Syrian war. Problems of property and housing that existed before the revolution, were exacerbated after the war, and have only multiplied in the last decade.

From the first months of the Syrian revolution, the regime's military was targeting residential areas where protests broke out, and with the intensification of the military confrontations between the regime forces and the opposition factions, the regime and its Russian and Iranian allies bombed dozens of Syrian cities in retaliation. The regime resorted to violent tactics to restore areas outside of its control, and achieve other objectives, including demographic change. The regime and its allies bombed houses, private buildings, schools, hospitals, factories, and infrastructure for services (energy, water, sanitation, transport, and communications). The devastation in Syria was further caused by the military confrontations between various parties to the conflict, such as those that took place after ISIS took control of large parts of Syria — between ISIS and opposition groups and ISIS and the regime forces, and the International Coalition's operations against ISIS. Several international reports were published about the rate of destruction in Syria. The destruction in the housing sector, for which the regime and its allies bear the greatest responsibility, was the largest among other sectors, as the level of destruction reached 27% of residential

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[43] The real estate judiciary in Syria - an unpublished study for the Jusoor International Justice Organization - March 2020

[44] Decision issued by the Court of Cassation No. 540 Basis 54 of Mar 14, 1965 - published in Lawyers Magazine - p. 137 of 1965



housing, and the level of destroyed facilities was 40%.<sup>[45]</sup> Syrian and international reports on the number of destroyed buildings and houses varied between approximately 1.5 million and 2 million houses. The governorate of Aleppo and its countryside ranked first in destruction, followed by al-Ghouta in Damascus and its southern regions and Zabadani, followed by the cities of Homs, Raqqa, Hama, Deir ez-Zor, Daraa and Idlib, and lower levels of destruction in other Syrian governorates. The past years of war caused forced displacement of more than 6.14 million people in Syria, the largest number of internally displaced persons a conflict has ever caused in modern history.<sup>[46]</sup> And 6.6 million Syrians became refugees in 126 countries, according to the United Nations High Commissioner for Refugees. Syrian refugees constitute 8.25% of the global refugee population, and 83% of Syrian refugees are concentrated in the Arab countries neighboring Syria.<sup>[47]</sup> These statistics reveal the repercussions of the Syrian war on the successive undermining of property and housing rights. The large number of displaced persons and refugees lost their property due to targeting and destruction and became unable to exercise their rights to buy or sell their property or return to their homes.

## 1- Laws and mechanisms of infringement of property and housing rights

During the war years, the Syrian regime passed several real estate laws and decrees, created organizational schemes, and amended judicial, security, and administrative procedures — all of which constituted flagrant violations of property and housing rights. Especially since those changes were applied when half of the Syrian population was displaced outside Syria. Perhaps a review of the general context of those laws and the executive procedures associated with them, which puts us in front of a dangerous approach that the regime is taking, to achieve goals with political and authoritarian dimensions, which, if pursued, would lead to the erasure and obliteration of the identity of the urban environment and social relations in Syria. The seriousness of this issue is a result of the effects of those laws.

The seriousness of the regime's policies came into fruition when it passed Legislative Decree No. (66) of 2012, related to the reorganization of the Mezzeh and Kafar Souseh Basateen (groves) areas, and began the implementation of two large urban projects in the areas specified by Decree 66. These areas were subjected to great destruction during the conflict, and most of their residents were displaced. The first project to be implemented was "Marota City," which began in 2016, and is built on an area of 214 hectares, and covers the former unofficial neighborhood of Basateen al-Razi in Mezzeh, whose residents were pro-active in the 2011 uprising.

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[45] Syria after eight years of war - Report issued by the United Nations Commission (ESCWA) - 2020 - <https://publications.unescwa.org/projects/saw/sdgs/pdf/en/Syria-at-War-8-years-on-Report-Final.pdf> Viewed on Oct 16, 2021

[46] Report on Justice for Overcoming the Conflict in Syria - Syrian Center for Policy Research - May 2020 -

[47] Report of the United Nations High Commissioner for Refugees - June 18, 2021 - <https://www.unhcr.org/5ee200e37.pdf> Last seen Oct 20, 2021

The second project, Basilia City, in 2018, was to be implemented on an area of 880 hectares, four times the area of Marota city, with an objective to eliminate specific neighborhoods that were directly involved in uprisings against the regime in Mezzeh, Kafar Souseh, al-Qadam and Daraya.<sup>[48]</sup> Legislative Decree No. (40) of 2012 was passed to remove informal housing areas, and to demolish all unauthorized buildings in “illegal” neighborhoods. Then Law No. 23 of 2015 regarding the implementation of urban planning and urbanization, permitted administrative units to deduct percentages of private property (acquisition) up to 40% percent of its area. In addition, Law No. 3 of 2018, which allows for the demolition of damaged buildings, and Law No. 10 of 2018, the most harmful law at large scale, provides for the creation of one or more opportunity zones throughout Syrian territory.<sup>[49]</sup> After Law 10 was passed, it was a subject of widespread criticism, which resulted in subsequent amendments. The law included significant restrictions on establishing property and housing rights, in addition to granting administrative units the right to seize property, in the event that real estate owners and occupants are unable to object to decisions to create opportunity areas. As stated in Article (22) of the Law 10, “The administrative unit may seize public property and public building subdivisions, and the spaces designated for demolition that are devoid of buildings after the creation of an opportunity zone.” In light of the inability of a large number of property owners to submit objection requests themselves or on their behalf, for security reasons, and because the majority of them are refugees and forcibly displaced people, the danger of applying this article of Law 10 is clear.<sup>[50]</sup> The law also provides free deduction for “public interest” and without compensation, which is another form of expropriation, as is the case in many of the real estate laws previously mentioned. These laws legitimize expropriation and confiscation of property, and permit the demolition of entire neighborhoods, even those that were subject to duly certified opportunity schemes. They also grant the administrative authorities the power in urban expansion and restructuring, and deprive owners from possessing and owning their properties, simultaneously with the application of the Investment and Real Estate Development Law No. (15) of 2008, that allows for the expropriation of property in the event of collective violations.<sup>[51]</sup> Regarding reparation for property owners, some laws such as Law 66 of 2012, compensation does not exceed, at best, 20% of the actual value of their property, even after taking into account any inflation to the Syrian pound. Even those who were provided with alternative housing, as stated in Paragraph A / Article 45 of the same law — it states: “Alternative housing shall be secured within a period not exceeding four years,” as was the case for the residents of Basateen Al-Mazzeah and Kafar Souseh, who weren’t compensated or granted back their property despite their property being included

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[48] Alternative housing in Marotta and Basilia between promises and postponement (in Arabic) - Human Voice - May 5, 2021 - <https://human-voice.co/archives/69553> Last seen Oct 21, 2021

[49] For more information, review the texts of the mentioned laws - the official website of the Syrian Parliament

