



# The Role of Transitional Justice (Legal and Institutional Reform) in Addressing Property and Housing Issues in Syria

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THE DAY AFTER  
Supporting Democratic Transition In Syria

## The Role of Transitional Justice (Legal and Institutional Reform) in Addressing Property and Housing Issues in Syria



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

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## Executive Summary

In light of the experiences of countries that have tried transitional justice applications in cases of property restitution and compensation, the success of restitution and reparation programs in addressing the legacy of violations suffered by property and rights owners, and in addressing the defects and problems of the real estate system, has largely depended on reforming legal legislation and institutional structures in a preliminary and parallel context that provides the elements for the implementation of transitional justice programs with the best possible mechanisms.

Given the importance of benefiting from these experiences and ideas in the context of legal and institutional reform in the Syrian situation, this research comes in an attempt to form a conceptual and procedural approach to link the required reform mechanisms to the requirements needed for the success of the transitional justice process according to a research vision based on an introductory approach, dealing with the concepts and implications of legal and institutional reform through the reform of political institutions being the main entry point for various structural change processes in countries undergoing internal transformations and conflicts especially since the transition from an authoritarian to a democratic system of governance is now measured by the levels of reform and change in governance structures, based on an empowered legal system that preserves private and public rights and freedoms, and an administration that possesses competence and integrity in implementing economic and administrative reform programs.

Since the development of a comprehensive approach to reform in property and housing issues is the focus of the research, it tried to address the study of the cumulative impact of legislation and laws that have exacerbated property and housing problems in Syria. This issue was addressed in Section I through a historical review of the property ownership systems in Syria during the Ottoman era and the French mandate, and later during the post-independence stage which witnessed the introduction of reforms to address the gap in land distribution with the issuance of the Syrian Civil Code in 1949, which played an important role in the development of the current land tenure system.

Moreover, the legislations, plans and programs adopted by successive Syrian governments during five decades of Baath rule, reflected the growing gap between the constitutional texts that theoretically provide for respecting the right to property, without addressing housing rights and their accumulated inability to address the worsening housing problems that

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emerged with the increasing population and the declining incomes rates, in addition to the role of some laws and decrees in establishing the rules of land-ownership violations.

These governments' failed policies included in their five-year plans, coupled with the systematic escalation of violations of property and housing rights during the era of the Syrian revolution, were serious indicators of the role of real estate laws and real estate dimensions issued by the regime in undermining the legislative and legal framework that govern property and housing issues, and the emergence of structural problems that gradually led to the fragmentation of real estate unit and the threat of urban and demographic identity, through the establishment of new real estate incidents at the expense of confiscation and dispossession of property and house owners, and preventing the return of absentees and IDPs to their original domiciles.

Section I reveals these defects in the constitutional texts as the basis for the issuance of several real estate laws before 2011, which granted the executive bodies and administrative units great powers in enabling the administrative authorities to deduct up to half of the lands of private property owners, free of charge and without any compensation to the owner, including the laws of expropriation, urbanization and land sale, in addition to laws ruling border areas, while dozens of real estate laws issued after the 2011 revolution allowed for an excessive intrusion from the part of the executive authority to violate and waste housing and property rights in a wide-scale and systematic manner as presented in detail.

Due to the combination of ownership and housing problems in the conflict phase, with the inconsistent management approaches of private and public property over the Syrian regions, Section II highlighted the disparities and inconsistencies between the various parties in the management of the real estate system according to the areas of control and influence of each of them, which clearly reveal the size of private and public property that were exposed to various forms of violation, whether under the guise of certain real estate legislations that have increased the violations of property rights or by virtue of other forms of seizing and misappropriation of property. In Regime-controlled areas, the management of private and public property was used in a manner that meets the objectives of the political and military authority, without any regard for the constitutional and legal guarantees that protect real estate and housing rights.

The regime's war against the revolting environments has resulted in enormous human and material losses. The regime issued an arsenal of legislations and real estate procedures which protect and facilitate the seizure and confiscation of the property of IDPs after half of the Syrian population was divided into migrants, IDPs or refugees.

The research also indicates that the real estate registry departments in the regime areas refuse to document all temporary records that were issued in areas outside its control even



after these areas were restored by it. This leads to the loss of real estate rights for those who were forced to leave those areas.

As for the management of property in areas controlled by SDF and the Autonomous Administration, despite the Autonomous Administration authorities' reliance on almost the same administrative division of the Land Registry Department in its areas, which is the division followed in Syria since the establishment of the Land Registry in 1926, the Land Registry Department is not the only entity that regulates and documents real estate properties in these areas. In each province, the Agriculture and Irrigation Committee controls State-owned agricultural land within its scope and regulates how it is invested. Many of those who were beneficiaries of these properties have been adversely affected by being expelled from their own property without compensation or alternatives.

In addition, there are several intricate and complicated real estate problems, the most prominent of which is how to address the real property of IDPs, which is an integral part of the search for legal justifications for the confiscation of their property. Laws that translate these unlawful endeavours have been issued but were later retracted under local and international pressure. One of these laws was the law on "Protection and Management of Absentee Property", which was first issued in 2015, re-issued in 2020 under the current Autonomous Administration, and was also retracted.

Regarding property management in the areas of "HTS and the Salvation Government", which controls the city of Idlib and large parts of its countryside, as well as the western countryside of Aleppo, the Ministry of Local Administration and Services in the Salvation Government is responsible for supervising all bodies and institutions concerned with real estate and housing affairs.

The Directorate General of Real Estate Interests in Idlib adopts the same procedures approved in the real estate departments of the regime, while stipulating that the principles of Islamic Sharia are not violated in all matters related to the work of the registry and the Directorate. Therefore, its courts refuse to apply "legal inheritance" laws on common lands owned by the State.

Areas that were transformed into incubators that host IDPs are suffering from the spread of camps and informal settlements, and consequently from the resulting erosion of a large proportion of agricultural and forest land. According to multiple testimonies and sources, real estate sales to foreign Sharia and security leaders were officially registered in the land registry authority in violation of legal procedures.

As for the management of property in the areas of the National Army and the Interim Government, it is clear from studying the methods of property management in those areas that there are varying levels of experience in each region, in terms of organizational and

administrative reference for each of them, and the limits of the powers of the concerned departments in real estate.

Among the most prominent problems faced by local councils and land registration and documentation departments that have been established in these areas, include the many original real estate records and title deeds that have been lost or destroyed due to the rounds of conflict and the rotation of the forces controlling them, in addition to the documented occurrences of military groups violations on private property in these areas.

In the context of benefiting from international experiences in legal and institutional reform in countries that have suffered from internal conflicts, which have had effects during and after the conflicts on the rights of property and housing owners, Section III presents the experience of South Africa and the experiences of land system reform in some Latin American countries. This puts us in front of multiple approaches in the application of the institutional reforms that were necessary to address a set of measures aimed at regulating the use and management of land and natural resources, as well as the protection of the rights of groups or individuals exposed to expropriation and holders of customary or informal rights to land.

South Africa was one of the first democratic transitions of the 1990s. The problem of land and population was one of the greatest challenges facing the new regime and one of the main drivers of the black majority's struggle in the face of policies of forced land confiscation and unequal distribution of wealth.

Following the establishment of the Truth and Reconciliation Commission (TRC) in 1995, pursuant to the Law (Strengthening National Unity and Reconciliation), the Land Recovery Authority and the Land Recovery Court were established, and the Land Recovery and Compensation Authority was not only working for those whose rights had been violated, or whose property had been expropriated, but also working on the redistribution of land in order to ensure a more equitable distribution among the races, empower the poor and the destitute, and grant them the right to own land through the land redistribution program, ensuring the fight against poverty and achieving social justice and stability.

At other times, it was impossible to recover property for objective reasons such as using the land/property for the interest of the public or having people already occupying the facility. In contexts of displacement, violations have occurred for several decades, so those affected had to choose between restitution in the form of alternative State-owned land or monetary compensation for expropriations that have occurred since 1913. In practice, the Commission addressed only ten per cent of all legitimate claims for restitution and compensation. This is due to the failure of government policies to implement land reform policies, which have been adopted with the aim of promoting national reconciliation and toning down the sharp imbalances in land distribution.



In terms of the land reform experiences in 17 countries in Latin America and the Caribbean, addressing land issues after the war has often been associated with the ability of local stakeholders to peacefully manage conflicts within society, the ability to use courts to address injustices, and taking the initiative to update local cadastres and land registries while lobbying for legislative and fiscal reforms to mainstream these initiatives at the national level, in addition to strengthening local customary conflict management mechanisms.

However, those initiatives also faced numerous and complex challenges, including those linked to addressing the large gap created by the long-standing inequalities in the distribution of land among the population, let alone the discrepancy in property registration systems, between the informal customary nature of property and those organized in official records.

Best estimates suggest that 70 per cent of land plots in Latin American countries are not documented in official records. Moreover, the multiplicity of property rights systems in Latin American countries is also a pressing problem, given its negative impact on the secure tenure of indigenous peoples.

Despite the limited implementation of agricultural reform, the cases of Guatemala and Colombia offer interesting measures. Both countries aimed to improve access to land for small rural landowners. Therefore, a trust fund was established in Guatemala and a land fund in Colombia, with the aim of distributing land to the landless, vulnerable and victims of conflict.

Although negative discrimination against women in terms of land distribution and management existed due to the domination of customary rules that deny women their property rights over constitutional rules most of the time, feminist movements, and alliances with civil society organizations in many of these countries have pushed the authorities to adopt fairer and more equitable policies, particularly in government property redistribution programs.

The fourth and final Section focuses on the role of constitutional, institutional and legal reform in property and housing issues in the Syrian situation, explaining the serious effects of poor guarantees to protect the right to private property in Syria, the absence of clear constitutional provisions, as those in the 2012 constitution that accurately define the conditions and criteria for expropriation cases for public benefit, the role of the State in achieving the social function of property and housing, and the absence of legal provisions that determine fair compensation.

These constitutional gaps formed a cover for land acquisition, expropriation and confiscation, especially in recent years that Syria had to live through.

The research also investigates the shortcomings and imbalances in the scope of general constitutional guarantees and their negative repercussions on various property and housing issues in the practical field. Hence the importance of abolishing the constitutional articles that constrict public rights and freedoms, including the right to property and housing, such as those that grant unrestricted powers to the President of the Republic, which amount to (21) articles in the Constitution of 2012, in the context of constitutional reforms, and reviewing all legislations and real estate laws issued during the rule of Al- Baath, because of the resulting restrictions and many complications on property and housing rights, which in turn exacerbated the real estate and housing problems that have overlapped during the past decades, in parallel with reforming the judicial institution by providing the foundations for the independence of the judiciary, ending the dominance of the executive authority that controls the Supreme Judicial Council, the Judicial Inspection Service, and the Constitutional Court, and abolishing the exceptional courts of various names, which the authority uses as a tool of repression and abuse.

Alongside structuring the ordinary judiciary in all its various degrees, courts and decisions, and the way it should address the manifestations of corruption and bribery that gnaw its joints, the research also raises the problems of the real estate judiciary and the overlap in its reference and powers, in addition to the need to make actual reforms in redefining the reference of the real estate judiciary, as a competent and independent judiciary, to which the law of the judiciary applies in all matters related to the appointment, transfer, promotion and dismissal of judges, and end duplication and overlap between the functions and competencies of the permanent real estate judge and the tasks and work of the temporary real estate judge, through the establishment of real estate chambers within the ordinary courts, which are competent in all real estate disputes cases and property confirmation and works, which commissions and oversees a technical committee tasked with the identification and editing processes, with a representative of the Directorate of Real Estate Interests being a member of this committee, in addition to revoking the real estate judges law (no.16 of 2014), because it grants the executive authority, through the Director of Real Estate Interests, broad powers in the work and appointment of the temporary real estate judge.

In view of the scale of the violations of property and housing rights that compromised the rights of millions of Syrians, the research proposes to establish a mechanism for property restitution and compensation in Syria, that is clearly stipulated in any political agreement or solution, in its capacity as the body responsible for reparations, restitution and compensation within the transitional justice mechanisms, and defining its administrative powers and the related judicial terms of reference, similar to the successful experiences of

bodies entrusted with this role in some countries, such as in the experiences of Bosnia and South Africa, for example.

Finally, the research singles out several proposals related to institutional reform in governance structures and community frameworks, most notably the harmonization of the Central Land Registry and the adoption of all documents related to property consolidation and real estate sales transactions, in accordance with judicial, legal and procedural controls in proving the validity of those transactions, after the removal of illegal restrictions that have been placed on proof of ownership. Moreover, there is a need for updating and modernizing the registration systems through the wider use of technology, increased decentralization and improved the capabilities of regional and local units, addressing discrepancies in registration systems, land and housing management in governance areas beyond the control of the regime, and reunifying the real estate system.

