

INVESTMENT OF CONFISCATED FUNDS, AND A NEW EPISODE OF HLP RIGHTS VIOLATIONS

A STUDY OF LAW 26 OF 2023



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Executive Summary

HLP rights in the Syrian context are no longer merely linked to the concept of property and housing, the right of a person to enjoy their property and the state's duty to protect them; rather HLP rights in Syria are linked to the societal fabric, the right to return, the exercise of political rights, peacebuilding and transitional justice, among other rights.

Defending HLP rights has necessarily become a defense of the right of Syrian men and women to achieve democratic transformation, build a just and sustainable peace, resist the laws and procedures of the Syrian regime that perpetuate the displacement and change of the structure of Syrian society that the military machine has done.

Law 26 of 2023, the subject of this study, comes along with dozens of laws concerned with property that were passed after 2011, with hundreds of resolutions and decrees aimed at punishing opponents, rewarding supporters,

and building a homogeneous Syrian society according to the description of the regime's president.

This law has seven articles, addressing the destiny of real estate confiscated by virtue of exceptional court rulings, and how they are to be transferred to the ownership of public entities, and to be invested, thus preventing the owners of these rights from any opportunity to recover their rights in the future.

Article 1 states: "The ownership of movable and immovable funds confiscated by virtue of a concluded court ruling shall be transferred to the state." It further clarifies the distribution of these funds among ministries, by stating that: "The Ministry of Finance shall undertake the management and investment of movable and immovable funds, except for lands located outside zoning plans, which shall be managed and invested by the Ministry of Agriculture and Agrarian Reform."

Article 3 states that: "By a decision of the Prime Minister, upon the request of the competent minister, the ownership of the funds referred to in Article 1 shall be transferred to public authorities of an administrative nature without compensation, and in exchange for a fee in the event of ownership being transferred to public authorities of economic nature."

The other articles clarify the role of the Prime Minister in allocating these confiscated funds.

To understand the impact of this law on HLP rights, it is necessary to begin by clarifying how movable and immovable funds are confiscated by virtue of a judicial ruling, and then explaining the provisions of this law, then clarifying the impact of this law by reviewing a set of laws that allow public entities to transfer these properties that have been devolved to them, to private entities, thus losing any opportunity for the restitution of such property in the future.

Despite the existence of constitutional provisions that prohibits confiscation of funds, the Law of Counter-Terrorism Court stipulates the necessity of confiscation of funds by public authorities,

in stark contradiction with the constitutional provisions and all human and legal norms. The mentioned court has been a tool that enabled the regime to strip opponents of their property, in addition to the Military Field Court which used the same tactics before being abolished recently.

Confiscation alone may allow those affected, at the moment of a political solution, to demand the restitution of their property, but this law came to prevent this opportunity by investing in the confiscated funds by transferring their ownership to public bodies of administrative and economic nature.

To explain the impact of this law on the fate of property, a review has been made to several laws that allow public entities to transfer these properties at a later stage to the private sector, i.e. to individuals, thus depriving rights holders of any opportunity to restore their property and rights.

The law gave these confiscated properties located outside the zoning chart to the Ministry of Agriculture and Agrarian Reform, which could, under the State Property Law, sell land, including the confiscated lands that it acquired under the law in question.

Also, under the Local Administration Law, administrative units can sell real estate to the private sector, and the law in question gave them the right to access confiscated property that has become property of the state. Therefore, they have the ability to register them in their name, and then sell them.

A review was conducted to several laws, according to which ownership of confiscated real estate, which has become property of the state, could be transferred to public entities, and then to private entities, resulting in the loss of these rights.

A number of recommendations were reached at the national and international levels to address the serious effects resulting from the implementation of the provisions of the said law.