[50] Current realities and challenges of transitional justice as a key part of building sustainable peace in Syria (in Arabic) - Report of the National Agenda for the Future of Syria - United Nations Beirut 2018- [https://naf-sprogramme.info/sites/default/files/2019-06/Transitional%20Justice-Ar\\_0.pdf](https://naf-sprogramme.info/sites/default/files/2019-06/Transitional%20Justice-Ar_0.pdf) Seen Oct 25, 2021

[51] The new property law in Syria - Human Rights Watch - May 29, 2018, <https://www.hrw.org/news/2018/05/29/qa-syrias-new-property-law> Seen Oct 26, 2021

in areas deemed “rehabilitated” for nine years when the law came into effect.<sup>[52]</sup> In other cases, there were conflicting statements by regime officials about alternative housing, in areas for which plans for regulation were issued, such as the cases of the Yarmouk camp and Qaboun, where the Director of Technical Services in Damascus Governorate previously stated that residents of those two areas will not be eligible for alternative housing but will instead be granted regulatory shares.<sup>[53]</sup>

In turn, the regulation schemes issued by the governorates’ public offices are inseparable from the regime’s real estate policies in demarcating areas with the objective of demographic change and social engineering. In recent years, dozens of regulation schemes were issued, targeting primarily areas that were heavily involved in the Syrian revolution, and hence, were subjected to massive destruction and displacement of its inhabitants. For example, the regulation scheme of Industrial Qaboun No. 104 of 2019, modified the character of the area from agricultural and industrial to residential and commercial. This move can probably be considered the first practical application of Law No. 10 of 2018. Although the regime allowed Qaboun’s original residents to return to their homes three years ago, the number of returnees did not exceed ten percent of its total population, due to the security clearance imposed by the regime on the residents.<sup>[54]</sup> There are dozens of regulatory laws issued in recent years, which, if implemented in the areas covered by those laws, lead to a violation of the rights of property owners and a change in the demographic makeup of areas.

## 2- Impact of laws and procedures with real estate elements

The regime has passed laws and circulars with real estate elements, and they are laws that do not fall under real estate law but are rather indirectly involved in regulating real estate and property rights. These laws have also permitted the seizure, confiscation, and appropriation of movable and immovable property of absentees. A tactic used by the regime against its opponents, and in further giving more power to its security services and loyalists to seize the property of refugees and displaced persons, in addition to forging and tampering with ownership documents, and transferring property illegally and in bad faith. Among the most harmful laws are the Anti-Terrorism Law No. 19 of 2012, and Law No. 22 applicable to the Terrorism Court, both of which permit confiscation “under the cover of

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[52] Habib Shehada- “Fake Houses”: Decree 66 Breaches Its Promises And Expels Syrian Families - Siraj Website - Mar 11, 2020 - [“Fake houses”: Decree 66 Breaches its Promises and Expels Syrian families – Siraj \(sirajsy.net\)](#) Seen 27 Oct 2021

[53] The Reality of Property, Housing and Land Rights in Syria: A Working Group (HLP) - Research 2020 - Report issued by The Day After - <https://tda-sy.org/wp-content/uploads/2021/04/Syrian-Regime-Institutions-for-Real-Estate-Development-and-how-they-Operate-ENG.pdf> Seen Oct 30, 2021

[54] Mazen Ezzi - On the outskirts of Damascus - Social engineering between the capital and its surroundings - Middle East Department at the European University Institute - Oct 1, 2021 - <https://middleeastdirections.eu/new-publication-wpcs-on-the-edge-of-the-capital-social-engineering-in-north-eastern-damascus-mazen-ezzi/> Viewed Nov 1, 2021

the law” and the use of pretrial detention, targeting families of indicted persons, and executes these laws according to the person’s identity (i.e., opposed to the regime), and not according to the offense.<sup>[55]</sup> Furthermore, Legislative Decree No. 63 enabled the Ministry of Finance to seize assets and properties of persons subject to the Anti-Terrorism Law of 2012 and transfer their ownership to the Syrian government. It is a clear violation of the due process of litigation and the rights of the accused, as the decree does not allow an appeal, and people are not notified of their names being added to the list of suspects.<sup>[56]</sup> As for Legislative Decree No. (31) of 2020, regarding provisions for exemption and military service, again — it allowed for the seizure and confiscation of property by the regime. According to this decree, the General Recruitment Directorate, as stated by the head of the Allowance and Exemption Branch in the regime forces in early February 2021, can confiscate the assets and property of anyone who has reached the age of 42, inside or outside Syria, in the event that he does not serve in the military. If the person does not own any property, the property of his family and relatives will be seized.<sup>[57]</sup> In addition, the regime resorted to a series of executive circulars, which place restrictions on property owners’ buying/selling of their properties, including the circular issued by the Presidency of the Ministers’ Council No. (4554) of the year 2015, which includes some cases that require prior security approval, such as selling property and transferring property (houses-shops) in regulated or unregulated areas, so property cannot be sold/transferred without prior security approval.<sup>[58]</sup> Moreover, companies affiliated with the Real Estate Investment and Development Authority created new real estate processes, with the objective of confiscating property, and enabled Iran to control strategic areas in Syria under the cover of “real estate development and reconstruction.” For example, the regime recently agreed to establish a new real estate project in the Mazzeh area under the name “Amissa al-Sham area,” a similar project to one that was established in the western countryside of Homs, “Amisa Hills Suburb,” which falls within the “Shiite belt” across Syrian provinces. These projects, established by Iran, control thousands of hectares of Syrian land.<sup>[59]</sup> The regime employs all these laws and projects, for the purposes of robbing and stripping millions of Syrians of their rights to their properties, in exchange for granting more power to heads of security services and militias loyal to it, and its cronies, to control and seize private and public properties, and reward properties to its allies. The regime is systematically applying those mechanisms to prevent the return of refugees and manipulate the rebuilding process based on selective criteria.

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[55] Syria: Suspects’ Families Assets Seized— a report issued by Human Rights Watch – on July 16, 2019 - <https://www.hrw.org/news/2019/07/16/syria-suspects-families-assets-seized> Seen Nov 2, 2021

[56] Syria: Confiscation of suspects’ assets - previous source

[57] Sara Kayyali - Syrian ‘Military Evaders’ Face Unlawful Seizure of Property, Assets - on Feb 9, 2021 - Human Rights Watch -<https://www.hrw.org/ar/news/2021/02/09/377818> Viewed Nov 11, 2021

[58] See official website of the Presidency of the Syrian Council of Ministers (in Arabic) <http://www.pministry.gov.sy/> Seen Nov 5, 2021

[59] What is the story of the new real estate project in the “Mazzeh” area of Damascus (in Arabic) - Syria website 24-Nov 1, 2021 [%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D8%A7%D9%84%D8%B9%D9%82%D8%A7%D8%B1%D9%8A-%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF-%D9%81%D9%8A-%D9%85%D9%86%D8%B7%D9%82%D8%A9/](https://www.syria-press.com/%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D8%A7%D9%84%D8%B9%D9%82%D8%A7%D8%B1%D9%8A-%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF-%D9%81%D9%8A-%D9%85%D9%86%D8%B7%D9%82%D8%A9/) Seen Nov 7, 2021

### 3- Restrictions on Proof of Ownership

According to some estimates before 2011, only about 50% of the land in Syria is officially registered, for reasons related to the forms of ownership in Syria, as previously discussed in the report.<sup>[60]</sup> What is worse, in informal settlements, real estate records were legally compromised, and barely enough to prove ownership. With the displacement of a large segment of the population, citizens' rights to their property are seriously at risk, especially because refugees displaced persons are unable to prove their identity — is another obstacle that stands in the way of restoring their property and practicing their other basic rights.