Accordingly, the officials of the governing bodies in these areas should abide by the International Humanitarian Law and the international standards in place when establishing and documenting property according to unified records, managing property in a way that safeguards the rights of owners including those who are absent and stopping violations and infringements of private and public property, which have been documented in several local and international reports.

The research suggests strengthening the roles of community-based frameworks in defending property and housing issues, and empowering Syrian women to participate in all institutional reform processes being direct beneficiaries to benefit from addressing property violations, development of laws and governance institutions that eliminate gender-based discrimination, especially since the transformations of Syrian reality during the war exposed the magnitude of the heavy burden borne by women, and the need to endow them with all their rights, equitable with men.

In line with the above, civil society organizations play a pivotal role in supporting collective claims to property, for example, civil society organizations in Latin American countries have played a pivotal role in supporting the rights of indigenous peoples and their claims to property restitution through coordination among their active networks and joining efforts to urge governments to implement restitution and compensation programs. feeding into this direction applicable to the Syrian situation.

This trend in the Syrian situation is fuelled by the fact that Syrian civil society organizations are the first to raise the voices of those affected by property violations and have taken important practical steps in spreading the culture of defending property, housing and land titling issues and forming a public opinion in favour of them that can be counted on in the future to be a key participant in this process and its entitlements.

## Introduction

The Day After (TDA) organization had previously issued my research on transitional justice mechanisms “reparations and compensation” in addressing property and housing issues in Syria which prompted me to complete and cover what establishes a deeper and more comprehensive research approach that explores the other side of the crucial legal and institutional reform in addressing property and housing issues.

[Link to the research](#)

Given the multiplicity of theoretical concepts that link the issues of reform to transitional justice paths and the variations in the international experiences that have been through those paths, the way to build a Syrian vision that harmonizes the requirements of justice and the realistic ability to address this huge volume of violations of property and housing rights, which constitute the main objective of tackling the methods of the topics presented by the research outlined through an introductory approach, contributes to the rooting of the concept of legal, judicial and institutional reform, taking into account the difference between reform in the cases of stable countries, and reform in countries suffering from internal conflicts and crises, and the latter being what concerns us specifically in the Syrian situation.

Then, Section I will study the impact of laws and legislation in exacerbating the problems of property and housing which requires a review of the roles of legislation issued during the rule of Al-Baath in its establishment of the rules of violation of property and housing rights, whether through real estate legislations or those that affect them even indirectly, and the consequent steady fragmentation of the real estate system on the one hand, and the accumulation of property and housing problems during the conflict stations, on the other.

In Section II, I will discuss the implications of the inconsistencies in the management of private and public property applied over the Syrian regions, due to the inconsistency in real estate policies between regime-controlled areas and those outside its control, and the resulting difficulties and problems due to the conflict in property registration and documentation systems, the fragmentation of the real estate system, and the weakness of legal protection systems, as well as controls for right holders.

In Section III, I will present examples of international experiences that have addressed the issues of property and housing, as known by South Africa after its liberation from apartheid and experienced in some Latin American countries that have reformed their land systems during their democratic transitions.

These experiences are brimming with lessons that can be learned because they will put us in front of different models of institutional reform, its role in addressing imbalances in the distribution of land among the population, the nature of the challenges faced by those countries, and the legal and practical mechanisms adopted to recover property or compensate lands in different ways.

The fourth and final section will propose the roadmap towards a Syrian approach to constitutional, institutional and legal reform, based on the diagnosis of constitutional and legal gaps that formed the rules of violation of property and housing rights, and the importance of reform and political change as an indispensable input to the reform of Syrian constitutions and laws in a way that protects property and housing rights, developing solutions to the abuses and violations that have accumulated over the past years in conjunction with the reform of the judiciary, providing conditions for its independence and ridding it of the dominance of the executive authority, ending with recommendations suggesting the establishment of a Syrian authority for property restitution and compensation, in accordance with the best international standards that ensure justice for the affected IDPs and refugees, without losing sight of the requirements for reforming governance structures and societal frameworks, on which the fulfilment of transitional justice requirements in Syria will depend to a large extent.

In order to cover the research subjects and themes in a systematic manner and achieving the objectives of the research while enabling an objective read and analysis, with the aim of general formation, multiple research methodologies were utilized according to the specific needs of the research. Therefore, the researched utilized the historic descriptive approach for the first section to establish an objective view over the transformation of the real estate system in Syria during the different phases of the establishment and development of the modern republic of Syria, while the second and third sections required the utilization of the comparative analytical approach, considering the multiple and variant real estate laws between the different areas of control in Syria, which stressed the importance of learning the impact of such variant real estate policies and regulation on accumulating real estate-related issues and the property rights of landlords and property owners, which is covered in the second section according to the principles of the applicable research approach, while the third section provides a review and analysis of the nature and quality of the institutional reform experiences in international countries, and the potential of building on their lessons and findings within the Syrian context. The fourth section required reflection and a vision in the context of developing theoretical and practical tools of institutional reform in the Syrian context, hence the inductive research approach was utilized to identify the findings and associated recommendations to address the issues of property and housing through the integration/alignment of institutional reform programs and the course of transitional justice in its various aspects.

# Prelude

## First: Concepts and implications of legal and institutional reform

In countries facing severe internal conflicts and crises, the provision of the elements and mechanisms of effective structural and institutional reform is one of the biggest challenges facing them during the stages of political transition, and the redefinition of the role and functions of the State, political parties, civil society and the private sector, in addition to the availability of international and regional support for the restructuring processes in various institutions, sectors and administrations. The overall institutional change reflects the reforms applied to the overall structures, rules and behaviour's in the work and performance of the legislative, executive and judicial bodies, and their success in meeting the requirements of the stages of stability and recovery.<sup>1</sup>

Inspired by international experiences, the reform of political institutions has been the primary gateway to the processes of institutional change and the starting point for changing the political environment associated with how political power is exercised and shaped.

The criteria that govern and distinguish good democratic governance are now measured by the ability of the political system in a country to respond to the requirements of modernization and democratization of institutions with their various functions and competencies, and the efficiency of administration and public accountability of executive bodies, in order to achieve the highest levels of freedom and justice<sup>2</sup>, quality of life and social security, and to ensure justice, freedoms and the rule of law through an independent judicial system.

While the reform of economic institutions requires major and comprehensive changes based on a strategic vision of sustainable development, improving the regulatory quality of economic competition, fighting corruption, strengthening the governance of administrations and companies, achieving the independence of financial and monetary institutions, protecting property rights, and stimulating the roles of the private sector and civil society in development, such reforms require a fundamental shift in the roles of the State, especially in countries where central governance dominates their resources and economic, productive

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[1] Jane Chow – Ghulam Rasoul Madani, Mohammed Owais Anwar - and Sayeda Al-Zahra - Institutional Reforms and Their Impact on Economic Growth and Investment in Developing Countries – Sustainability Magazine – June – 2021

[2] Al-Futaisi Mohammed bin Said – The role of political reform in developing public policies and improving the performance of government agencies - Journal of Academic Researcher in Legal and Political Sciences - 23/3/2022 - <https://www.asjp.cerist.dz/en/article/183134>



and investment sectors. Therefore, the United Nations Millennium Declaration linked good governance to the achievement of development goals and focused on the importance of combating corruption as a serious social phenomenon that cannot be eliminated without reforming governance institutions, and without public and private institutions and actors being accountable to the people.<sup>3</sup>

However, legal, and judicial reform is considered the basis of the judicial and human rights structure in the application of justice, the fight against corruption, tribunals and the achievement of transitional justice which can only be done through the reconstruction and development of the judicial and human rights system with the aim of enhancing efficiency and integrity and ensuring independence and the rule of law.

Working on this path requires the abolition of laws that restrict freedoms and violate the rights of citizens, while implementing legislations that guarantee people's rights and duties on the basis of citizenship, integrity and efficiency, in conjunction with reforming and developing the judicial structure, ensuring its independence and enabling law enforcement agencies to take their role effectively.

Moreover, the restructuring and reform of the security sector go hand in hand with the reform of the justice sector, as the latter is the guarantor of the accountability of security personnel if they opt to violate these laws. Also, modern approaches

argue that the reform of formal legal institutions has had little or no impact on social or economic conditions in developing countries. Therefore, in the subsequent decades, the focus was on studying the factors that contribute to law reform and administration, which has a positive impact on development rates, the most important of which are "the rule of law, the quality of bureaucracy, the level of corruption, income levels, growth rates and economic investment."<sup>4</sup>

While administrative reform is the basis on which many processes related to political, social and economic development are built, and keep pace with continuous changes, as a powerful tool for any government or system that seeks to develop its operations and policies to achieve its goals, while at the same time helping it to get rid of old policies or disruptive behaviours' that hinder professional development and even workforce development, the administrative reform can be defined as the process of re-engineering administrative processes by reforming and developing their systems, rethinking practical approaches and

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[3] Dr. Riyadh Bin Jalili, Institutional Reform, APII Kuwait Series, Issue 77, 1/11/2008 - <https://www.arab-api.org/APIPublicationDetails.aspx?PublicationID=40>

[4] Kevin Davis and Michelle Treble Cook – Legal Reform and Development - Third World Quarterly Report – 2001  
file:///C:/Users/Ayman%20Abu%20Hashem/Downloads/11375738%20(3).pdf -

methods, adopting the successful or the most innovative ones, and raising the level of efficiency in a positive environment that focuses on reaching goals without complications.

Whenever administrative work incorporates high principles, such as justice, enhancing productivity, boosting personal development, adopting flexibility, and eliminating bureaucracy, this enhances responsibility levels, raises commitment to job performance and strengthens institutional loyalty, which subsequently reflects positively on the quality of services provided to the target audience.<sup>5</sup>

## **Second: The role of legal and institutional reform in the application of transitional justice**

The experiences of countries that have been through the applications of transitional justice in cases of property restitution and compensation have shown that the success of restitution and reparation programs in dealing with the legacy of violations suffered by owners of property and rights, and in addressing the defects and problems of the real estate system, depends to a large extent on reforming legal legislation and institutional structures, and in an introductory and parallel context, it provides the foundations for implementing transitional justice programs with the best possible mechanisms.

This extrapolation reflects the bright side of some international experiences which have moved with a degree of confidence towards restructuring their institutions and providing a legislative environment that enables the bodies in charge of implementing property restitution, reparation, and compensation programs for victims to implement these programs with the least obstacles and impediments. However, other international experiences have faltered in the implementation of those programmes, owing to their inability to overcome internal vulnerabilities in transition and their failure to reform their legal frameworks and institutional structures.<sup>6</sup>

The general formulations of the reform of the laws on property and housing rights and the laws on contracts and registration will not suffice if the quality of the institutions in charge of enacting these laws and regulations is not improved and the independence of the judicial system and the systems of the courts and committees in charge of settling real estate disputes and restitution are not guaranteed.<sup>7</sup>

According to recent literature, any progress on this path depends on the relationship between constitutional changes and the transitional process (constitutionalizing the

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[5] Administrative Reform – Bahrain Institute of Public Administration Website – [https://www.bipa.gov.bh/administrative\\_reform/](https://www.bipa.gov.bh/administrative_reform/)  
- Administrative Reform – Previous Reference

[6] Samia Yitouji - Transitional justice as a source to strengthen the normative international protection of human rights – PhD thesis - University of Mohamed Khaisar – Algeria – pp. 84- 85

[7]Ibid.

transitional process). The processes of transitional justice and constitution-making in a post-conflict or authoritarian period require broad popular acceptance, in addition to the consensus of the political elite, since the relationship should be designed to strike a balance between participation and transparency, on the one hand, and flexibility in achieving common consensus, on the other.

In general, the constitution must include within its principles of transitional justice, the constitutional rules on the guarantee of housing and property rights, the organization of land, the provision of procedures for the safe return of refugees, and the powers of bodies entrusted with property restitution and compensation.<sup>8</sup>

Given the special attention paid to reparations in international human rights law, reviewing laws and procedures that justify violations of property and housing rights, amending and correcting those laws and procedures, and issuing new legislation and laws that prevent the recurrence of the legacy of violations, is one of the most important criteria for the desired constitutional and legal reform and building real social reconciliation in the future<sup>9</sup>

The relativeness of transitional justice experiences has expressed the inseparability of judicial and non-judicial mechanisms and their dialectically close connection to each other.

Even, the complementarity between them is based on the extent to which partial reforms in the various sectors of the State reflect progress in the various mechanisms of transitional justice.