At the national level:

- ▶ Demanding the Syrian regime to repeal this law and any effects that may have resulted from its implementation.
- ▶ Demanding the Syrian regime to abolish the Counter-Terrorism Court due to its unconstitutionality and because it constitutes an abuse to the rights of Syrian men and women, including HLP rights.
- ▶ Civil society organizations should advocate for issues of HLP rights, including monitoring and documenting violations of HLP rights, including confiscation of property issued by exceptional courts.
- ▶ Establishing associations for victims of HLP rights violations and advocating for them at the national and international levels.
- ▶ Demanding the negotiating parties to include HLP rights in the political solution to ensure non-recurrence of violations, restitution and reparation.

At the international level:

- ▶ Putting pressure on the Syrian regime to repeal this law, and any effects resulting from its implementation.
- ▶ Putting Pressure on the Syrian regime to abolish the Counter-Terrorism Court because it constitutes an abuse to the concept of the rule of law, independence of the judiciary, and human rights, including HLP rights.
- ▶ International accountability institutions, especially the COI and IIMM should focus on violations of HLP rights, as violations of human rights.
- ▶ Holding those involved in violations of HLP rights accountable through international and national accountability mechanisms in countries that employ the Universal Jurisdiction.
- ▶ Considering HLP rights, including rights to confiscated real estate, as a basic criterion in early recovery projects.
- ▶ Adding institutions and individuals involved in acts that violate HLP rights on sanction lists.
- ▶ Any political solution should include HLP rights to ensure the restitution of confiscated property.

**First .
How Movable and Immovable
Property are Confiscated by
Virtue of a Judicial Ruling.**

1.The Concept of General Confiscation and Specified Confiscation:

Article 15 of the Syrian Constitution of 2012, which addresses the right to property, stipulates the following:

- ▶ Private property, both collective and individual, shall be protected in accordance with the following bases:
 - A. General confiscation of funds is prohibited.
 - B. Private ownership may not be removed except for public interest by a decree and in exchange for fair compensation in accordance with the law.
 - C. Specified confiscation may not be imposed without a final judicial ruling.
 - D. Specified confiscation is permissible for the necessities of war and general disasters by virtue of law and in exchange for fair compensation. Compensation shall be equivalent to
- ▶ the real value of the property.

According to this constitutional text, the constitutional legislator distinguished between two concepts of confiscation, which are general confiscation and specified confiscation. The constitution prohibited general confiscation in absolute terms, and allowed specified confiscation without compensation by virtue of a final judicial ruling, or with compensation in specific cases. To differentiate between the concepts of general confiscation and specified confiscation, it is important to note that the concept of confiscation is "the forcible removal of ownership of something from its owner and adding it to the property of the state without compensation." Confiscation is divided in terms of its subject matter into specified confiscation and general confiscation.

Specified confiscation is imposed on certain property that is specified and identified before a ruling of confiscation is passed. This includes specific funds or items per se. On the other hand, general confiscation is the type of confiscation that is imposed on all the funds of a certain person and is not based on prior seizure of such funds; it includes the entire property of the convict.

The Syrian Constitution, as shown above, clearly and completely prohibits general confiscation.

Specified confiscation has been stipulated in the Syrian Penal Code, and some specific laws, all of which provide for confiscation as a secondary punishment as a result of committing a specific crime. It is included among the secondary penalties in Article 42 of the Penal Code under the name **“in-kind confiscation.”** What is meant by in-kind confiscation is that the confiscated item is specified by itself. Article 69 of the penal code explains the concept of confiscation by stipulating:

- 1 While preserving the rights of a third party in good faith, it is permissible to confiscate all items that resulted from an intentional felony or misdemeanor or that were used or were prepared to commit them.
- 2 These items may be confiscated in an unintentional misdemeanor or in violation if the law contains an explicit provision.
- 3 In the event that what should be confiscated has not been seized, the convict shall be granted a deadline to hand it over, under penalty of paying its value as determined by the judge.
- 4 When necessary, the court may seek the assistance of an expert to estimate the collectable value and collect the estimated value according to the method used in collecting fines.”