In a study that interviewed 580 Syrian refugee families conducted by the Norwegian Refugee Council, 70% of refugees claim that their property documents are in the name of a family member. While 17% said that they brought their property documents with them following their displacement, and the majority, 50%, did not possess official documents that prove ownership, or believed that their remaining documents had been destroyed. According to the study, the missing ownership documents isn't the only problem, but so is the lack of civil documents. Civil documents include birth registrations, family registers, national identity cards, and marriage certificates, all of which are necessary for proof of identity to claim property ownership.<sup>[61]</sup> Although the Syrian government issued Decree 33 of 2017, to address the problems of proving ownership documents, which states that "individuals who hold digitized title deeds, can request the issuance of a new copy of the document in case it is lost or stolen; but if the title deed is not numbered, the individual must file an application in the appropriate court and provide evidence of ownership, including witness testimony, and if the judge determines that the suit is valid, the court issues a declaration to notify anyone who wishes to challenge the claim. The court gives six months for the applicants to file a claim of ownership of a property or a right. Whoever wants to appeal must appear in person or send a legal power of attorney."<sup>[62]</sup> However, the decree also states obtaining the approval of the security apparatus is a condition for issuing the power of attorney. It seems that these restrictions imposed by laws and procedures related to proving ownership are not the only hindrance for Syrian refugees, displaced and disappeared persons. There are other factors that show how the regime and other parties targeted and destroyed land registry offices and civil records during the war. For example, on July 1, 2013, the regime forces bombed the real estate registry building in the center of Homs city. The resulting fire destroyed many property records in the building. Such attacks were repeated in Damascus and Homs, specifically in Zabadani, Darayya, and al-Quseer, where land registry offices and civil records were destroyed in those areas. Other parties targeted these offices during the war, as happened in the city of Manbij when the Kurdish People's Protection Forces took over the city in 2016. Local parties accused the forces of being responsible for burning the civil registry building,

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[60] Housing, Land and Property in the Syrian Arab Republic - July 2016 - Norwegian Refugee Council -

[61] Previous source

[62] Return is a Dream Options for Post-Conflict Property Restitution in Syria - Report by the Syrian Justice and Accountability Center (SJAC) - September 2018 - <https://syriaaccountability.org/wp-content/uploads/Property-Restitution-Report-Final-Web-1.pdf> Seen Nov 8, 2021



which contained civil status records, with the aim of destroying the records to prevent their Arab owners from recovering their property.<sup>[63]</sup> The bombing of the civil courts building in the Shaar neighborhood of Aleppo also resulted in the burning of records of civil cases related to the sale and purchase of real estate. Destroying records not only prevents the original owners from reclaiming their property, but also allows these properties to be transferred to individuals and groups loyal to the regime. For example, the involvement of sectarian groups affiliated with the regime and Iran in selling real estate, homes were sold illegally using forged documents, in the neighborhoods of al-Bayada, al-Arman and al-Zahra neighborhoods in the north-east of the city, which are either neighborhoods with an Alawite majority, or bordered neighborhoods with an Alawite majority, and were not besieged, and their infrastructure only suffered minor damage.<sup>[64]</sup> Document destruction affects the majority of IDPs and refugees, and in the event that refugees are able to return home, the lack of proof of ownership of the property will likely result in it being transferred to other individuals, or potentially, regime cronies, whether for residential or commercial use. There are additional implications for the generation of children born into the conflict as refugees, who need to prove their parentage and nationality, as well as property ownership, in order to recover any family assets.<sup>[65]</sup> Women's rights to property are equally problematic, with their own challenges of loss of ownership documents and proof of identity.

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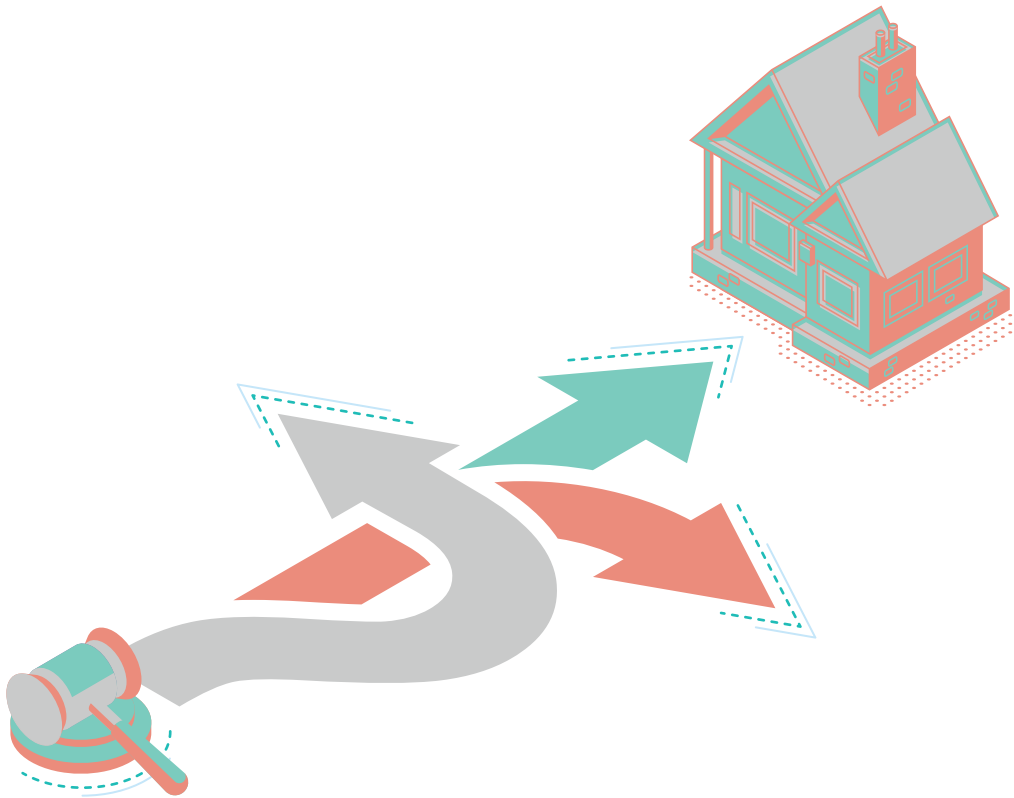
[63] Manbij. Attempts to burn the land registry and bring about demographic change (in Arabic) – Al-Khaleej Online – Aug 14, 2016 - <https://alkhaleejonline.net/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9/%D9%85%D9%86%D8%A8%D8%AC-%D9%85%D8%AD%D8%A7%D9%88%D9%84%D8%A7%D8%AA-%D9%84%D8%AD%D8%B1%D9%82-%D8%A7%D9%84%D8%B3%D8%AC%D9%84-%D8%A7%D9%84%D8%B9%D9%82%D8%A7%D8%B1%D9%8A-%D9%88%D8%A5%D8%AD%D8%AF%D8%A7%D8%AB-%D8%AA%D8%BA%D9%8A%D9%8A%D8%B1-%D8%AF%D9%8A%D9%85%D8%BA%D8%B1%D8%A7%D9%81%D9%8A> Seen Nov 9, 2021