It is inconceivable that progress in the course of reparation and compensation will proceed in full swing, without the integration of the political, legal, judicial and administrative reform processes, and providing the pillars of sustainable development because the problems addressed by transitional justice are not only associated with overcoming the past of violations, but also with establishing social reconciliation to ensure that they are not repeated in the future.<sup>10</sup>

Such concepts, which have been tested in practical reality and in the experiences of many countries that have specifically addressed land and housing problems, have found that addressing the roots of authoritarian and societal conflicts, the problems of concentration of wealth and resources in the hands of a few groups, and the phenomena of corruption and its repercussions, is the key solution to change the rules of the political game, pave the way for

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[8] Amanda Katz and Barrell - The interaction between transitional justice and constitution building – International idea Policy Paper – Publications - <https://constitutionnet.org/sites/default/files/2021-03/moving-beyond-transitions-to-transformation-interactions-between-transitional-justice-and-constitution-building.pdf>  
2021

[9] Dr. Ali Abdel Khader Al-Mamouri – The problem of implementing transitional justice – Future Center – 5 June 2022 - <https://mcsr.net/news752>

[10] Kevin Davis and Michelle Cook – Legal Reform and Development – op. cit.

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transitional justice programs, and face the challenges imposed by previous official and customary policies.<sup>11</sup>

These are challenges that local forces and parties, especially in countries suffering from internal conflicts, cannot address without the intervention of international institutions and experts in support and assistance operations in various forms.

It is clear, for example, that the experience of Bosnia and Herzegovina with regard to property restitution programs and the return of the displaced has opened eyes to the importance of the institutional reform required for the success of these programs and the consolidation of the positive changes that these experiences entailed, which can be utilized in the Syrian experience in particular.

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[11] Solon L. Baraclaw - The Legacy of Land Reform in Latin America  
- <https://journals.sagepub.com/doi/abs/10.1177/0143831x91121005>

A large, expressive teal brushstroke graphic that serves as a background for the central text. The stroke is composed of several overlapping, textured bands of color, creating a sense of movement and depth. It is centered on the page and extends across most of its width and height.

# Section I

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## **Section I: Cumulative Effect of Legislation and Laws in exacerbating property and housing problems**

The approaches of successive Syrian governments during five decades of Baath rule in dealing with property and housing issues, have been based on the issuance of legislations, plans and programs that reflect the growing gap between the texts of constitutions that provide for respecting the right to property, but only in theory, without addressing housing rights and their accumulated shortcomings in addressing the deteriorating housing problems worsened by the increase in the population and the decline in per capita income, let alone the role of some laws and decrees in establishing the rules for violating the right to property.

While the flawed policies included in those governments' five-year and ten-year plans, coupled with the systematic escalation of violations of property and housing rights during the era of the Syrian revolution were a serious indicator of the role of real estate laws with real estate dimensions issued by the regime in undermining the legislative and legal framework governing property and housing issues, and the emergence of structural problems that threaten the urban and demographic identity through the establishment of new real estate incidents at the expense of confiscation and dispossession of property and housing owners, and preventing the return of absentees and displaced persons to their places of residence, what made the effects of this problem much worse during the years of the revolution is the many contradictory methods of managing public and private property by the de facto forces in areas outside the control of the regime, which seized many of those properties and also fell within the circle of violations and encroachment on rights holders.

In parallel, the difference in real estate registration and documentation systems in the Syrian regions led to a great manipulation in the registration and transfer of property contrary to legal principles, and a difference in the procedures and rulings of the judicial authorities dealing with property and housing disputes.

In the context of addressing the aspects of the problem, we will reveal the roles of government institutions and bodies concerned with urban planning and the implementation of housing projects in justifying the confiscation and dispossession policies that the regime has increasingly pursued in recent years. We will see their tasks according to the reference and competence of each of them, of defining the processes of demographic change, and enabling real estate speculation companies loyal to the authority and its allies to plan and start building large housing complexes in areas that have been destroyed and evicted. The space and environment of housing constitute essential elements of demographic identity because the identity of any place is the standard indicator of linking human needs, in terms



of safety, security, protection and autonomy, with the forms and patterns of spatial and urban organization and the resulting personal perceptions and physical characteristics provided by the constructed environment in order to meet those needs appropriately.<sup>12</sup>

This indicator, which is readily present in urban philosophy, and which is taken as a basis for analysing the problems and challenges facing the population environments, helps us interpret the changes that have occurred in the issues of ownership and housing in Syria - especially after the ruling party seized power - and the cumulative impact of the legislation and laws issued by it in the successive stages of its rule, and its role in the multiplicity of legal, judicial and administrative references that regulate the issues of ownership, possession and housing, not to forget the failure to build a unified real estate system, in parallel with enabling the executive authority to expand the concept and mechanisms of confiscation under the guise of "public benefit", and depriving broad categories of the provision of adequate housing, and turning a blind eye to the expansion of random and informal housing as one of the forms of containing the growing need for housing with increasing population density, and its use for the purpose of power needed in certain aspects, in exchange with the absence of the required treatments for that phenomenon, which has been called the misery belts.

The cumulative effect of legislations and laws relating to property and housing issues is illustrated by observing and monitoring the following data and variables:

### **First: Problems of the real estate system**

The property system in Syria has undergone many developments during the Ottoman era and the French Mandate, the most important of which was the establishment of a central registry for land management, which made the registration and transfer of real estate property more stable and accurate, specifically in terms of facilitating property procedures, especially after resorting to the processes of demarcation and drafting of estates, under the supervision of the real estate judge, according to decision No. 186 of 1926<sup>13</sup>

The Ottoman "Tapu" system included lands that had not been demarcated or drafted in a legal document.

However, land tenure remained inequitable, especially since most peasants worked for a few large farm owners under informal lease contracts.

Therefore, following Syria's independence, the tendency was to introduce reforms to address the gap in land distribution with the promulgation of the Syrian Civil Code in 1949, which

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[12] Spatial Identity Environment Housing in Iraqi Architecture Trends – Researchers Group – Architecture Department University of Mosul– <https://www.iasj.net/iasj/download/d3f516353a2e00c3> Last seen 12/3/2021 -

[13] Identification and Editing System issued by Resolution 186 of 1926 - <http://aniskfoury.com/uploaded/details/files/11.pdf> Last viewed 15/10/2021

played an important role in the development of the current land tenure system. The Civil Code divided the lands into five categories: privately-owned lands, State-owned property, State-owned unclaimed customarily managed property, State-owned reserved unclaimed property, and State-owned non-restricted property, which contributed to the division of the types and conditions of tenure and ownership, and the identification of the issues of sales, rent, use, utilization, easement, and other rights related to real estate and movables.

Against the backdrop of Syrian-Egyptian unity, nationalization and agrarian reform laws were promulgated in 1958, which benefited the peasants to a great extent, which, according to its critics, later exacerbated the problems of squatters on private land and the use of these laws for discriminatory purposes during Baath rule.

With the population inflation in Syria during the second half of the twentieth century, problems of informal housing, disputes over tenure, and the growing need to build a unified real estate system that addresses property and housing issues in a fair and balanced manner began to emerge.

We can say that at a time when Syria was most in need of developing an advanced real estate system that protects private and public property and provides a legal and investment environment that achieves developmental integration and population balance between urban and rural areas, the policies of the ruling party and its successive governments since the 1970s created legislative and legal obstacles to the possibilities of unifying and developing the real estate system, resorting instead to the expansion of real estate rights outside the controls of the Permanent Land Registry through multiple systems and procedures in the registration and transfer of these rights, contrary to what the Syrian Civil Code, issued by Legislative Decree No. 84 of 1949, stipulates in Article 825 that: "In-kind real estate rights are acquired and transferred by registration in the Land Registry."

The law gave the land registry documents absolute evidential power, as an official recognition of the owner's tenure of the property.<sup>14</sup> In turn, the role of the real estate judiciary in Syria reveals how ownership was documented and legal disputes were examined in a way that led to the fragmentation of judicial references concerned with real estate since real estate judiciary does not fall within the judicial structure as stipulated in the provisions of the judiciary under Law No. 98 of 1961. Moreover, the legislator also called it "the judiciary" without following the other rules set out in the Judicial Authority Law, including the appointment, rights, immunity, promotion, removal, and transfer of judges.

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[14] The Syrian Civil Code

Although the demarcation and drafting of real estate and immovable property in the districts or provinces is the prerogative of a justice of the peace, who is the permanent real estate judge, it is possible to replace the justices of the peace with temporary real estate judges to carry out the editing and identification of real estate and immovable property in the districts or provinces in which such works are opened based on the identification and editing processes described in Resolution 186 of 1926, in which case the demarcation process is handed over from the justice of peace to the temporary real estate judge appointed by a decision of the Minister of Justice on the recommendation of the Minister of Agriculture, who is subordinate to the Ministry of Agriculture and is called (the judge of the individual real estate). Therefore, we note that the decisions of the permanent real estate judge are in their nature, administrative, while the decisions of the temporary real estate judge have judicial status.<sup>15</sup> This is one of the aspects of imbalance in the real estate judiciary in Syria and its impaired independence, and its failure to address real estate problems in accordance with sound judicial procedures.

However, the context of the fragmentation of that system, after the outbreak of the Syrian revolution in 2011, was characterized by a steady disintegration with the issuance of a package of real estate laws and procedures, which in turn enshrined systematic violation rules that affected the properties of millions of IDPs and absentees during the years of conflict.

Several studies have dealt with the legal and practical effects of these legislations and their roles in creating plans, projects and real estate facts that reflect the interests and objectives of the authority, and if continued, lead to the synthesis of a real estate system, leading to a change in the urban and demographic identity and the separation of the identity of the places and their actual owners.

In order to avoid the repeated presentation of these laws and their risk in fragmenting the real estate system – which is considered the most arbitrary in terms of depriving landowners of fair compensation - and to prevent the exploitation of the concept of compulsory distribution that prevents landowners and residents from benefiting from urban reorganization, impose security and procedural constraints on proof of absentee property, and give administrative units near-absolute powers to regulate real estate areas in the absence of their owners without allowing them the right to object to the new masterplans, while totally ignoring how these laws, can result in releasing the hands of speculative companies and real estate profit and depriving the poor, who are the majority of society, from providing social housing for every family, as stated in the recent ten-year plans<sup>16</sup>

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[15] Real estate judiciary in Syria – Unpublished study by Jusoor for International Justice – March 2020

[16] Further elaboration on the seriousness of the real estate legislation issued after 2011, we can return to the research: The role of transitional justice (Mechanisms of reparation and compensation) in addressing the problems of ownership and housing in Syria- <https://tda-sy.org/wp-content/uploads/2022/03/%D8%AF%D9%88%D8%B1->

## Second: Laws Permitting the Dominance of the Executive Authority

The executive authority is one of the three government authorities, along with the legislature and the judiciary. It is tasked with implementing laws passed by the legislature. The Syrian constitution has regulated the work of the executive authority, the latest of which was the constitution in force for 2012, in articles 83-131 of the constitution.<sup>17</sup>

Although the Syrian Constitution stipulated articles related to the separation of powers and defined the powers and roles of each, many other articles still give the President of the Republic, in his capacity as head of the executive authority, the upper hand in dominating the legislative and judicial authorities.

There are many studies that have shown where the structural imbalances in the Syrian constitution texts, which led to the weakening and subordination of the legislative authority and undermined the independence of the judiciary.

There is no dispute in saying that the defects in the constitutional texts were the basis for the issuance of several real estate laws that granted the executive bodies and the administrative units great powers to enable the administrative bodies to deduct up to half of the lands of the owners of private property, free of charge and without any compensation to the owner, and to set criteria for the concept of compulsory distribution based on considering the regulatory area as a legal personality, replacing all owners and right holders, as stated in the Urban Division and Urbanization Law No. 9 of 1974.<sup>18</sup>

These include the Expropriation Act No. 20 of 1974, which was replaced by the Expropriation Law No. 20 of 1983, where the latter allowed government agencies to seize private property and use it contrary to the public benefit, without correcting the injustices and inequities of the previous law, especially that the compensation was determined on the basis of the initial fixed value of the seized real estate, which is much less than its actual value. This fuelled the fire of resentment against the laws of expropriation which legitimized the confiscation portal on a large scale.<sup>19</sup>

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[17] Consider the articles of the Syrian Constitution on the separation of powers and the powers of the President of the Republic

[18] The real estate problem and its repercussions on property and housing rights – Researchers Group –June 2019  
[19] Real estate ownership and the Constitution (research paper of the Syrian Lawyers Association in cooperation with the team of legal experts) Syrian Lawyers Association - 10 April 2020  
<https://freesyrianlawyers.com/index.php/ar/%D9%85%D9%86%D8%B4%D9%88%D8%B1%D8%A7%D8%AA->

Other laws also played a serious role in monopolizing the real estate trade, freezing large areas of land, authorizing land sale to public bodies, or covering it with acquisition laws, such as the Regulation of the Sale of Land No. (3) in 1976. Whereas the Reconstruction of Land Plots Law No. 14 of 1974 and its amendments excluded land plots belonging to administrative authorities and the public sector from its provisions, which resulted in increasing, rather than decreasing property prices and placed more obstacles in the way of addressing housing problems.<sup>20</sup>

In addition, other laws imposed many restrictions on property ownership rights, including the Law on Ownership in Border Areas No. 41 of 2004 and its subsequent amendments, which prohibits the establishment, transfer, modification, or acquisition of any real estate right on land located within border areas, except under a license from the Minister of Interior, which is a peremptory license that does not accept any judicial review methods.<sup>21</sup>

On another note, there are laws with security and political dimensions that falsely justified to the executive authorities to infringe on the right to property, as Article (4) of the Emergency Law issued by Legislative Decree No. 51 of 1962 stipulated the right of the military governor to the seizure of any movable or real estate, imposition of temporary custody on companies and institutions, deferral of outstanding debts and liabilities due for what is being seized, whereby under this text, the property of many political opponents was seized without any compensation.