According to this text, confiscation should only be specific, and it is a secondary penalty as a result of the occurrence of a criminal offense, and it is a discretionary penalty that the court can impose when necessary in intentional felonies and misdemeanors. The court can also rule on its value when it is not possible to seize what must be confiscated. Confiscation refers to items that resulted from the crime or that were used to commit a crime, such as a gun used to kill, or the objects used for theft, etc. Confiscation is not obligatory except when there is a specific provision, such as Article 619, which talks about the crime of gambling and stipulates the confiscation of the items resulting from the crime, as well as the furniture and things present in the place of the crime.

In all cases, Syrian law, with the exception of the Counter-Terrorism Court Law, does not stipulate the possibility of general confiscation or real estate confiscation. The concept of removing ownership for public interest is a concept different from confiscation, as it is in exchange for fair compensation, while confiscation is taking the funds without compensation. It is also different from the concept of expropriation of real estate that the regime has adopted during previous decades under the state of emergency, as expropriation means deprivation of the use and disposal of property, without leading to the transfer of ownership.

-2 Confiscation in accordance with the Counter-Terrorism Court Law:

The Counter-Terrorism Court was established pursuant to Law 22 of 2012 to enforce the provisions of the Counter-Terrorism Law 19 of 2012. It is an exceptional court with many flaws, and the Counter-Terrorism Law is too broad and covers everyone who opposes the regime. Human Rights Watch described the said law by stating that "The special court uses the overbroad provisions in the Counterterrorism Law, enacted in July 2012, to convict peaceful activists on charges of aiding terrorists in trials that violate basic due process rights."

This court, whose founding law stipulates in Article 7 that "the Court shall not abide by the due process stipulated in applicable legislation in all roles and procedures of prosecution and trial." One of the members of the court is a military judge, in addition to many defects that give it the status of an exceptional court, to apply a broad law that harms everyone who raises their voice against the regime, under the label of terrorist acts or supporting terrorism.

In terms of confiscation, Article 1 of the Counter-Terrorism Law defines the freezing of funds and confiscation as follows: "Freezing funds [...] is the prohibition of disposing of, transferring, moving, or changing the form of movable or immovable funds for a specific period or during the stages of investigation and trial.

Confiscation [...] is the permanent deprivation of movable and immovable funds and the transfer of their ownership to the state by virtue of a judicial ruling.”

Articles 11 and 12 also stipulate the following:

“Article 11: Freezing funds [...] The competent public prosecutor, or the person delegated by them, may order the freezing of movable and immovable funds for anyone who commits one of the crimes related to financing terrorist acts or commits one of the crimes stipulated in the present law if there is sufficient evidence thereof, to ensure the rights of the state and those affected.

Article 12: Confiscation and Measures [...] In all crimes provided for in the present law, the court shall rule by conviction to confiscate movable and immovable funds and revenue thereof and items that were used or prepared to be used in committing the crime and shall order the dissolution of the terrorist organization, if any exists.”

In accordance with these definitions and provisions, the Counter-Terrorism Court has given free rein to the general confiscation of movable and immovable funds of those referred to it. Indeed, the Counter-Terrorism Court has always included in all its conviction rulings a provision for general confiscation of all movable and immovable funds, in clear contradiction with the Syrian Constitution and the rules of justice and fairness. Furthermore, the Military Field Court (before its recent abolition on 3 September 2023 pursuant to Legislative Decree 32) adopted the same approach as the Counter-Terrorism Court in terms of general confiscation, especially since the Military Field Court is not subject to any controls in its work, given that the resolution of abolishing the court kept the rulings passed by it in force.

Second . Explaining the provisions of Law 26 of 2023.

The following can be understood from the articles of this law:

1. The ownership of all movable and immovable funds confiscated by virtue of a judicial ruling shall be transferred to the state. This means that the law did not specify the decisions of the Counter-Terrorism Court, but rather the provisions were broad, noting that the Counter-Terrorism Court is the only court that has a legal framework allowing it to make general confiscations. This provided a cover for the rulings of the Military Field Court that ruled on confiscation without a legal text allowing it to do so.