[64] Jihad Yazigi - Destruct to Reconstruct How the Syrian Regime Capitalises on Property Destruction and Land Legislation - Friedrich-Ebert Stiftung (FES) – July 2017 <http://library.fes.de/pdf-files/iez/13562.pdf> Seen Nov 10, 2021

[65] Emily Stubblefield and Sandra Joireman Law, Violence, and Property Expropriation in Syria-201 <https://www.mdpi.com/2073-445X/8/11/173> - Previous source

## SECTION 3

# Challenges and ways to address property and housing issues in Syria



The focus of the first section on the principles and mechanisms of reparation and compensation, and exploring the Bosnian example, is more than just a conceptual rooting of the legal framework, which dictates how to recover property and housing in the context of the implementation of transitional justice. Solutions that address the property and housing problems in Syria, are not separate from the overall challenges in the country and help in foreshadowing the future of transitional justice in Syria. The mechanics of applying justice and relying on international provisions and texts that guarantee the rights of the victims are not enough to achieve transitional justice. There is a large gap between the doctrinal and theoretical construction of transitional justice, and the outcomes of other transitional justice processes in other countries are too limited to be able to bridge that gap. It is imperative that building a Syrian process for transitional justice requires the maturation of that process, and the solidification of its national and international demands, according to a vision that stems from the basic requirements for the transition of Syrian society. A transition from wars, tragedies, and widespread violations, to justice, peace, and stability. The cooperation between Syrian and international efforts, include property and housing rights, at the core of the tasks of the transitional process, as well as constitutional and legal frameworks. Granting property return and compensation programs is no less important than the rest of the justice mechanisms, which is what the report will address in this section.

## Challenges and ways to address property and housing issues in Syria

### First: Challenges and Obstacles to Transitional Justice in Syria

#### 1- The political process faltered, and the war continued

A few months after the Syrian revolution broke out in March 2011, Arab and international movements began to put forward early initiatives to stop the attacks and violations committed by the regime forces against peaceful demonstrators. The Arab League launched its first initiative in September 2011, followed by the second Arab plan for a solution in October 2011. Then the United Nations initiative known as the “Kofi Annan Plan” was proposed in March 2012. Several subsequent international resolutions followed, and they laid out a road map for a political solution in Syria, most notably Geneva I on June 30, 2012, which included that political transition must be achieved through a transitional governing body with full executive powers, in turn creating a new political climate, which constitutes a favorable and appropriate environment for the voluntary and safe return of refugees.<sup>[66]</sup> However, dozens of international initiatives, plans and resolutions related to the Syrian issue did not lead to stopping the war and initiating a real political process over the past ten years.

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[66] For more information, see Geneva Communiqué 1 of 2012, Resolution 2118 of 2013, and Resolution 2254 of 2015



Usually - as the precedents of contemporary conflicts and wars indicate - it is very difficult to achieve transitional justice, except through a comprehensive political transition process. Moreover, transitional justice, with all its legal, moral, and societal principles, serves as a measure for the success or failure of a political solution.<sup>[67]</sup>

The political process in Syria only resulted in exacerbating the tragedy of the Syrian people and deterred any possible opportunity to agree on fundamental issues, including the safe and voluntary return of refugees, the restoration of property, reparation, and compensation. All which were previously mentioned in the twelve points that former international envoy De Mistura proposed to the two sides of the conflict in March 2016, and which have not succeeded in achieving any progress.<sup>[68]</sup>

Nevertheless, educational and training initiatives and programs have emerged that aim to develop a proposed theoretical framework on how to implement transitional justice in Syria, and the concepts of property and housing recovery, and solving real estate problems associated with them. Furthermore, trials initiated by some European courts have begun to prosecute and hold accountable perpetrators of war crimes in Syria. Based on the principle of universal jurisdiction that are represented in the laws of these countries, there has been a wide discussion about the extent to which these trials are considered part of the transitional justice process in Syria, or are they completely different, or whether they are a symbolic step at best. Others saw it as a major judicial and technical step to build upon, in order to initiate other transitional justice mechanisms.<sup>[69]</sup>

Rarely have the Syrian negotiations rounds, in Geneva and other initiatives, seen substantive discussions about transitional justice in Syria in general, or any other discussions specifically related to property and housing issues. The first time that such issues were addressed, showed conflicting opinions about idiomatic connotations derived from the concept of transitional justice. During the fourth round of the Constitutional Committee in Geneva, which took place between November 30 and December 4, 2020, UN envoy Geir Pedersen briefed the Security Council following that round, and the term “restorative justice” was coined by some members of the Constitutional Committee.

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[67] Juan Pablo Terminiello - Dictatorships, Refugees, and Reparations in the Southern Cone of Latin America - Forced Migration Bulletin - March 2014 - <https://www.fmreview.org/crisis/terminiello> Seen Nov 15, 2021

[68] The most important points of de Mistura’s document to resolve the Syrian crisis (2016) (in Arabic) - Al Jazeera Net website – Mar 24, 2016 - <https://www.aljazeera.net/encyclopedia/events/2016/3/24/%D8%A3%D9%87%D9%85-%D9%86%D9%82%D8%A7%D8%B7-%D9%88%D8%AB%D9%8A%D9%82%D8%A9-%D8%AF%D9%8A-%D9%85%D9%8A%D8%B3%D8%AA%D9%88%D8%B1%D8%A7-%D9%84%D8%AD%D9%84-%D8%A7%D9%84%D8%A3%D8%B2%D9%85%D8%A9> Seen on Nov 16, 2021

[69] The researcher’s participation in a symposium on the challenges of transitional justice in Syria on Feb 25, 2021