The application of this law continued for nearly five decades before it was replaced by the Counter-Terrorism Law No. 19 of 2012, which was more deliberate in violating the right to property, using it as an excuse to deprive Syrians who revolted against the regime in 2011 of their rights and private property. Article 11 stipulates the right of the Attorney General and whoever he authorizes, to freeze of movable and immovable property of anyone who commits one of the crimes stipulated in the law, while Article 12 stipulates that for all the crimes set in this law, the Court's conviction orders the forfeiture of movable and immovable property, its products and the property used or destined for the commission of the offence. Under the pretext of terrorism, thousands of sentences have been handed down against political opponents who have been unjustly dispossessed and confiscated. The same applies

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[20] Ibid.

[21] For more information, see: How many Syrian laws have been used for discriminatory purposes. - Syrians for Truth and Justice - November 10, 2021 - <https://stj-sy.org/ar/%D9%83%D9%8A%D9%81-%D8%AA%D9%85-%D8%A7%D8%B3%D8%AA%D8%AE%D8%AF%D8%A7%D9%85-%D8%A7%D9%84%D8%B9%D8%AF%D9%8A%D8%AF-%D9%85%D9%86-%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%A7%D9%84%D8%B3%D9%88/>

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to dozens of laws and decrees issued by the Syrian regime during the 2011 revolution, the most dangerous of which are Decree No. 66 of 2012, and Law No. 10 of 2018 and its amendments, the Planning and Urbanization Law promulgated by Law No. (23) of 2015 and other laws that had direct effects on the right to property, by enabling the institutions and executive bodies of the regime to impose new real estate incidents on the ruins of the rights and properties of the IDPs and refugees. Violating those rights by various means, led in terms of the outcome to what can be called the war of confiscation of private property, as a parallel process to the military and political conflict, and transforming the housing problem into a weapon to punish the social environments that revolted against the regime, and changing the urban identity to suit the plans of demographic change.

In fact, it would not have been possible for the executive authority to play this role of serving the policies of the regime, had it not been for the judiciary's loss of its independence, and its transformation into a tool to cover up the actions of the executive institutions in the name of law enforcement, in parallel with determining the function of the legislative authority, by approving laws and legislations that achieve the objectives of the authority, and release its hand in violating the rights of Syrian citizens.





# Section II

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## **Section II: The impact of the discrepancy in the management of private and public property over the Syrian regions**

The vast transformations that took place in the real estate system in Syria during the years following the outbreak of the 2011 revolution were not limited to real estate legislation and procedures and the work of real estate institutions in areas under the control of the regime, but areas under the control of the de facto forces in eastern and north-western Syria have also undergone other transformations, all of which, in terms of their repercussions on property and housing rights, have led to overlapping real estate problems, including those attributable primarily to the regime's responsibility for the destruction of the bulk of Syrian property, and as a result of the systematic shelling and targeting of large areas of Syria due to fight between the parties to the conflict, which led to the displacement of millions of Syrians from their areas, depriving them of living in their areas of residence, and their inability to exercise their rights to their property.

In parallel, with the disparity and inconsistency between these different parties in the management of the real estate system according to the areas of control and influence of each of them, it also clearly reveals the size of private and public property, which has been exposed to various forms of violation, whether under the cover of certain real estate legislation that has increased the loss of property rights, or by virtue of other forms of expropriation and dispossession of property. Hence the importance of studying the impact of the different parties to the conflict in their management of private and public property on all aspects related to property and housing issues, which is considered one of the major problems that emphasize the importance of providing the requirements of legal and institutional reform in the context of the desired transitional justice, by contributing to reducing the damage caused by the conflict and imbalance in the work of the existing administrations, and how to address the effects of violations committed by them, which affected the owners of real estate and housing rights.

### **First: Property Management in Regime-controlled Areas**

In the previous section, I discussed the developments in the property tenure system in Syria, according to which successive Syrian governments, after independence were managing private and public property, according to its whims. After Al-Baath regime took power in Syria, multiple legislations and laws were issued, which led to the expansion of the confiscation of private property on the one hand, and the exploitation of public property for the purposes of consolidating power at the expense of its investment for development requirements on the other hand.

In this long era, which lasted for more than five decades, the flaws and gaps in the procedures and mechanisms of property management resulted in a widening gap between the properties registered in the Land Registry and the reality of their actual size on the ground. Real estate disputes over communal lands have increased due to the obstacles of allocation and division, but what is more serious than this emerged with the expansion of the violating construction and the spread of slums, which constituted (50%) of the total housing in Syria, according to the statistics of the Central Bureau of Statistics in 2007.<sup>22</sup>

Although growing housing needs since the middle of the last century have imposed real estate policies that provide adequate housing, government plans and programs in this regard have failed to achieve the strategies that were included in the five-year plans worked out by Al-Baath governments. We see that the government's focus on the ninth five-year plan between 2000 and 2005 and considering it the most important strategic plan to solve the housing problem in Syria, which was based on partnership between the public, cooperative and private sectors, the implementation of public housing (youth and workers) was limited to the General Housing Corporation, while it failed to secure the roles assigned to this plan in the housing cooperation sector and the private sector, although their roles constitute in quantitative terms ( 58 to 90% ) of the strategic plan.<sup>23</sup>

The Tenth Five-Year Plan (2005-2010) adopted the social dimension of housing and the provision of 500,000 housing units through the establishment of serviced and organized urban communities with all facilities and infrastructure and under sound environmental conditions that guarantee the right of every family to adequate housing. The private sector has been given a key role in the implementation of 75% of the plan's objectives.<sup>24</sup> This plan has also failed to achieve its objectives as a result of the absence of a legislative and administrative environment capable of meeting the requirements of involving the private sector. This was not remedied by the promulgation of the Real Estate Development and Investment Law No. 15 of 2008, which, apart from being issued three years later than what was scheduled in the implementation of the plan, it was not actually implemented in the years following its issuance.<sup>25</sup>

After the 2011 revolution, the administration of private and public property was used by the regime in accordance with its political and military objectives, without any regard to the constitutional and legal guarantees that protect real estate and housing rights. The regime's

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[22] Ayman Abu Hashim - Demographic variables and their effects on the societal fabric, property rights and the return of refugees – Research issued by Next Day - October 2021 - <https://tda-sy.org/wp-content/uploads/2022/01/Demo-Identity-AR-Print.pdf>

[23] Raeda Ibrahim – The role of the government in addressing housing issues in Syria - Faculty of Economics – Aleppo University 2014%20i -<http://mohe.gov.sy/master/Message/Mc/raedabrahim.pdf>

[24] Ibid.

[25] For more information see the Real Estate Development and Investment Law No. (15) of <https://www.albankaldawli.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria> 2008

war against the rebellious environments defying it resulted in huge human and material losses. With regard to the extent of destruction of homes and public facilities, the World Bank estimates, according to a study of the economic and social consequences of the conflict in Syria until 2017, that 7% of residences was completely destroyed and 20%, partially destroyed.<sup>26</sup>

While the regime has issued an arsenal of legislation and real estate procedures that cover and facilitate the seizure and dispossession of IDPs, we are aware of the seriousness of this on the rights to property and housing, knowing that more than half of the Syrian people have become displaced, refugees and evacuees.

The researcher detailed the most prominent of these laws, and the impact of each of them on the violation of the rights of housing and real estate owners in his previous research on the mechanisms of reparation and compensation in addressing property and housing issues in Syria.<sup>27</sup>

These laws were accompanied by the issuance of several masterplans, which targeted areas that were subjected to large-scale destruction and displacement, such as the Qaboun neighborhood and the Yarmouk camp in Damascus, to which Law No. 5 of 1982, titled the "Urban Planning Law", amended by Law (41) of 2002, was applied, and according to these plans, their residents are deprived of alternative housing, in addition to the role of these two plans in changing the urban and demographic identity of both areas, in the event of their application.

While the masterplan of Al-Haidariya neighborhood in Aleppo was based on the Real Estate Development and Investment Law No. (15) of 2008, the difference in the application of real estate laws to these cases among others, would change the legal effects of each of them, and would give the regime's institutions absolute freedom to re-engineer them according to their vision for each region, and worse, ignore the large and accumulated real estate problems caused by the war, and treat them as if they were stable areas, although most of their residents are outside Syria, and there is no safe environment yet for their return thereto.<sup>28</sup>

The law that negates all doubt about the intentions of the regime to follow the policy of dispossessing property and houses of their original owners is Law No. (10) of 2018 and its amendments, which is considered a circular for Decree No. (66) of 2012, giving the right to administrative units to create one or more organizational areas within the general masterplan, while including legal and procedural obstacles that prevent right owners from

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[26] War Losses: Economic and Social Consequences of the Conflict in Syria – Report by the World Bank – 10/7/2017 - <https://www.albankaldawli.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria>

[27] The role of transitional justice (reparations and compensation mechanisms) in addressing property and housing issues -

[28] The reality of property, land and housing rights in Syria – HLP Working Group 2020.



organized during four years of its work, more than 6500 transactions of transfer of ownership, in addition to thousands of procedures for filing a writ of lawsuit, writ of seizure, ownership statements and others, which included all areas outside the control of the regime in the province, where the regime ignored all the transactions that took place during that period and refused to handle them.<sup>31</sup>

It is clear from the performance of the governments and institutions of the regime in dealing with the real estate system that the deficiencies and imbalances that were characteristic of the management of property during the decades preceding 2011 have turned afterwards into fully governed mechanisms in the management of property, in order to achieve the plans and objectives of the security, economic and demographic system, making it one of the tools for violating property and housing rights, and dismantling the real estate system, instead of its roles and functions in protecting and guaranteeing rights holders, addressing property and housing problems, and developing the real estate system in accordance with development requirements.

## **Second: Managing property in areas outside the control of the regime**

During the conflict that impacted the Syrian geography, large areas came out of the regime control, and alternative administrations were formed. These forms varied according to the nature of each region and the power that controls it, which is resulted in different levels of efficiency, performance, and legal implications.

In view of the return of the regime's control over many of these areas in recent years, the research will address the authorities concerned with property management in the areas that are still outside its control, which is the administrative and organizational reference that deals with all aspects of real estate registration and documentation, granting building licenses, issuing organizational plans and housing projects, supervising public property, and other aspects of real estate affairs; and whose actions, under international law, are subject to legal and procedural obligations, which cannot be waived on grounds of the absence or disruption of State institutions for any reason.

### **1- Property management in areas controlled by the SDF and the Autonomous Administration**

The areas of northern and eastern Syria include three main governorates (Deir Ezzor, Raqqa and Hasakah) that are controlled by the Syrian Democratic Forces (SDF) and have a control area of about 25% of the area of Syria. The regime retains control of the so-called security

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[31] The Reality of Property, Land and Housing Rights – op. Cit.



squares in Hasakah governorate, and the Autonomous Administration has been in charge of governing that area since its establishment in March 2016.<sup>32</sup>

The Autonomous Administration has a clear centralized structure for the three legislative, executive, and judicial authorities. However, the power and influence available to the military arm and members directly linked to the Kurdistan Workers' Party (PKK) significantly affect the legal procedures and executive decisions of the administration, making the control of its actions within a single legal framework packed with difficulties and complications.

The Autonomous Administration authorities maintained almost the same administrative division of the Land Registry Department in their areas, which is the same division followed in Syria since the establishment of the Land Registry in 1926.<sup>33</sup> Even the same former employees were retained to benefit from their knowledge and experience in real estate. However, the Land Registry Department is not the only entity that organizes and documents real estate properties in those areas, as the Agriculture and Irrigation Committee in each governorate controls the agricultural land owned by the State within its scope and organizes its investment, and many of those who were beneficiaries of those properties have been affected because they were kicked out without compensation or other alternatives.

There is also the Public Property Committee, which is one of the committees directly affiliated with the executive authority and has almost absolute powers to benefit from, and invest in those properties, taking into consideration that these properties have large areas in the provinces of the region, and a large part of them were leased under permanent contracts to the beneficiaries using them.

Theoretically, it may seem that the function of all these departments and committees, whether real estate registration and documentation, or the organisation of agricultural lands and public property, reflects the unity of the real estate system in the experience of Autonomous Administration.<sup>34</sup>

However, the examination and analysis of the work of each of them, indicates the existence of profuse and complex real estate problems, the most prominent of which is how to handle the property of the displaced, which is in the context of the search for legal justifications for the confiscation of their properties.