2. The law divided funds into two parts. All movable funds and real estate funds within zoning plans are managed and invested by the Ministry of Finance, while real estate outside zoning plans is managed and invested by the Ministry of Agriculture and Agrarian Reform.

3. If the funds are a share in a company, the Ministry of Finance replaces the owner of the confiscated funds, and the management and investment of the company or the shares is carried out by the Ministry of Finance in accordance with Corporate Law.

4. The law authorized the Prime Minister to transfer ownership of confiscated funds to public bodies of administrative nature or public bodies of economic nature. It also gave the Prime Minister the authority to allocate a portion of the confiscated funds to any public entity.

5. The law authorized the executive authority, represented by the Prime Minister, to issue a special system that sets the rules for managing, investing, transferring ownership, and allocating confiscated funds.

6. This law applies to all confiscated funds, whether a ruling to confiscate them was issued before or after the enactment of this law.

Legal analysis:

1. This law came as a second and complementary step to the first step of legitimizing general confiscation in contradiction to the Constitution. This confiscation includes those accused of terrorism or supporting terrorism in the regime's perspective, that is regime's opposition and those who confronted it. The first step is to punish the regime's opponents by stripping them of their money and closing the door for the possibility of their return. The second step is to invest the confiscated funds as a means to reward its supporters, including individuals, companies, and countries.

2. This law is practically to benefit from confiscated real estate, as movable funds are often cash or petty assets that cannot be invested. The large amount of confiscated real estate is what has been targeted by this law. This is evident by dividing the confiscated funds into real estate within the zoning plan to be managed by the Ministry of Finance, and real estate outside the zoning plan to be managed by the Ministry of Agriculture and Agrarian Reform.

3. The law established the general framework that allows the executive authority to invest confiscated funds, and it gave that authority the freedom to invest the funds, through the authorization of the Prime Minister, without setting any controls for that.

4. The law addressed funds already confiscated or that will be confiscated, which means that the regime is continuing its policy of general confiscation.

The question to be asked here is what is the seriousness of this law, as long as the funds were confiscated by virtue of a judicial ruling, and ownership is transferred from the names of their owners to the name of the Syrian Arab Republic? and what harm could befall the owners of the confiscated funds from investing or not investing them as long as they are taken away from their ownership.

Answering this question will explain the real reasons for issuing this law. Confiscating funds and transferring them to the name of the state leaves room for the owners of the funds to recover them. This can be either through the legal framework which allows those who were tried in absentia to be retried, as the Counter-Terrorism Court Law provided them with the opportunity to be retried, if they surrender themselves. Or, alternatively, through a political solution that opens the way for a reparations program through which those whose money was confiscated can recover it.

But when ownership is transferred from state ownership to private ownership, then the owners of the money will not be able to recover it, neither through the judiciary nor through a political solution. Hence, the regime perpetuates its dispossession of ownership, benefits from it by selling it to the private sector and prevents its real owners from recovering it.

Third . **The impact of this law** **on property rights.**

This law gives the executive authority the ability to invest confiscated real estate and transfer its ownership to public entities of administrative nature and public entities of economic nature or to allocate these properties to any entity of the public sector. To examine the possibility of this law to be a tool for transferring ownership to the private sector, it is necessary to examine some of the laws that allow this to happen.

1.Private State Property Law No. 252 of 1959

This law is considered an addition to the Agrarian Reform Law No. 161 of 1958, the basic laws that regulate the management, investment, and sale of state property. This law defines state property as “private state property is the built and unbuilt real estate and the immovable real rights which belongs to the state in its capacity as a legal person under the laws and decisions in force, whether it is under its actual control or under the disposal of other persons.”

The law enumerates the types of state ownership:

- Real estate registered in the Real Estate Registry or ownership books in the name of the state
- Real estate that devolves to the state by virtue of the laws in force.