In response, Syrian CSOs issued a statement clarifying the error in the international envoy's briefing, which did not align with what was included in the paper during that round, particularly on transitional justice. Rather than using the term 'transitional justice', according to the UN envoy's statement, the term "compensatory justice" was used, and was defined as: "Refugees have the right to recover or compensate their property, and that compensation may only be granted in the event that restitution is not possible. Restitution is considered the preferred solution, and an essential element of compensatory justice."<sup>[70]</sup> Following that statement, there was a public expression of outrage among Syrian opposition on the interpretation of the concept of "restorative justice," which sparked widespread criticism, because, according to their view, it leads to the development of plans and a new program for the Syrian solution, based on reconciliation between the parties. This meant that the possibility of working on reconciliation between the regime and the opposition would keep the regime in power, a notion that is completely dismissed by the Syrian opposition. According to the Syrian opposition, a full implementation of the international resolution, including a transitional governing body, and achieving transitional justice during this stage, will bring about a new political system to the country, and overthrow the current regime. Simultaneously, many Syrian jurists and politicians wrote about the differences of terms and mechanisms of transitional justice, and how it is defined.<sup>[71]</sup>

In light of the disruption and the failure of the entire political process, it is fair to say that reaching a political solution is one of the biggest challenges facing the process of transitional justice in Syria, and property and housing problems will continue to accumulate, without real interventions or pressure on the regime to stop its unjust policies. The regime will continue to deprive owners of their property and rights and will continue to impose new real estate restrictions. Today, as the war in Syria continues, and the lack of a safe environment for refugees and displaced persons to return to, all demands to address property and housing issues remain pending, which makes opportunities and options for just solutions for this issue extremely challenging in the current situation. Investigative information in many reports and studies confirms that refugees' return to their homeland is diminishing and seeking to sell their properties and lands at the lowest prices is their priority, in fear of the regime and Iranian militias seizing or confiscating their property for various reasons.

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[70] "Reconciliatory justice"... Pederson's coinage stirs up a storm among the Syrian opposition (in Arabic) - Al-Quds Al-Arabi 17 newspaper - December 2020 - <https://www.alquds.co.uk/%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%AA%D8%B5%D8%A7%D9%84%D8%AD%D9%8A%D8%A9-%D9%85%D8%B5%D8%B7%D9%84%D8%AD-%D9%84%D9%80-> Seen Nov 18, 2021

[71] Riad Muasses - Restorative, transitional, or compensatory justice? (in Arabic)- Al-Quds Al-Arabi - Dec 22, 2020 - <https://www.alquds.co.uk/%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%AA%D8%B5%D8%A7%D9%84%D8%AD%D9%8A%D8%A9-%D8%A3%D9%85-%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%84%D9%8A%D8%A9-%D8%A3%D9%85-%D8%AA%D8%B9%D9%88%D9%8A%D8%B6%D9%8A%D8%A9%D8%9F/> Seen Nov 20, 2021

## 2- The Elitist Culture of Transitional Justice in Syria

In Syria, there is a paradox between the extreme need for transitional justice as an approach that works to address large-scale violations, and the accumulation of challenges and difficulties that stand in the way of initiating operations and programs that achieve the objectives of transitional justice. In addition to the political challenges that were previously addressed in this report, there are complications related to the societal fragmentation in Syria, which are related to social and identity heritage. Many communities in Syria perceive the concept of justice from a lens that is based on defending ethnic, sectarian, tribal and regional affiliations, and ensuring the rights and interests of each of them. This problem has steadily worsened, with severe ramifications caused by the years of war. Authoritarian blocs and groups with sectarian and tribal extensions strongly oppose the implementation of transitional justice, including the Syrian regime and its cronies, and warlords in areas outside the regime's control. Furthermore, there are groups and segments of society, who feel wronged and victimized due to the violations committed against them by the regime and other parties, which fuels the overwhelming desire for revenge, especially in a society that neglects its duty of accountability and retribution.<sup>[72]</sup>

In light of the state of political and social turmoil that characterizes the Syrian crisis, it is difficult to reach an accurate objective assessment that determines how far societal, civil and political forces will go, to apply transitional justice in Syria. Discourses, activities, and programs of Syrian CSOs active in the field of transitional justice certainly contribute to reaching an assessment. However, with the official Syrian opposition, it takes a more limited approach, and transitional justice is part of a broader political discourse, rather than a specific process to be applied. Perhaps CSOs in Syria are more qualified to lay the foundations for transitional justice, as their initiatives clearly indicate the focus of some of them on accountability mechanisms. Such as monitoring and documentation files, collecting testimonies and bringing forward witnesses relevant to the trials of war criminals in Syria, such as those carried out by the courts of some European countries under universal jurisdiction. In addition, other organizations focus on education and awareness programs on transitional justice, with property and home restitution (HLP) being one of their mechanisms. At a time when most CSOs in Syria are making transitional justice a priority, their documentation activities support only one or two elements of transitional justice, and the more sustainable documentation efforts of Syrian CSOs is mostly focused on accountability, while reparations and restitution of HLP rights are given much less attention and resources.<sup>[73]</sup>

[72] Transitional justice in Syria (in Arabic) - Pro-Justice website - July 11, 2018 - [https://pro-justice.org/ar/uncategorized/news\\_views/research/%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%84%D9%8A%D8%A9-%D9%81%D9%8A-%D8%B3%D9%88%D8%B1%D9%8A%D8%A9-%D8%A8.html](https://pro-justice.org/ar/uncategorized/news_views/research/%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%84%D9%8A%D8%A9-%D9%81%D9%8A-%D8%B3%D9%88%D8%B1%D9%8A%D8%A9-%D8%A8.html) Seen Nov 21, 2021

[73] Sima Nassar - Documenting gaps in human rights violations and transitional justice in Syria and ways to address them – The London School of economics and Political Science Oct 18, 2020 <https://blogs.lse.ac.uk/crp> last seen Nov 21, 2021

Despite the importance of these efforts, there is an absence of a unified Syrian strategy for transitional justice on which Syrian CSOs must collaborate with the rest of the political and societal forces and parties that support the justice approach. If such a mechanism isn't established, it will raise many problems in the transitional justice process, which should be modified according to the Syrian context, and must respond to its requirements. For example, several CSO activists were critical of certain issues, particularly the statement issued by the Civil Society Chamber in Brussels, on Apr 25, 2018, addressed to the High Commissioner for Foreign Affairs of the European Union, Federica Mogherini, and the Special Envoy to Syria. Staffan de Mistura, which caused controversy among opposition forces and activists. They saw in some of the statement's paragraphs alignment with the demands of Bashar al-Assad's regime, such as the statement's proposition to reopen Syrian consulates, and to remove the economic sanctions imposed on the Assad regime and equating between the culprit (dictator) and the victim. The statement further implied that both the Syrian regime and opposition must be held accountable for the crisis in Syria, including the issue of demographic change, which the international community agreed was perpetrated by the Syrian regime at a large scale.<sup>[74]</sup> This is where the views among the Syrian opposition differ. The open trials in some European countries accusing some Syrians of war crimes, as was the case of Islam Alloush, caused numerous reactions from Syrians. Some welcomed the trial, while others were skeptical. Each accused person, especially those with a somewhat high profile, as was the case with Alloush, were supported by a team of defenders and skeptics, who raised questions about the integrity of the judiciary, causing further divisions among the already fragmented Syrian communities. This raises the question — how can transitional justice be implemented in Syria, when consensus on the concept of justice among Syrians is absent?<sup>[75]</sup>