Laws have been issued that translate these illegal endeavours into actions, such as the law on "Protection and Management of Absentee Property", which was issued the first time in

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[32] Sinan Hatahet - Political Economy of the Autonomous Administration of North-East Syria – Middle East Trends – January 2020 - <https://medirections.com/index.php/2019-05-07-15-50-27/wartime/2020-01-28-17-47-29>

[33] Demographic variables and their impact on the social fabric, property rights and the return of refugees – op. cit.

[34] The Reality of Property, Land and Housing Rights – op. Cit.



2015 under the then-Democratic Autonomous Administration and re-issued in 2020 under the Autonomous Administration, which defines the absentee as "the Syrian - and persons of similar status- who lives outside the authority of the Autonomous Administration, and does not have first and second-degree relatives residing in the region." The danger of this definition is that it threatens refugee property owners who do not have first- and second-degree relatives with losing their rights to this property while they remain absent from it. Had it been applied before it was suspended shortly after its issuance<sup>35</sup>, as a result of the widespread criticism it sparked, it would have actually led to the deprivation of the population of entire regions, whose people, because of the war, have turned into displaced persons and refugees in other regions and countries.

Other laws in the context of seizing absentee property include the "Duty of Self-Defence" Law issued by the Autonomous Administration in 2019 and was also later suspended.<sup>36</sup>

There are other aspects of the Autonomous Administration authorities' work which affect real estate in a large way, such as the influence exercised by the PKK leaders on the bodies and institutions of the Autonomous Administration, which interfere in the appointment of Land Registry Department employees and all committees concerned with public property, and even the work of the judiciary and the rulings issued by it.

The multiplicity of legal references in the work of the courts is reflected negatively on property issues. For example, these courts apply personal status laws, which differ significantly from the Syrian Personal Status Law, and have special laws and procedures related to inheritance issues that sometimes differ from one governorate to another, in addition to the conflict between procedures and laws in many cases, while many real estate disputes related to public property are subject to solutions and settlements imposed by the councils and bodies in force, rather than being resolved before the courts, which have been suspended from considering such cases.<sup>37</sup>

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[35] The Autonomous Administration issues a law to manage the property of expatriate Syrians - Enab Baladi - 8/6/2020 - <https://www.enabbaladi.net/archives/406193>

[36] Jurists attacking the laws of Autonomous Administration - New Arab - 9 August 2020 - <https://www.alaraby.co.uk/%D8%AD%D9%82%D9%88%D9%82%D9%8A%D9%88%D9%86-%D9%8A%D9%87%D8%A7%D8%AC%D9%85%D9%88%D9%86-%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%22%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%B0%D8%A7%D8%AA%D9%8A%D8%A9%22-%D9%81%D8%B1%D9%85%D8%A7%D9%86%D8%A7%D8%AA-%D8%B9%D8%B3%D9%83%D8%B1%D9%8A%D8%A9>

[37] "Autonomous Administration" - Judicial Introduction to Understanding the Model and Experience - Omran Center for Strategic Studies - April 2021 - <https://www.omrandirasat.org/%D8%A7%D9%84%D8%A5%D8%B5%D8%AF%D8%A7%D8%B1%D8%A7%D8%AA/%D8%A7%D9%84%D9%83%D8%AA%D8%A8/%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%B0%D8%A7%D8%AA%D9%8A%D8%A9-%D9%85%D8%AF%D8%AE%D9%84-%D9%82%D8%B6%D8%A7%D8%A6%D9%8A-%D9%81%D9%8A-%D9%81%D9%8E%D9%87%D9%85-%D8%A7%D9%84%D9%86%D9%85%D9%88%D8%B0%D8%AC->

All these problems and complexities in the management of property lead to a weakening of the community's confidence in it, Therefore, many residents in that area resort to the regime departments that remained in Qamishli and Al-Sabkha in Raqqa, with the aim of registering and documenting their property and issuing the necessary documents. Note that both the regime and the Autonomous Administration departments do not recognize each other's documents issued by their respective real estate records.

As for housing issues in the areas of the Autonomous Administration, despite the great destruction suffered by some governorates, such as the one Raqqa suffered on the eve of the war between the International Coalition and Daesh, there are no clear plans among the competent departments and councils to reconstruct those areas since the majority of their population is counted as evacuees.

The Autonomous Administration has issued the masterplan for Raqqa, but it has not been implemented. The Administration is replacing the urban reorganization by allowing, within a scope limited to the rehabilitation of destroyed houses and neighbourhoods, while it does not have a vision to address the random housing that has doubled in some areas such as in Qamishli and Hasakah.<sup>38</sup>

It is impossible in any case to assess the performance of the administration in this area without clarifying the impact of the violations suffered by the owners of real estate properties at the hands of the People's Protection Forces (YPG) and the Internal Security Forces (Asayish), where international reports have documented the looting, destruction and burning of houses in the countryside of Hasakah, such as Tel Hamis, Tel Brak, Al-Manajir, Al-Aghbish, Umm Al-Rous, Umm Tuina and others. They have also confiscated many private properties for security reasons, using accusations that "their owners are from Daesh" as a sufficient justification to seize and confiscate them.

Little can be expected regarding the future of the real estate system in this expansive area, in light of the geopolitical and military changes on Syrian territory, the future of governance in general, and the changes in the real estate system in particular.

## **2- Property management in the areas of HTS and the Salvation Government**

HTS controls the city of Idlib and large parts of its countryside and the western countryside of Aleppo. Its "Salvation Government" informally handles all civil and service affairs in those areas.

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[38]An expansion organizational chart in the city of Raqqa – Enab Baladi - 4/7/2020  
<https://www.enabbaladi.net/archives/398251>

The Ministry of Local Administration and Services in the Salvation Government is responsible for supervising all bodies and institutions concerned with real estate and housing affairs, with the exception of public properties at border crossings and some other important areas which are supervised by a special committee that reports directly to the director of the economic file in HTS. The courts of the Ministry of Justice of the Salvation Government are competent to hear real estate disputes and inheritance cases.<sup>39</sup>

Since the city of Idlib came out of the hands of the regime in 2015, the staff of the Land Registry resumed their work and maintained the records of the Department of Real Estate Interests in Idlib. In June 2020, the Directorate General of Real Estate Interests in Idlib began its work under Resolution No. 263 issued by the Salvation Government.

The Directorate adopted the same procedures applied by the real estate departments of the Syrian government and now adopts the same hierarchy and laws that were applicable before 2011, except for its administrative subordination to the Ministry of Local Administration in charge of auditing and maintaining the integrity of the land registry. All documents issued by the Directorate are official and approved by the government and its courts.

Among the tasks of the Directorate lie the registration of real estate rights, transfer of property ownership, real estate secretarial operations and cadastral transactions.

In 2020, the Directorate General of Real Estate Interests in Idlib documented 37,056 real estate statements or copies of the real estate cadastre, 16,122 title deeds, in addition to 9,980 transfer contracts, while the local council grants building licenses, which amount to about 50 licenses per month.

Although the ownership process is carried out in accordance with the Land Registry Law No. 188 of 1926, the Salvation Government stipulates that this law does not violate the principles of Islamic law in all matters related to the work of the Registry and the Directorate. Therefore, its courts refuse to apply the "legal inheritance" law on lands whose bare ownership belong to the State, while individuals have the right to invest and dispose of them, including the right to inherit, that is, the right to distribute equal shares between males and females, as is practiced in Syrian laws, and the courts apply instead the legal inheritance in accordance with the provisions of Islamic law.<sup>40</sup>

While the Directorate of Real Estate Interests underscores the commitment of its employees not to transfer and re-establish any property except in the physical presence of the seller and the buyer or their legal proxy, with the required proofs of identity and real estate documents, and that the transaction is audited and documented before the head of the Real Estate

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[39] The Salvation Government from Establishment to Control of Idlib – Enab Baladi – 10/1/2019 - <https://www.enabbaladi.net/archives/275762>

[40] The Reality of Property, Land and Housing Rights – op. Cit.

Documentation Office in the Directorate, many violations occurred contrary to these procedures, due to the downward pressure from influential figures in authority on the employees of the Directorate, to force them into waiving some of these conditions and completing the process of re-establishing and transferring sales without abiding by them.

Numerous sales to foreigners, princes and security commanders in HTS have been unlawfully re-established, according to the testimonies of employees who were afraid to reveal their names.<sup>41</sup>

In addition, real estate transactions depend on the security approval required by the Office of Studies in the Salvation Government to confirm that the parties to the transaction do not deal with any party affiliated with the Syrian regime. This approval constitutes a restriction on property owners who live outside the Authority's areas of influence. Many cases of seizure and appropriation of absentee property have been applied under security decisions, in a manner that mimics Resolution No. 4554 of 2015 issued by the Syrian regime, which requires the addition of real estate sales, renting and emptying houses and shops to cases that require prior security approval from the competent authorities.

Idlib is also suffering from accumulated real estate problems dating back to pre-revolution times being one of the areas to which the Border Areas Law No. 41 of 2004 and its amendments apply. The restrictions that this law have imposed on the transfer and registration of properties have led to the prevalence of the phenomenon of unregistered consensual sale and purchase contracts spread all over the real estate departments.

This phenomenon has expanded in recent years, in light of the spread of undocumented contracts and the resulting difficulties of proving the ownership of a succession of owners in a way that allows the original owner to sell the property more than once, which also results in many difficulties in determining the good-faith owner.

In addition to the aforementioned problems, the Salvation Government failed to observe the legal conditions for acquisition for service purposes, which was demonstrated in its refusal to compensate the property owners who were adversely spread by the Sarmada-Dana road expansion project in northern Idlib, despite the repeated petitions and claims they made.

Human rights reports also documented several cases in which the properties of displaced persons were seized for ideological reasons, such as the case of the village of Ghassaniyah and other Christian villages in Jisr al-Shughour.<sup>42</sup>

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[41] Testimony of one of the employees who worked in the Directorate of Real Estate Interests in Idlib before leaving for Turkey in 2020

[42] The Reality of Property, Land and Housing Rights – op. Cit.

It is not possible to assess the management of property in the areas of HTS influence without knowing how its affiliated government deals with the housing crisis in an area crammed with displaced people where the population of Idlib governorate has quadrupled since 2011 to date, reaching more than three and a half million.

This reality imposed the proliferation of camps and informal settlements over vast areas, in parallel with the lack of agricultural space and the rationalization of a large part of agricultural land for housing and construction without organizational plans for the buildings and accompanying infrastructure.

The government ministries and local councils in the region have allocated many public properties, as well as agricultural lots and woodlands, in order to build camps, and the so-called "replacement" projects whereby tents are replaced by residential apartments for the beneficiaries themselves. These projects, which consist of thousands of random housing units, are implemented in cooperation with humanitarian organizations, the right of their occupants is limited to benefiting from them without actually owning them.<sup>43</sup>

With these great demographic and urban transformations that have manifested on the real estate map in Idlib, and the exceptional situation they have imposed in dealing with them at the expense of the organizational and cadastral plan of the governorate, it is very difficult to talk about addressing the problems and real estate disputes that have resulted from this situation in light of the uncertainty of this region's future and what will happen to it if the political and field conditions change.

### **3- Property management in areas controlled by the National Army and the Interim Government**

In essence, the region of northeast Syria, which has been witnessing successive shifts along the experiences of alternative administrations since 2012, is controlled by National Army factions, while the Syrian Coalition's Interim Government is an administrative authority with restricted powers.

Studying the methods of property management in these areas shows varying levels of experience in each region, in terms of organizational and administrative reference for each of them and the limits of the powers of the concerned departments in real estate. However, as we will see, many of the pre-2011 real estate problems that accumulated dramatically in the years that followed share many similarities.

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[43] Thousands of random housing units outside the organizational chart in Idlib – Al-Gharbal Magazine – 17/May 2021- <https://www.algherbal.com/archives/5501>

Among the most prominent problems faced by the local councils and real estate registration and documentation departments established in those areas, is the issue of original real estate records and documents that got lost or damaged due to the rounds of conflict and the rotation of the forces controlling them, as was the case in the city of Al-Bab in particular, which was already suffering from great disparities between the reality of the properties in it, (most of which are communal lands) and their title deeds and records.

With the spread of slums in recent years, due to the city's absorption of large numbers of evacuees and IDPs, the masterplan of the city no longer reflects the new real estate incidents. Every attempt to develop a new masterplan was faced with the difficulties of ending commonage or co-ownerships, which requires logistical, technical, and material capabilities that are not available.<sup>44</sup>

Therefore, the Directorate of Land Registry, with oversight from the local council, is working to restore the database by relying on notarized sales with the notary public, "judicial sales" because most of the parcels in the city and its real estate areas are still common.