Articles 4 and 5 of this law stipulate: “Guardianship over state-owned real estate and the authority to manage and defend them is within the jurisdiction of the Agrarian Reform Foundation, with the exception of real estate subject to the jurisdiction of another ministry or institution under special laws.

Regulations related to the reform, investment, distribution, sale, and leasing of state-owned real estate shall be developed by decisions issued by the Minister of Agrarian Reform, after the approval of the Board of Directors of the Agrarian Reform Foundation.”

Thus, this law allows the Ministry of Agriculture and Agrarian Reform to invest, distribute, sell, and rent state real estate, including, of course, real estate that devolved to the state pursuant to confiscation decisions.

2.Local Administration Law:

Issued by Legislative Decree 107 of 2011. Article 61 thereof addresses the powers of the city, town or municipal council:

“Changing the allocation of public property of the city or town and including it in its private property.

- ▶ Establishing the foundations for the disposal of movable and immovable property belonging to the administrative unit for sale, rent, and investment within applicable laws and regulations.

- ▶ Creating and financing companies with economic returns for the administrative unit in accordance with the provisions of applicable laws and regulations and awarding private investments in the city or town.
- ▶ Setting the necessary rules for managing government facilities and projects that the central authority entrusts the administrative unit to manage
- ▶ Setting rules for managing and investing in projects and facilities that serve the administrative unit and are abandoned by the relevant party.”
- ▶ Article 69 also stipulates: “Request the Real Estate Registry to transfer unbuilt state-owned lands located within the boundaries of the administrative unit to the ownership of this unit.
- ▶ Article 134 also mentions means of financing administrative units, including “the proceeds of selling, leasing, and investing real estate in cities, towns, and municipalities in accordance with applicable laws.”

According to these provisions, the administrative unit can transfer public property to the private property of the administrative unit, and then it can dispose of this property by selling, renting, and investing.

In line with this, Law 42 of 2022 established controls for sales operations that can be undertaken by administrative units.

The mentioned law stipulates that the Economic Committee in the Council of Ministers has the power to ratify sale, lease, or investment contracts concluded by administrative units, in contracts whose value exceeds one billion Syrian pounds (that is, about 67 thousand US Dollars). It gave the Minister of Local Administration the power to ratify contracts worth between 500 million SYP and one billion SYP, and it gave the governor the power to ratify contracts whose value is less than 500 million SYP.

3. Holding Companies Law:

It is Law 19 of 2015, which allows the provincial council or city council to establish a holding company. The ownership of property belonging to the administrative unit can be transferred to the holding company, which has the right to invest and sell funds. The most prominent example is Cham Holding Company, which was established by the Damascus Governorate Council in 2016, which made the investment in the Marota City project. Cham Holding Company has carried out commercial cooperation with private companies, such as Aman Al-Sham, owned by Samer Fawz, the Main Mall Company, owned by Mazen Al-Tarazi, Rawafed Damascus Company, owned by Rami Makhoulouf, among others, most of whom are under US and European sanctions.²

2. Mahmoud Lababidi – Damascus Businessmen: The Ghosts of Marota City
https://cadmus.eui.eu/bitstream/handle/62227/1814/MED_07_2019_AR.pdf?sequence=3&isAllowed=y

4. Investment Law:

Law 18 of 2021, amended by Law 2 of 2023. This law, according to its provisions, aims to encourage investment and attract capital; it provided great facilities to investors. The only obstacle to the impact of this investment on HLP rights was the existence of a special law for them, which is the Real Estate Development and Investment Law No. 15 of 2008. However, amending the Investment Law abolished the Real Estate Development and Investment Authority, replacing it with the Syrian Investment Authority. Consequently, real estate has come under the Investment Law. A previous study by The Day After talked about the danger of amending the Investment Law on HLP rights.