CSOs in Syria have gone through several phases of change as a result of the ever-changing dynamics during the war. Consequently, people in Syria's orientations and priorities were frequently changing as well, including their political views and affiliations. This limits the consensus on a coherent and comprehensive vision of transitional justice in Syria. Add to that complication, each individual application of transitional justice in post-conflict countries, has its own historical background and specificity. From a technical point of view, the culture of transitional justice in Syria is still elitist, with experts and activists of

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[74] Statement from Syrian CSOs raises criticism of Syrian opponents: reaffirming the demands of the regime (in Arabic) - Al-Suriya Net - April 26, 2018-

<https://www.alsouria.net/archive/content/%D8%A8%D9%8A%D8%A7%D9%86-%D9%84%D9%80%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D9%85%D8%AF%D9%86%D9%8A-%D9%8A%D8%AB%D9%8A%D8%B1-%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D8%AF%D8%A7%D8%AA-%D9%85%D8%B9%D8%A7%D8%B1%D8%B6%D9%8A%D9%86-%D8%B3%D9%88%D8%B1%D9%8A%D9%8A%D9%86-%D8%AA%D8%B1%D8%AF%D9%8A%D8%AF-%D9%84%D9%85%D8%B7%D8%A7%D9%84%D8%A8-%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85>  
Seen Nov 21, 2021

[75] Ninar Khalifa - The path to implementing transitional justice in Syria is paved with obstacles. Is there any hope? (In Arabic) - Enab Baladi – Mar 1, 2020, <https://www.enabbaladi.net/archives/366832#ixzz7D-2nVRTm> Seen Nov 22, 2021

both genders leading the discussion, who are trying in their discussions, to come up with a participatory approach that suits the requirements of justice in Syria, set priorities for it, and discuss the possibilities for achieving it.<sup>[76]</sup> There are positive indications that victims of violations are becoming more involved in the process towards achieving justice, and their involvement has helped formulate charters, set up conferences, and create independent bodies that have been actively working on achieving justice for victims. However, the deficiency in the culture of transitional justice in Syrian communities, and the harsh living conditions of Syrians in Syria, and in countries of asylum, and the absence of a national and political process that works to represent their needs, related to transitional justice in particular, are challenges that must not be undermined. In addition, the flawed programs, and activities of CSOs are a factor that must raise awareness and encourage the establishment of new mechanisms that contribute to the consolidation of the culture and values of transitional justice in Syrian communities.

## **Second: The Syrian approach to addressing property and housing problems**

It is impossible to design a Syrian transitional justice strategy, without a clear vision of the principles and programs that guarantee the recovery of property and housing rights, which will depend on the nature of the solutions, and assessing the level of effectiveness of these solutions in reparations and compensation programs. As long as there is no political solution in Syria, the transitional justice in Syria will have many challenges and problems, and the path to any political solution remains opaque. However, working on the maturation of Syria's approach to transitional justice, creates an essential lever to overcome the legacy of violations through judicial and non-judicial mechanisms, and is the only way to restore the confidence of Syrians that their homeland has become a stable and suitable place for living. Resolving real estate and housing disputes in the post-war phase will most certainly emerge throughout the Syrian regions and will also include the residents of informal housing that were subject to extensive destruction.<sup>[77]</sup> Therefore, it is extremely crucial to reform the real estate system, which has caused violations of property and housing rights, and integrate it into the required institutional reform.

The elements of the proposed approach for transitional justice are based on the consolidation of the theoretical knowledge building of property recovery and compensation issues into the Syrian collective psyche. The process must include clear mechanisms, in which Syrian communities participate, and not only groups that are directly affected.

[76] For more information see: Transitional Justice: Path and Significance. An open discussion with experts and specialists (in Arabic) - Harmon Center for Contemporary Studies - May 2, 2021- <https://www.harmoon.org/reports/%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%84%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D8%B3%D8%A7%D8%B1-%D9%88%D8%A7%D9%84%D8%AF%D9%84%D8%A7%D9%84%D8%A7%D8%AA> Seen Nov 23, 2021

[77] Leïla Vignal - Perspectives on the return of Syrian refugees - Forced Migration Bulletin - Issue 57 - February 2018 - <https://www.fmreview.org/syria2018/vignal> Seen Nov 23, 2021



It will serve as a prelude to the implementation of transitional justice, and includes the following determinants and mechanisms:

## 1- Basic and guiding determinants

Academic texts that formulated the concept, principles, and mechanisms of restitution of property and housing (and cases of compensation in the event that recovery is not available) have become the baseline that constitutes guidance for countries to follow. It included many global and regional instruments related to human rights and international humanitarian law, which stipulate the right of persons who are victims of grave violations to benefit from the means of grievance, to obtain redress and compensation before the authorities at the national level, and if necessary, before international courts.<sup>[78]</sup> Transitional justice, especially in the second half of the last century, had a remarkable role in developing and enriching the visions and processes of justice and reparation. In recent decades, the implementation of transitional justice linked its general principles (theory) with implementation, which resulted in clearer and more consistent steps, programs and mechanisms that are gradually demystifying the process. The Pinheiro Principles, which were included in the final report of the Special Rapporteur of the United Nations Commission on Human Rights 2005, relating to the restitution of housing and property to refugees and displaced persons, were among the most important guiding principles in addressing legal and technical issues related to the restitution of housing, land and property, in cases where displacement leads to arbitrarily or unlawfully depriving persons of their homes, lands, former property, or places of residence.<sup>[79]</sup> Concurrently, international jurisprudence has worked hard on the issue of compensation in accordance with the principles of property recovery, and there was a consensus that compensation and/or redistribution mechanism is an option, if recovery is not possible, but compensation is a secondary option and should be used only when recovery of property is not feasible because of logistics, or when the plaintiff voluntarily seeks compensation in lieu of restitution. The problem of compensation is that it requires large financial resources, and the state may not be able to afford it in the post-war phase.<sup>[80]</sup> In addition to the consolidation of these principles and determinants in jurisprudence and international law, the formation of bodies that rely on the consultations of international experts, and are entrusted with the follow-up and enforcement of property restitution programs, have also had a remarkable role in oversight and facilitating response procedures with better standards and in faster periods of time.