Since a large part of northern Syria is also located within the border areas, the difficulties of obtaining security approval were a major reason for the spread of the phenomenon of external contracts signed outside the real estate department.

Although the Real Estate Records Department in Azaz cancelled the security approval condition (despite its adherence to the application of Resolution No. (188) of 1926) and also cancelled the real estate financial clearance, this did not have any tangible impact on urging people to organize their real estate transactions in line with the approved principles, nor on limiting the organization of slums that continue to spread in the city with the influx of large numbers of IDPs and evacuees.

In fact, real estate activity is now governed by speculation and Murabaha in the absence of planning and urban regulation mechanisms, in addition to the fact that the committees authorized to suppress building violations that fall outside the old masterplan tend to act selectively at times.<sup>45</sup>

In turn, the absence of a unified organizational and administrative property management reference, despite the presence of departments and employees of the interim government, is reflected in the various forms and methods of managing the real estate system, which is one

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[44] Directorate of Real Estate Interests in Al-Bab : Building the database from scratch - Syria Report - 11/8/2021 <https://hlp.syria-report.com/%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%B3%D9%83%D9%86-%D9%88%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-%D9%88%D8%A7%D9%84%D9%85%D9%85%D8%AA%D9%84%D9%83%D8%A7%D8%AA/%D9%85%D8%AF%D9%8A%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D8%B5%D8%A7%D9%84%D8%AD-%D8%A7%D9%84%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D8%A8%D8%A7%D8%A8-%D8%A8%D9%86%D8%A7%D8%A1/>

[45] Azaz Council turns a blind eye to building violations – North Press – 26/12/2021 - <https://npasyria.com/90854/>





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constitute one of the current and future challenges; an aspect that can only be dealt with successfully if transitional justice programs succeed in enabling IDPs to return to their property and places of residence and addressing the violations and real estate problems witnessed by the region in recent years.

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## **Section III :International experiences in legal and institutional reform**

Institutional reform is one of the most under-researched and under-explored areas of transitional. While institutional reform is largely focused on legislative reform, security sector reform, as well as the reform of inspection and vetting, there are examples of institutional reform in States undergoing transition that go further to address the root causes of conflict and economic, social, and cultural rights.

A sustainable approach to housing, land and property issues often requires going beyond the compensatory approach limited to wartime expropriation issues. Post-conflict legal and

institutional reform related to land management and registries represents an opportunity to fix issues during conflict and pre-conflict. The importance of this approach was underscored by at least 16 peace agreements that included provisions calling for reform or amendment of the land management framework<sup>48</sup>

Many international experiences in this context provide important lessons that can be learned, as they put us in front of multiple approaches in the application of the institutional reforms that were necessary to address a set of measures aimed at regulating the use and management of land, natural resources, and the protection of the rights of groups or individuals exposed to expropriation and holders of customary or informal rights to land.

Those experiences have sparked in-depth national debates to review land policy and build consensus on land tenure and how to address land grabbing or other malpractice issues.

By virtue of the specificity of the South African experience in the democratic transition phase, through which the steps it has taken can be clarified to address the old and accumulated legacy in land and property issues, the presentation and analysis of the successes and failures of that experience - as the research will explain - will lead us to address the overall policies and steps it has taken, to reform governance structures in various fields and sectors.

While the experience of some Latin American countries, which shifted from a long colonial legacy towards democratization, guides us to the type of developments in land and property issues in the post-conflict stages, the way to address violations and grievances that affected land and housing owners, and the different methods of treatment that will be adopted depending on the level and degrees of institutional reform, especially since the significant gaps in these countries between customary land management systems and formal legal systems have been major challenges faced by their State and local authorities.

In addition, South Africa faced the problem of historical discrimination suffered by indigenous peoples, in terms of decades of deprivation of property rights, let alone the customary and social discrimination that affected women's rights in many respects.

## **First: The experience of South Africa**

### **1- Restitution and Compensation Laws and Programs**

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[48] For more information, please refer to the peace agreements concluded in Afghanistan, Burundi, Colombia, Ivory Coast, Darfur, El Salvador, Guatemala, Kenya, Kosovo, Mali, Nepal, Philippines, Rwanda, Somalia, Sudan, and Uganda

South Africa was one of the first cases of democratization in the 1990s. After long decades of the apartheid regime -in which the white minority dominated the political and economic institutions and controlled the wealth, resources, and lands at the expense of the persecuted and marginalized majority of its black indigenous population, Nelson Mandela, head of the African National Congress party, managed after his release from prison in 1990 to lead South Africa's transition towards a multiracial democracy in collaboration with the white President de Klerk.

The problem of land and population was one of the greatest challenges facing the new regime and was one of the main drivers of the struggle of the black majority in the face of policies of forced land confiscation and unequal distribution of wealth.<sup>49</sup>

Following the promulgation of the 1993 Interim Constitution which established the principle of equality and eradication of previous discriminatory laws, the Land Restitution Programme was launched, an aspect of the land reform adopted following South Africa 's first democratic elections in 1994.

This law provides for returning real estate and agricultural property which was confiscated or bought cheaply after 1913 as part of discriminatory laws under which 90% of the property was transferred to whites. The law also provides for the abolition of the Bantu Law of 1951 and the Settlement Law of 1954, according to which eight major local settlements were identified as isolated areas to which blacks were transferred, called (Bantustan), on an area not exceeding 13% of the country's area, even though the blacks accounted for more than 75% of the country's population. The government's goal behind the program was to redistribute 30% of the land expropriated by whites to indigenous citizens by 2014.<sup>50</sup>

The Truth and Reconciliation Commission (TRC) which was formed in 1995 pursuant to the Promotion of National Unity and Reconciliation Act, was followed by the establishment of the Land Restitution Authority and the Land Restitution Tribunal, which, along with its headquarters, had eight regional offices.

The work of the Land Restitution and Compensation Commission was not been limited to those whose rights have been violated, or who have been dispossessed of their property, but the Commission has worked to redistribute land, in order to ensure a more equitable distribution between races, empower the poor and landless, and grant them the right to own land through the land redistribution program, in a way that wins the fight against poverty and the achievement of social justice and stability.

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[49] Maha Abdul Latif - Society and political transformation in South Africa until 1999- Publications of the Faculty of Political Science – Al-Nahrain - University <https://www.iasj.net/iasj/download/95dff29bbefe637e>

[50]Ahmed Adali - Reconciliation and Truth in South Africa : A Research on the Achievements and Impasse of Transitional Justice – Journal of Arab Studies – Issue 47 – November 2020 - <https://siyasatarabiya.dohainstitute.org/issue047/Pages/Siyassat47-2020-Idali.pdf>

The real estate court is responsible for ratifying agreements mediated and solved by the authority, and adjudicating cases in which no agreement is reached. The Court's primary mandate lies in its ability to determine the question of land restitution, compensation and legitimate ownership.<sup>51</sup>

Under these laws, lands were returned through negotiation between the parties concerned or arbitration before the Real Estate Court in one of the following forms: restitution of the land expropriated from the plaintiff, giving the plaintiff alternative land or payment of alternative satisfaction compensation, provision of special financial aid in the form of services, or development of infrastructure in the place where the plaintiff currently resides.

In the context of democratization and the application of the principles of justice, the democratic system did not deprive the descendants of the colonizers - who had acquired citizenship as time passes - of their rights, and it recognized their right to compensation for the loss that they might suffer as a result of the restitution of indigenous lands and property. In this case, the State is the guarantor of these rights and is responsible for applying the principles of justice to all, recognizing that the transition to a democratic system should not lead to further violations against different ethnic groups.<sup>52</sup>

In terms of the implementation of these constitutional provisions and the laws issued under them, the Property Restitution Authority and the Property Court have faced significant operational problems due to the long legacy of policies based on racism and the deepening sense of mistrust and insecurity of the black majority, coupled with their inefficiency in the management and use of land after the interruption of their generations for decades due to the confiscation of their land.

Under the South African transitional justice, victims of dispossession had the right to choose between restitution in the form of alternative State-owned land or monetary compensation for expropriation that had taken place since 1913. However, in order to maintain social cohesion, the government decided to buy lands at market prices from white farmers rather than confiscate them, to distribute the land to black claimants. The cost of this procedure has slowed the implementation of the recovery and redistribution process, considerably. In fact, the Authority has addressed only 10% of the total legitimate claims for recovery and compensation.<sup>53</sup>

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[51] Hal Ruth-Land restitution in South Africa – rights-development, and the restitution state- Canadian Journal of African Studies vol. 38- NO 3- 2004

[52] Ibid.

[53] Truth and Reconciliation Commission Report - , Volume 5 ,Chapter 8 in particular - [https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05\\_AR.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05_AR.pdf)

In addition, government policies fail to implement the land reform policies adopted with the aim of promoting national reconciliation and stability, supporting economic growth, improving family living conditions and alleviating poverty.

There were instances where it was impossible to recover property for objective reasons such as the use of land/ property for the public good, or the actual existence of residents using this facility. In contexts of displacement and violations that occurred several decades ago, it was more feasible to compensate the original owner than to give them their land back.

In parallel, the years of the new regime have not eliminated the economic disparities between whites and blacks. South Africa remains one of the countries with the most inequitable income, with nearly 60 per cent of the population earning less than \$7,000 a year. Since 2007, blacks have accounted for about 90 per cent of the poor. Experts estimate there are about nine million blacks living without shelter, some living in tin and hay huts.

Although the government built 1.5 million homes for the poor in the early years of democracy between 1994 and 2003 and made positive strides in terms of services and infrastructure in poor areas, the political and economic crises in South Africa - especially during the presidency of President Zuma after 2010 - coupled with the very sluggish implementation of the reconstruction and development program carried out by the African National Congress government.<sup>54</sup>, were among the factors that compounded the housing problems and in turn hindered the process of land restitution and compensation as a result of the weakness of financial resources capable of covering the required compensation for large numbers of affected people.

As a result, land restitution operations remained within a limited range even though the goal of land restitution was the primary goal of the black majority in order to correct the historical injustice suffered by the apartheid regime and discriminatory laws.

## **2- Problems and Challenges of Institutional Reform**

The experience of transitional justice in South Africa illuminates the extent of the impact of the recovery and compensation programs that have been adopted and worked on in the overall legal and institutional context in which the democratic transitions took place. It provides us with an understanding of the work of State institutions, and the problems and challenges that they have faced and continue to face, in identifying obstacles and hotbeds of deadlock and failure, which prevented the application of recovery programs and alternatives to them, as desired by the black majority; which is one of the issues that in turn tests the extent to which the institutional and judicial structures enforce and apply the constitutional

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[54] Alan Hirsch , Season of Hope: Economic Reform under Mandela and Mbeki, Cozalo Natal University Press , 2005

and legal provisions and articles that determine the paths of transitional justice and its complementary mechanisms.

Tracking South Africa's constitutions in the era of democratization starting from the Interim Constitution of 1993 until the Permanent Constitution of 1996 and its subsequent amendments in 2012 in particular, puts us in front of a national vision that is determined to adopt the imperatives of transitional justice and to consider this vision – as stated in the Law on Promoting Reconciliation and Unity – as one of the fundamentals of the new social contract, and an essential guarantee for achieving justice and equity<sup>55</sup>.

In the context of the implementation of this vision, the Truth, and Reconciliation Commission (TRC) was established in 1995 with exceptional powers to summon, investigate violations and make recommendations.

Three years after gathering information and testimonies about victims, the Commission issued a report in 1998 that included the testimonies of more than 22,000 victims and witnesses, with 2,000 testimonies given at hearings and investigations conducted to establish accountability for crimes committed during the apartheid rule. However, it settled for replacing the principle of accountability with a pardon in the event of recognition and confession. Of the 7,112 pardon requests, the committee granted 819 pardons to guilty people, favouring the logic of forgiveness over punishment.

Presidential pardons of former President Thabo Mbeki were seen as a way to resolve the “incomplete and unfinished work of the Truth and Reconciliation Commission,” which was conducted under secret trials in the absence of the victims and without any representation. Those responsible for violations who did not apply for amnesties remained in a cycle of impunity.

In view of the widespread criticism of the Commission's work<sup>56</sup>, the Pretoria Supreme Court in 2008, declared the amendments to the prosecution policy unconstitutional. In 2010, the Constitutional Court upheld the right of victims to be consulted before granting political amnesty.

Thus, in practice, amnesties were at best applied to individuals who confiscated and appropriated black land during the apartheid era, while attempts were made by organizations representing victims, including the Khulumani Support Group, which in 2002 sued 23 multinational corporations in a US court demanding compensation for mass violations committed during the apartheid regime. Such violations included the confiscation of large areas of black land, without compensation to the owners and occupants.<sup>57</sup>

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[55] Maha Abdellatif – Society and Political Transformation in South Africa – op. Cit.