Article 23 of this law provides for the power for the Board of Investment to allocate state lands to investors. It states that “The Board has is entitled to allocate lands to investors to implement projects on them, provided that the Council issues a system that includes the foundations for using state-owned real estate for the purpose of investing them in accordance with the provisions of the present law.”³

According to this law, the Supreme Council for Investment can transfer state ownership for the benefit of investment projects owned by the private sector, be it Syrian or foreign.

5. Law of the General Authority for the Management and Protection of State Property:

Law 43 of 2023, which was issued three weeks after the issuance of Law 26, the subject of the study. This law talks about the creation of a public authority with the aim of protecting and managing the state’s private property, maintaining it, and investing it in an optimal manner. This law established a board of directors for the authority headed by the Minister of Agriculture and Agrarian Reform. The board exercises the powers to approve strategies and annual plans for managing and protecting state property. The law authorized the Minister of Agriculture and Agrarian Reform to issue the Authority’s bylaws.

The Authority’s bylaws have not yet been issued, but the establishment of this Authority coinciding with the Confiscated Funds Investment Law creates fears that this Authority will be the tool that can be used to establish new rights over confiscated funds.

³The Day After – Amending the Investment Law and a new chapter of the violations of HLP rights
<https://tda-sy.org/wp-content/uploads/investment-law.pdf>

Conclusion

After the large number of general confiscation decisions of the opposition's movable and immovable funds under the pretext of terrorism, the regime found that it is in control of a large financial mass represented in the confiscated real estate whose ownership had been, or would be, transferred to the name of the Syrian Arab Republic. These funds differ in nature from state funds, as state funds are usually non-agricultural lands, public facilities, and others. But the confiscated funds are real estates (houses) within the cities, or specific agricultural lands within private ownership.

Therefore, it was necessary to create a legal framework that would allow the regime to invest this money by selling, renting, etc. Law 26, the subject of study, came to existence as a tool to help the regime make money from these properties on the one hand, and to prevent its opponents from thinking about any solution that would allow them to recover their properties,

and to perpetuate the reality of forced displacement that it created through its military and security actions, on the other hand.

The most prominent risk, maybe, is the existence of a legal framework, as indicated by the study, that allows the transfer of public funds to natural or legal persons, and thus the transfer of confiscated properties to the names of persons or companies, and from them to other buyers, thus blocking the way to any political solution that could include the restoration of opponents' properties, as they have become the private property of others. When confiscated funds remain in the name of the state, it means that there is a possibility of recovering them within any political solution, but when their ownership is transferred from the state to individuals, this means that it is impossible to recover them.

Recommendations

At the national level:

- ▶ -Demanding the Syrian regime to repeal this law and any effects that may have resulted from its implementation. ◀
- ▶ -Demanding the Syrian regime to abolish the Counter-Terrorism Court due to its unconstitutionality and because it constitutes an abuse to the rights of Syrian men and women, including HLP rights. ◀
- ▶ -Civil society organizations should advocate for issues of HLP rights, including monitoring and documenting violations of HLP rights, including confiscation of property issued by exceptional courts. ◀
- ▶ -Establishing associations for victims of HLP rights violations and advocating for them at the national and international levels. ◀
- ▶ -Demanding the negotiating parties to include HLP rights in the political solution to ensure non-recurrence of violations, restitution and reparation. ◀

At the international level:

- Putting pressure on the Syrian regime to repeal this law, and any effects resulting from its implementation.
- Putting Pressure on the Syrian regime to abolish the Counter-Terrorism Court because it constitutes an abuse to the concept of the rule of law, independence of the judiciary, and human rights, including HLP rights.
- International accountability institutions, especially the COI and IIMM should focus on violations of HLP rights, as violations of human rights.
- Holding those involved in violations of HLP rights accountable through international and national accountability mechanisms in countries that employ the Universal Jurisdiction.
- Considering HLP rights, including rights to confiscated real estate, as a basic criterion in early recovery projects.
- Adding institutions and individuals involved in acts that violate HLP rights on sanction lists.
- Any political solution should include HLP rights to ensure the restitution of confiscated property.

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