[78] Assem Amin, the future of transitional justice in Syria (in Arabic) - Syria pages - Feb 1, 2014 -<https://syria.alsafahat.net/%d9%85%d8%b3%d8%aa%d9%82%d8%a8%d9%84-%d8%a7%d9%84%d8%b9%d8%af%d8%a7%d9%84%d8%a9-%d8%a7%d9%84%d8%a7%d9%86%d8%aa%d9%82%d8%a7%d9%84%d9%8a%d8%a9-%d9%81%d9%8a-%d8%b3%d9%88%d8%b1%d9%8a%d8%a7-%d8%b9%d8%a7> Seen Nov 24, 2021

[79] The Pinheiro Principles on Recovery - [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf) Seen Nov 24, 2021

[80] International Humanitarian Law Database - [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule150](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule150) Seen Nov 25, 2021

Many peace and conflict resolution documents and agreements have focused on the issues of refugee return and reconstruction as necessary prerequisites for implementing reparation and compensation policies with respect to property. However, the right to return to a country does not guarantee a return to place of origin, and as a result, the international community has increasingly favored the right of return to place of origin. International resolutions have affirmed this right in Palestine, Abkhazia, the Republic of Georgia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Croatia, Cyprus, Kosovo, Kuwait, Namibia, and Tajikistan.<sup>[81]</sup>

The principles of reparation and compensation, and all the substantive and procedural issues associated with them, and those incorporated in international jurisprudence, texts, and international practices, must be included in the Syrian process to transitional justice. Those essential principles must be protected from attempts to politicize or bypass them within the scope of political and negotiating processes in Syria. The most dangerous factor that could impede the path of transitional justice in Syria, is the logic of compromising judicial mechanisms for non-judicial mechanisms of justice and forcing concepts like ‘survival of the fittest’. This requires focused efforts to remove deficiencies even in some international resolutions related to Syria, especially those that addressed the issues of reparation vaguely, such as paragraph 14 of Resolution 2254 of 2015, which states, “The resolution expresses its support for the reconstruction and rehabilitation of Syria after the conflict.”<sup>[82]</sup> There are many means that can convey the needs and demands of Syrians to the international community in that focus on documentation, accountability and transitional justice, and address issues of property recovery, compensation and reparation. The memorandum was issued by 18 Syrian CSOs and addressed to UN envoy De Mistura on Feb 4, 2016.<sup>[83]</sup>

On this basis, there are resolutions that are not binding in international law but are of importance in advancing the Syrian transitional justice agenda at the international level, including the Special Rapporteur’s decision to bring the issue of transitional justice to the forefront. The discussion would cover victims and their families and address the dangers of postponing the discussion of transitional justice until further notice.<sup>[84]</sup> Therefore, the participation of civil groups in creating a comprehensive “road map” for the transitional justice process would clarify the process of the Syrian approach.

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[81] For more information, refer to: Dictatorships, Refugees, and Reparations in the Southern Cone of Latin America - Forced Migration Bulletin - Issue 45-March 2014 - [Dictatorships, refugees and reparation in the Southern Cone of Latin America | Forced Migration Review \(fmreview.org\)](#) Seen Nov 25, 2021

[82] Security Council Resolution 2254 (in Arabic) - Umayya Center for Research and Strategic Studies – Dec 26, 2015 - <http://www.umayya.org/publications-ar/policy-analysis-ar/8335> Seen Nov 26, 2021

[83] For more information, refer to the memorandum issued by Syrian organizations working on documentation, accountability and transitional justice - Feb 4, 2016 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25666> Seen Nov 26, 2021

[84] Human Rights Council, 46th Session, Resolution 24 A/HRC/46/L, 17 March 2021



There are examples that encourage this, such as the Truth and Justice Charter launched by five groups of victims/survivors and their families in February 2021 and is based on the active participation of victims in the justice process.<sup>[85]</sup>

To be able to develop the Syrian approach of transitional justice and immunize it from conflicting visions and different interpretations — working on defining the principles and determinants of the Syrian discourse on transitional justice is extremely important. The process must include representative frameworks of the Syrian revolution forces, the opposition, and CSOs — who must unanimously agree on justice terminology, including terminology that is best able to address property and housing issues. Violations of property and housing rights must be documented, in a database that is frequently updated, showing the extent of real estate and housing problems, to be used as a source on which national and international institutions depend. When reviewing some local and international reports that covered these problems, the researcher found conflicting statistics and numbers that represent the loss and damage of ownership documents for refugees and displaced persons, and the reliance of some reports on selective and partial surveys that are insufficient in presenting these problems and drawing general conclusions that do not necessarily reflect the truth.

## 2- Steps Towards Feasible Solutions

It is unlikely that the Syrian approach to justice will prioritize creating a mechanism for recovery of property, and the mechanisms of reparation and compensation that derive from it, without an accurate diagnosis of the various forms of expropriation. Property expropriation is used by the Syrian regime and the rest of the parties to the conflict, as a military tactic for political ends. It is also a significant source of supply for the war economy, and a tool for urban and non-urban rehabilitation, at the expense of waiving the rights of property owners.

An approach to solutions in Syria will depend to a large extent on the recognition of individual and collective rights, so that the first includes qualified property owners who have documents to prove ownership, or who will be able to prove them by available legal means. The second involves recognizing collective rights: such as customary and informal rights and common land rights, as well as other modes of ownership. It is a complex process with technical, legal, and political dimensions, where the traditional approach will not allow for the guarantee of HLP claims; many claimants have based on partial, informal, or verifiable evidence. This shift means that the right to restitution could be available to many displaced people who did not own land or housing prior to displacement, including those

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[85] Transitional justice: the path and implications. Open discussion with experts and specialists - previous reference

with rights to collective property, leases, or previous occupants without legal registration. Moreover, cases of seizure of private and public property, forced sales with motives of survival and poverty, and the spread of property theft and forgery became rampant during the war years. Some examples include networks of judges, lawyers, representatives of real estate companies, and brokers who falsify documents authorizing the sale of property, without the knowledge of the owner. Often the participants are accomplices in the crime, and subsequently transfer the ownership to a third party.<sup>[86]</sup> These illegal acts are problematic, and it is not possible to rely on the principle of goodwill stipulated in the Syrian Civil Code, which protects the buyer with goodwill. And as a precautionary measure so that the solution to these overlapping problems does not remain pending a political solution and hinder the transitional phase, it is necessary to encourage the cessation of sales and leasing of property, land and public ownership assets, and to make international financial and technical support conditional on the return of all housing, land and property assets, which were formerly private property to their legal owners, tenants or other legal pre-war residents.<sup>[87]</sup>

The use or exploitation of a property owned by a person by others due to certain circumstances, such as forced displacement that happened to many Syrians, does not in any way mean the owner's loss of his property. For example, what the regime did in the wake of its control in the year 2020, in towns in the Hama and Idlib countryside, where it seized vast agricultural areas estimated at about 440 thousand acres and auctioned them off to farmers who were regime loyalists. Because those lands' true owners were absent, this was a flagrant violation of property rights without any legal basis.<sup>[88]</sup> Therefore, these actions carried out by the regime, or similar actions that can be carried out by individuals, in the exploitation or use of pr of others who have been displaced from their areas, cannot establish a right for the usurper squatter because the right of ownership is transferred only by registration in the real estate registry, according to For the first paragraph of Article 825 of the Civil Code, which stipulates that "rights in real estate are acquired and transferred by registration in the real estate registry."<sup>[89]</sup> Therefore, if the displaced persons have an opportunity to return to their areas, they can recover their property from those who used it (i.e. squatted), as long as this property is registered in the real estate registry, and these general rules must be applied to various Syrian regions, whether they are under the control of the regime or other parties to the conflict, which have all witnessed fraudulent sales, or looted the property of others.