[56] Edgar Moran, "Forgiveness is resistant to the ugliness of the worker" - Translated by Hassan Al-Omarayn, Thinking Magazine, Issue 2- October 2013, p. 1 -

[57] South Africa – when strong institutions and massive inequalities collide – carnegie endowment for



On the other hand, the property system in South Africa has shown the weakness of the guarantees of equality between men and women in the land distribution and reform program, despite the clear guarantees in the Constitution in this regard, due to the severe social, economic and political deprivation suffered by the majority of women in South Africa.

Most rural women are engaged in agricultural production and grow staple crops on which the communities mainly live. As a result of apartheid, most women became farm managers when their husbands and sons were forced to work as day laborers in mines and in cities.

Black women - as part of the black majority - were thus denied land ownership rights in 87% of South African territory. Under customary law, until 1986, women could not obtain real land rights without the permission of their husband or guardian.

Although racial restrictions on land ownership have now been lifted, most rural black women do not have the financial capacity to buy land due to their extreme poverty. To date, women have not participated in the land reform process on an equal footing with men. Most of the trust funds and committees established in the context of land restitution and redistribution are still under the control of men.

The Public Property Associations Act of 1996 provided for equal representation of women but did not guarantee women's effective participation on an equal footing. This invited the Parliament to introduce a bill to recognize customary marriages in 1998. The proposed legislation included measures to align the customary law with the South African Constitution and its international obligations. The legislation grants equal status and eligibility to wives and provides for certain measures to include women in property contracts<sup>58</sup>.

Parallel to the complexities and challenges of recovery and compensation programs, successive governments since Mandela and Mbeki in the 1990s have tried to focus on developing reconstruction programs and programs for housing within development plans and reintegrating informal settlements (Bantustans) into towns and cities through social grants, the main source of livelihood.

Since 2004, after the issuance of the BEE-BB law, the government utilized the construction and housing sector in the redistribution of property to achieve economic and social balance and has achieved considerable success in this regard.

However, due to the failure of economic policies in those years and beyond, the persistence of severe inequality between a white minority representing two-thirds of the high-income

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international peace- 18 March 2021 - <https://carnegieendowment.org/2021/03/18/south-africa-when-strong-institutions-and-massive-inequalities-collide-pub-84063>

[58] South Africa – when strong institutions and massive inequalities - op. cit.

earners, and a black majority half of whom live in chronic poverty, was a strong indication of the magnitude of class inequality in the economic field among the population. It also indicates that the political leadership of governments in terms of race, background and culture, controlled by the National Congress Party, was unable to dismantle the joints of economic dominance of the white minority, which was reflected in the backwardness of economic and institutional reform in relation to political reform. These structural imbalances have affected various governance activities, including the management of State-owned companies and property reform systems which have faced many overlaps and complexities due to the conflict of competencies and programs between the powers of the central government and the powers of the provinces and local regions<sup>59</sup>. This explains why, after taking office in 2017, President Cyril Ramaphosa focused on land reform programs and projects caused by the continuing gross imbalance in the land distribution process, with 80 per cent of the indigenous population still owning only four per cent of South Africa's land. Ramaphosa believes that these changes will enhance equity, bridge social class disparities, drive economic development, increase agricultural production and food security, and raise competencies, skills and equal opportunities, as was clear in his statement: "Black people want their land back".<sup>60</sup>

Throughout the years of democratization, the challenges of economic and social reform, the fight against networks of corruption, in addition to the reform of the administrative, security, police, and public service sectors dominated by the white minority with competencies, were closely related to the challenges of redistributing property on the basis of justice; a matter that was not limited to mechanisms to recover confiscated land in the past, and compensation for its owners, but largely simulates the future of South Africa and how to qualify bureaucratic cadres from the black majority, which has suffered deprivation and exclusion for decades, and provide them with the scientific and technical qualifications to manage the various sectors of governance.

South Africa was fortunate to have the most powerful and effective prosecutor Thuli Madonsela. One of the many important investigations and reports was the most famous *Capture* case report in late 2016, shortly before the end of her tenure, which was based on whistle blower testimonies, and a cache of private emails that expose the misuse of State institutions for personal purposes<sup>61</sup>.

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[59] Alan Hirsch – Season of Hope – Economic Reform – op. cit.

[60] South Africa: Land Reform and Mandela Legacy - Asharq Al-Awsat - 24 August 2018 - <https://aawsat.com/home/article/1372201/%D8%AC%D9%86%D9%88%D8%A8-%D8%A7%D9%81%D8%B1%D9%8A%D9%82%D9%8A%D8%A7-%D8%A5%D8%B5%D9%84%D8%A7%D8%AD-%D9%86%D8%B8%D8%A7%D9%85-%D9%85%D9%84%D9%83%D9%8A%D8%A9-%D8%A7%D9%84%D8%A3%D8%B1%D8%A7%D8%B6%D9%8A-%D9%88%D8%A5%D8%B1%D8%AB-%D9%85%D8%A7%D9%86%D8%AF%D9%8A%D9%84%D8%A7>

[61] South Africa – op. cit.

The media has also played a crucial role supported by a variety of activist NGOs. According to the Reporters Without Borders Media Freedom Index, South Africa has one of the freest media environments in the world. South Africa also has independent women's, students' and religious organizations, civil unions and trade unions, all of which are civic tools of pressure to urge the Government to overcome these challenges.

The South African experience points to four potentially useful lessons for many countries struggling for a legal, social, political, and economic transformation that fulfills transitional justice requirements:

1- South Africa has the potential to create virtuous cycles of positive interactions between ideas, reform of laws and institutions and economic growth. But there is also a significant risk that distributional imbalances, at the root of which rests the problem of land and property which has not been addressed with the requisite inclusiveness and fairness, could cause a cumulative downward spiral.

1- Negotiations and political consensus can be key entry points to a democratic transition, and State institutions can act as a sponge for crises and shocks, but all of this does not preclude addressing chronic imbalances in economic and political power and in the areas of governance, as prerequisite conditions for achieving steady positive steps in transitional justice.

3- Overcoming the difficulties of dealing with the property ownership system and giving up the legacy of confiscation and appropriation in favour of the equitable distribution of real estate property depends on the existence of a constitutional and legal reference that provides justice to the disadvantaged and those with impacted property and housing rights; a legal reference that provides for guarantees of gender equality in all matters related to the system of tenure and ownership and the abolition of discriminatory customary laws that have allied those guarantees.

4- The separation and balance of powers, the strengthening of the independence of the judiciary, the activation of the roles of civil society, and the advocacy of media form an integrated series in building a reliable reform methodology which enjoys legitimacy and wide societal acceptance. Any imbalance in this series delays and hinders the paths of transitional justice in all its aspects.

## **Second: Models of Land System Reform Experiences in Latin America**

## 1- Pathways to democratization and institutional reform

Most countries in Latin America were once colonies of Spain or Portugal. Naturally, the legal system of land tenure and property registration practices have evolved from these colonial foundations. These European colonists were not the first inhabitants of the region; many indigenous groups lived there before colonization.

This cultural diversity created a similar diversity in the land tenure system, with a continuum that ranges from private to communal tenure (a combination of individual and collective).

Most Latin American countries suffer from high levels of land ownership concentration, making it the worst region in the world in terms of equitable land distribution. While agriculture remains a major economic or livelihood activity in Latin America, there is a significant gap between the haves and the have-nots as clearly indicated by land distribution patterns and how they are invested.<sup>62</sup>

During the colonial era or after independence, every care was taken to preserve the old arguments for land ownership. Land reforms in Latin America were characterized by three main features:

1- they occurred in response to the uprisings of the impoverished peasants.

2- The reforms ended the semi-control system prevalent in the agricultural sector where peasants were divided into two groups: a) those who had a permanent attachment to the main landowner's farms, and b) those who were temporary workers. This system evolved into a social base where some peasants worked on the farm and others remained as temporary labourers.

3- the elite minority of landlords who retained sufficient political power to influence the system under which the peasants gained ground.<sup>63</sup>

Since the military regimes in Latin America are the rule and democracy is the occasional exception, in the 1980s, Latin America witnessed the replacement of dictatorships and the transition to democracy. Most modern constitutions in Latin American countries included the right to property as an absolute right regulated by legislation and laws, while some, such as the constitutions of Colombia, Brazil, Peru, and Venezuela, affirm that property ownership carries duties and a social function related to land distribution policies, guaranteeing the rights of indigenous peoples, black communities, and those living in urban and rural informal settlements.

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[62] Scoping studies for land policy research in Latin America – Researchers: Stephen Barani – Carmen Diana Deere-Manuel Morales, February 2004 - <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/32790/119564.pdf>

[63] Scoping studies for land policy research in Latin America – previous reference.

The right to adequate housing is recognized in the constitutions of many countries, such as Argentina, Brazil, Colombia, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Venezuela, Chile and Bolivia. In some countries, such as Ecuador, Uruguay and Mexico, the right to housing appears among the fundamental rights recognized by the State<sup>64</sup>

During democratic transitions, land reform programs in 17 Latin American and Caribbean countries attempted to expropriate large land holdings (latifundia) and transfer them to small farmers; however, the results obtained were minimal due to the power of large landowners, and economic dependence on agricultural exports, which prevented the distribution of a greater part of land. For example, in Ecuador, the government distributed only unproductive land, facilitating the concentration of good land in the hands of influential landowners.

In Venezuela, half of the land distributed was public land, and high compensation was paid to large landowners whose land made up the other half. In Brazil, the Land Law set a minimum distribution of land for every family that does not own land for agrarian reform. However, it did not set a limit on the maximum size that each owner can own<sup>65</sup>

Another crucial assumption of the dominant approaches to post-war reconstruction, at least during the peak of the 1990s, was that peacebuilding provided a historic opportunity to implement key reforms that addressed the underlying causes of the war.

The large-scale land policy and management reforms envisaged in the peace agreements are a good representation of this idea. However, there are many examples of successful settlements of short-term conflicts that have done nothing to prevent violence from erupting later.

Indeed, post-war reconstruction sometimes enables the distribution of land to ex-combatants, refugees, and some IDPs, but rarely leads to the major land policy reforms required to benefit a wider audience<sup>66</sup>. Therefore, in post-war Latin America, addressing land issues has often been accompanied by the ability of local stakeholders to peacefully manage conflicts within the community, use courts to address injustices, initiate the modernization of local cadastre and land registries, press for legislative and fiscal reforms, harmonize these initiatives at the national level, and strengthen local customary conflict management mechanisms while championing national reforms to incorporate these rules and practices into statutory law.

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[64] - Rodry Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, International Center for Transitional Justice, May 2007, p. 40.

[65] Miguel Rocha de Sousa, *Political Economy of Land reform: New perspective for Latin America*, 2000.

[66] Scoping study for land policy research in Latin America – op. cit.

Land reform experiences in Latin America have faced multiple and complex challenges, including addressing the large gap between long-standing inequalities in land distribution among populations and the weak political representation of marginalized groups, which have been hardest hit by large landowners' control of productive agricultural land for decades. In addition to the discrepancy in property registration systems between the informal customary nature of property and those organized in official records. The best estimates indicate that 70 per cent of land parcels in Latin American countries are not documented in official records. In Guatemala, for example, there were only two registry offices serving the entire country until recently, which discouraged many landowners from registering their plots.

The multiplicity of property rights regimes in Latin American countries is also a pressing problem, given their negative impact on secure land tenure, reliable records, and the functioning of the land market.

While we see in some cases challenges closely related to political and institutional reforms, including those that have faced reform of land systems due to the spread of organized corruption networks, networks of interests outside the State, and sometimes the intertwining of interests between local forces at the expense of weakening justice and judicial institutions, and the failure of governments to achieve the levels of interaction between the triad of stability, reform and development.

In this context, the role of political turmoil and severe economic crises in hindering the implementation of agricultural reforms cannot be overlooked. An example of this type of challenge is when in 1979, the Nicaraguan government confiscated the land of large landowners, but it was unable to complete its plans for Sandinista agrarian reform because of the severe economic crisis associated with its loss of power in the 1990 elections.<sup>67</sup>

## **2- Challenges of addressing violations, discrimination, and indigenous peoples' rights**

During the democratic transition in Latin America, the organization of tenure forms according to the nature of the occupied land was one of the most issues on the agenda of government authorities. The experiences of Colombia and Guatemala are realistic examples of how to deal with violations of property rights resulting from confiscations, seizures, and displacement.

In Guatemala, Article 9 of the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (1994) states: "In the event of abandonment of land as a result of armed conflict, the Government undertakes to review and strengthen legal provisions, to

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[67] Land tenure, housing rights and gender, UN Human Settlements Programme (UN-HABITAT) in Mexico, <https://digitallibrary.un.org/record/781286>

ensure that such an act is not considered voluntary abandonment, and to ratify the inalienable nature of land rights. In this context, they should promote the return of land to its original owners and/or seek appropriate compensatory solutions."<sup>68</sup>

The real problem with this agreement was that the authorities responsible for implementing the restitution were the same ones who dispossessed the displaced by allocating their land. This has led to the creation of "an entire network of local ownership and political relations that are inherently hostile to the return of displaced people."