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[86] Alaa Nassar - With government complicity, Syrians' property falls victim to forgery - Syria Direct - Mar 29, 2021 - [With government complicity, Syrians' property falls victim to forgery - Syria Direct](#) Seen Nov 27, 2021

[87] Housing, Land and Property - Deusches Institute- Nov 26, 2018 - <https://www.recover-urban-heritage.org/> Nov 28, 2021

[88] Public auctions of the lands of the forcibly displaced are a method of the Syrian regime for the widespread and deliberate appropriation of the properties of its opponents (in Arabic) - Report of the Syrian Network for Human Rights - Feb 11, 2021 - [https://sn4hr.org/public\\_html/wp-content/pdf/arabic/Public\\_Auctions\\_of\\_Forcibly\\_Displaced\\_Peoples\\_Lands\\_Are\\_Another\\_Syrian\\_Regime\\_Method.pdf](https://sn4hr.org/public_html/wp-content/pdf/arabic/Public_Auctions_of_Forcibly_Displaced_Peoples_Lands_Are_Another_Syrian_Regime_Method.pdf) Seen on Nov 28, 2021

[89] Articles of the Syrian Civil Code

The procedural steps to protect the rights of refugees and displaced persons, as they are most affected by the lack of regulations for safe and voluntary return, and are the most at risk to lose their rights regarding their property, is to solve the problems of real estate and civil documentation, by: 1- Recognizing marriage and divorce documents issued by the registry Civil society 2- Exchanging information, documents and identifications between all parties and institutions in the areas in which they are located 3- Establishing a specialized committee to register the properties of the displaced and refugees, who own real estate that is under regime control, or which has been seized or sold, and to be documented and preserved.<sup>[90]</sup>

The serious repercussions of the prolonged conflict have led to the absence of a time frame to address issues of restitution and compensation. Other factors are no less important to consider when thinking about solutions to the problem, including dismissing reconstruction by the regime who is carrying it out in a selective and politicized manner, and preparing a comprehensive plan that includes the mechanisms and programs that must be established when starting the transitional phase. Previous international examples have confirmed that dismissing the demands for restitution of property and compensation leads to negative consequences for those affected, and hence the perpetrators of violations will benefit from the hindrance, and the absence of measures that limit their illegal behavior.<sup>[91]</sup>

Those determinants must be included in the transitional justice strategy in Syria and should form the foundations of the general and procedural framework of the property recovery and compensation program, and work to include practical efforts and initiatives that will support the transitional phase when the time comes.

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[90] Training Guide issued by Jusoor International Justice

[91] For more information see: The Experience of Transitional Justice in Guatemala 1994/2019 - Arab Democratic Center for Strategic Studies - July 11, 2020, <https://www.politics-dz.com/en/the-experience-of-transitional-justice-in-guatemala-1994-2019-a-study-of-mechanisms-and-means/> Last seen Nov 29, 2021

### 3- General and procedural frameworks for the recovery of property and housing

■ The final solution agreement in Syria must include a general framework for the property recovery and compensation program in detail, and in accordance with international texts and examples (other countries' experience with transitional justice) addressed in this report, by creating an independent annex in the agreement similar to Annex (7) of the Dayton Agreement on Bosnia and Herzegovina, and associating the program with guaranteeing the right of safe and voluntary return of all Syrian refugees and displaced persons.

■ Establishing an independent national body, tasked with receiving, investigating, and adjudicating property claims, and the importance of including the powers and competencies of this body through legislation annexed to the final agreement. The Real Estate Dispute Resolution Commission (CRPC) that worked with local housing authorities in Bosnia and Herzegovina serves as a great example.

■ The final agreement in Syria must include clear texts, abolishing or amending all real estate laws and decrees and procedures with real estate dimensions, which justified the confiscation, seizure, and looting of property, or imposed restrictions on proving ownership by all means of proof, reforming the real estate system in Syria, and addressing its flaws and loopholes in a way that ensures the rights of property owners, and providing housing and adequate shelter, and setting up compensation mechanisms in the event that recovery is not available through local and international support funds for this purpose to the rightful owners.

■ Adopting an institutional reform approach in the final agreement, by restructuring the military, security, and judicial institutions, on the basis of respect for human rights, and establishing citizenship and equal rights, and passing anti-corruption laws and encouraging accountability and transparency in all state institutions, as this has a direct impact on restoring the confidence of Syrians to live decently in their homeland.

■ Urgently forming a specialized committee to register the properties of refugees, displaced persons, and those forcibly disappeared, and all those affected, who own real estate in areas controlled by the regime, which have been seized or sold, to be documented and preserved, and to include in its work registration of cases in which property was seized, including areas controlled by the Syrian Democratic Forces (SDF) and the Syrian opposition.

■ Recognizing marriage and divorce documents issued by the civil registry, documenting incidents and civil and real estate documents electronically to preserve real and personal rights, and exchanging information and documents between all parties in the liberated areas.

- Increasing individual and societal awareness of the importance of maintaining ownership and housing documents by all means of proof and raising awareness of the need to register unregistered families and establishing a database online that will serve as a source of information and documentation of rights.
  - Activating international advocacy channels regarding the legal, technical, and political dimensions of Syrians' rights to housing, land, and property (HLP) and consulting with international and Syrian experts in training Syrians who will have a future role in the being part of an independent commission that addresses restitution and compensation issues.
  - Building a Syrian network that includes civil, political, and human rights actors who are active in transitional justice issues, and to unify the Syrian discourse on transitional justice, develop perceptions, plans and programs that support adherence to transitional justice, and motivate Syrian communities to participate in initiatives and programs related to the recovery of property and housing.
  - Activating the role of CSOs to apply pressure on negotiating parties to bring the issue of property recovery and compensation to the forefront, and support initiatives that work on documentation and awareness programs on real estate and civil rights and how to protect and defend them.
  - Encouraging the participation of women in all initiatives and programs related to property recovery and compensation and addressing restrictions on the transfer of property that affect their rights to property and housing.
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