In Colombia, one of the main obstacles to property restitution is the relationship between local politicians, the interests of large landowners, as well as companies and armed groups. As these actors have benefited from expropriation, they, in turn, contribute to a climate of insecurity against returnees or activists who defend land rights, which slows the process of restitution.<sup>69</sup>

In Colombia, the government that emerged from the 2016 peace agreement resorted to two ways of addressing encroachments on private property: first, using the legal instrument of expropriation in accordance with the legal arrangements stipulated by the Constitution, and second, opening direct negotiations with the original owner to compensate him in the event that the response was not possible or not feasible. If the land is public property, under the laws governing public service, the State can grant the occupants of informal settlements titles, under certain minimum conditions and requirements, such as having no other property, or not being indebted to the State. Colombia adopted laws and established institutions to ensure restitution and reform land ownership in a more equitable manner.<sup>70</sup>

The cases of Colombia and Guatemala illustrate this holistic approach, which aims to address wartime housing, land and property violations, and pre-conflict inequalities in terms of land acquisition. Both countries suffered from unequal access to land before the conflict between the majority of landless peasants and large landowners who owned a large proportion of the land. These disparities were identified as the root cause of the conflict. Both countries included provisions in their peace agreement, and the recovery aspect has been implemented to some extent in Guatemala and is still under implementation in Colombia. However, agrarian reform in Guatemala has failed and suffered delays due to a lack of

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[68] Mauro, Annalisa and Michelle Merlett. "Access to land and recognition of its rights in Guatemala": International Land Alliance. 2003 <https://humanitarianlibrary.org/sites/default/files/2013/05/kpguatemala03.pdf>

[69] Mauro, Analesa and Michele Merlett - "Access to land and recognition of its rights in Guatemala - op. cit.

[70] Antonia Dizaz, *The Political Economy of Latin America: Land Reform*, op. cit.



adequate funding.<sup>71</sup> While the approach has been good, political and economic interests have limited the impact of the reform.

In Guatemala, the failure to address these post-conflict inequalities has led to ongoing land disputes. In the absence of a strong and fair justice system, unresolved land issues have resulted in continued displacement and violence, at a low rate.

Despite the limited implementation of agricultural reform, the cases of Guatemala and Colombia offer interesting measures. Both countries aimed to improve access to land for small rural landowners. A trust fund had therefore been established in Guatemala and a land fund in Colombia.<sup>72</sup> with the aim of distributing land to landless, vulnerable and conflict victims. In both countries, programs have been initiated to facilitate access to land through subsidies and land purchase credits, with forms of technical assistance. In addition, these countries linked restitution and compensation to land reform by ensuring that informal land rights are recognized and registered in the cadastre after restitution.

These measures combine a compensatory approach with a meaningful approach to change, whereby restitution is complemented with a view to stronger tenure through the process of regulation and registration. The Pinheiro Principles support this approach.<sup>73</sup>

In the two above-mentioned, and other land reform experiences in the Latin American States, the problems of negative discrimination with regard to women's ownership of agricultural land have been a concern of women's and civic movements. In the past three decades, there have been positive transformations in the establishment of formal women's rights to land, after customary laws deprived women of land tenure in government distribution programs. A number of them have gone further in their recent agricultural legislation to adopt specific mechanisms for the integration of women. The most common procedure was to require the registration of land in land distribution programs and/or the granting of title deeds in the name of the spouses. El Salvador went even further, deciding to distribute land in the PTT land distribution programme on an individual basis to the men and women who form married couples.

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[71] By 2021, the Earth Fund has received less than 7 per cent of the 3 million hectares it is supposed to distribute by 2028. Source: Washington Office for Latin American Affairs, Policy Recommendations: Peace Agreement - Rural Reform July 20, 2021. <https://reliefweb.int/report/colombia/policy-recommendations-peace-accord-rural-reform-and-drug-chapter>

[72] The Colombian Land Fund consists of land acquired after the expropriation or restitution of public land acquired after the declassification of protected forests or land granted through international resources. Source: Andrés Fuerte Posada, Risks of the Peace Process in Colombia, Land Fund and Prospects for Access to Land by Communities and Smallholders, paper prepared for the World Bank's Annual Conference on Land and Poverty, 2018

[73] Kay Cristobal - Land Reform in Latin America: Past, Present and Future – A Look at Latin American Research – issued by Cambridge University in January 2022 - <https://www.cambridge.org/core/journals/latin-american-research-review/article/land-reform-in-latin-america-past-present-and-future/F2562E760D80C11252D29E28ED518B97>

Colombia, Nicaragua and Chile adopted affirmative action measures, giving priority in the distribution or titling of land to female heads of household.<sup>74</sup> Brazil allocated a 30 per cent quota for women in its land reform and market-assisted credit programs. As a result of these measures, the proportion of women benefiting from adjudication and land titling programs increased significantly in the 1990s and beyond, and attempts are still being made to develop property settlement policies capable of meeting the demands of those living in informal settlements and those living in organized settlements.<sup>75</sup>

On the other hand, such measures do not conceal the existence of variations with regard to the inheritance system. Especially for land that is distributed according to the concept of joint ownership, as this type of land cannot be sold, ceded, or transferred, before a certain period of time, usually between 10-15 years. If death occurs during this period, this type of land is re-segregated between heirs. If the death occurs after this period, the title deed is granted to the heirs of both sexes.<sup>76</sup>

More broadly, public debate in Latin American countries is focused on the problem of insecurity of tenure of indigenous peoples' lands, despite the end of their colonial era, especially in terms of how to bridge the gap between constitutional rights and the implementation of legislation and practical applications. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries is a well-developed instrument, in that it takes into account, comprehensively and in full, the demands of indigenous peoples in recent decades.

The Convention proceeds from the special relationship of indigenous peoples with the lands traditionally occupied or used. Article 14 establishes the obligation of States parties to recognize "the rights of ownership and possession of the lands traditionally occupied by the peoples concerned... Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."<sup>77</sup>

However, the problems of the autonomous territories on the Atlantic coast of Nicaragua and Panama, the indigenous territories of Colombia, the territorial provinces of Ecuador and the indigenous communal lands of Bolivia still contain a number of weaknesses and have not been able to resolve the problem of insecurity of indigenous land tenures. Most of those countries lack implementing legislation to ensure the application of this fundamental principle.

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[74] Scoping study for land policy research in Latin America – op. cit.

[75] The same reference.

[76] Kai Cristobal – Land Reform in Latin America - op. cit.

[77] United Nations Publications, Human Rights, High Commissioner - <https://www.ohchr.org/en/instruments-mechanisms/instruments/indigenous-and-tribal-pe, convention-1989-no-169>

In Mexico, for example, the Liberation Army (EZLN) in 1994 imposed the issue of social and political marginalization of indigenous peoples on the national agenda, and since 1996, proposals have been made to reform the Constitution to grant some autonomy to indigenous communities and municipalities with a majority indigenous population. These proposals, known as COCOPA, give them the right to manage resources, receive public funds, coordinate with other indigenous communities, govern according to tradition and control their land. However, the federal government considered that this would be the constitutional amendment passed in 2001, which recognized the country's ethnic diversity, but did not cede any autonomy. Therefore, the historical demands to respect and protect the collective rights of indigenous peoples in Mexico have not yet been satisfactorily addressed.<sup>78</sup>

Perhaps the obstacles facing institutional reform in Latin American countries in general still limit bridging the existing gap of inequality between the groups of society and prevent reaping any tangible benefits from land redistribution programs due to the poor quality of central and local governance institutions, which is reflected in the continued deterioration of the conditions of the majority of peasants and poor populations.

It is worth noting the role of international support programs for projects related to justice reform in Latin America, to which the World Bank has allocated \$305 million in the last two decades, while the Islamic Development Bank has been a stronger supporter, providing more than \$1.2 billion for the purpose of improving judicial and court structures, creating dispute resolution mechanisms, and integrating gender issues into the reform process, in addition to offering legal education and training programs for students, lawyers and judges.<sup>79</sup>

### **Lessons Learned from the Experiences of Latin American**

1- The importance of peace agreements that paved the way for democratic transformations in Latin American countries during recent decades. Efforts to reform property laws in urban and rural areas highlighted the importance of having national programs in place to handle infrastructure and delivery of services target areas. In the experience of many countries, reforms alone did not address increasing poverty and the poor distribution of wealth. Informal settlements around cities were clear examples that steps being taken were slow to improve the lives of residents, although they were included in the process of organizing and registering property.

2- Land registry systems across the region demonstrated the need to reconcile formal and informal systems of land tenure, find complementary mechanisms between federal/central government plans and local/provincial programs, reform outdated colonial laws and

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[78] Scoping study for land policy research in Latin America – op. cit.

[79] Jessica Muqfist and Carlos Esposito - The role of the courts in transitional justice – Voices from Latin America and Spain – Routledge 2012

modernize registration systems through a wider use of technology, decentralization, and increased capacities of regional and local units.

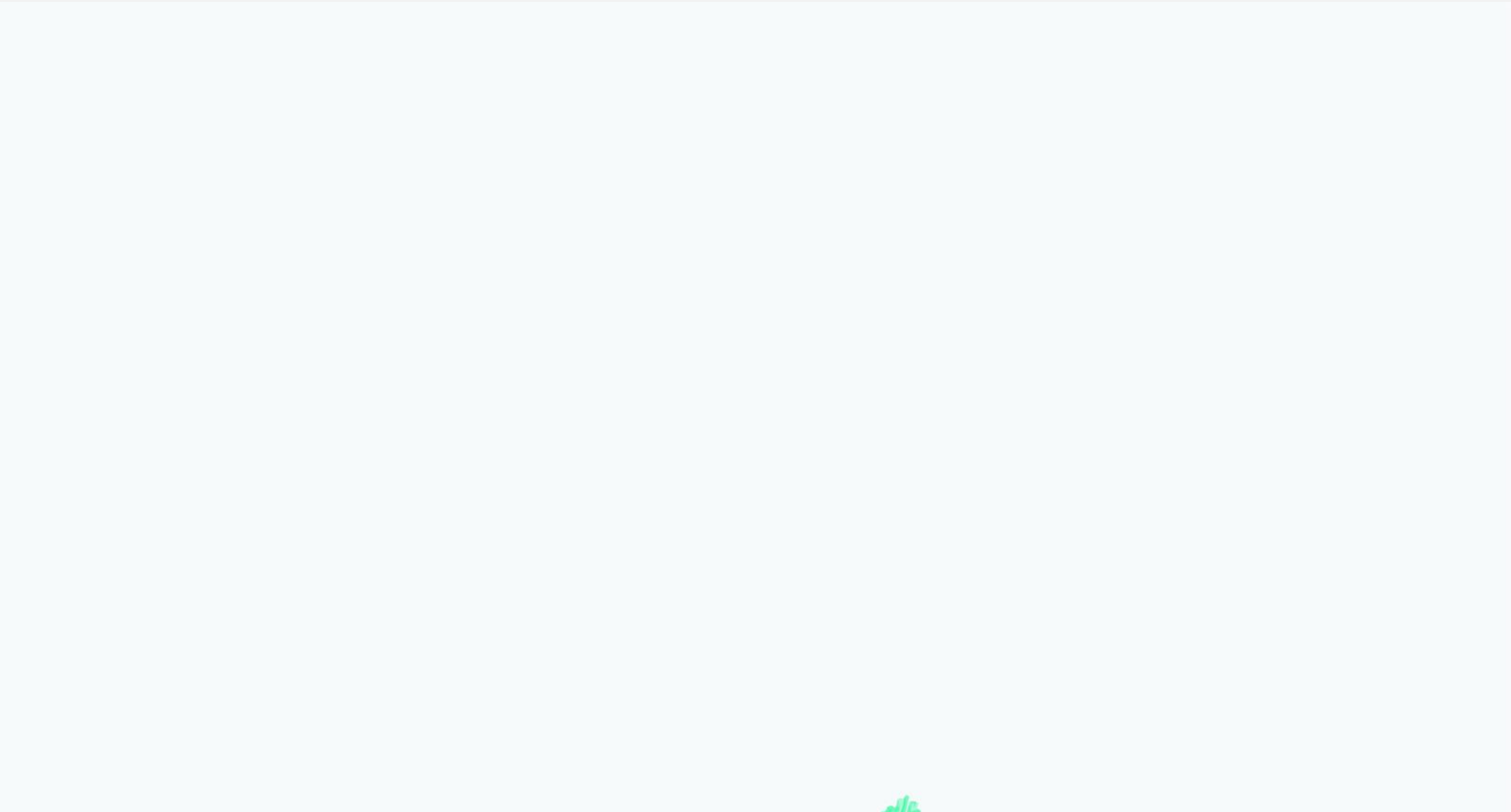
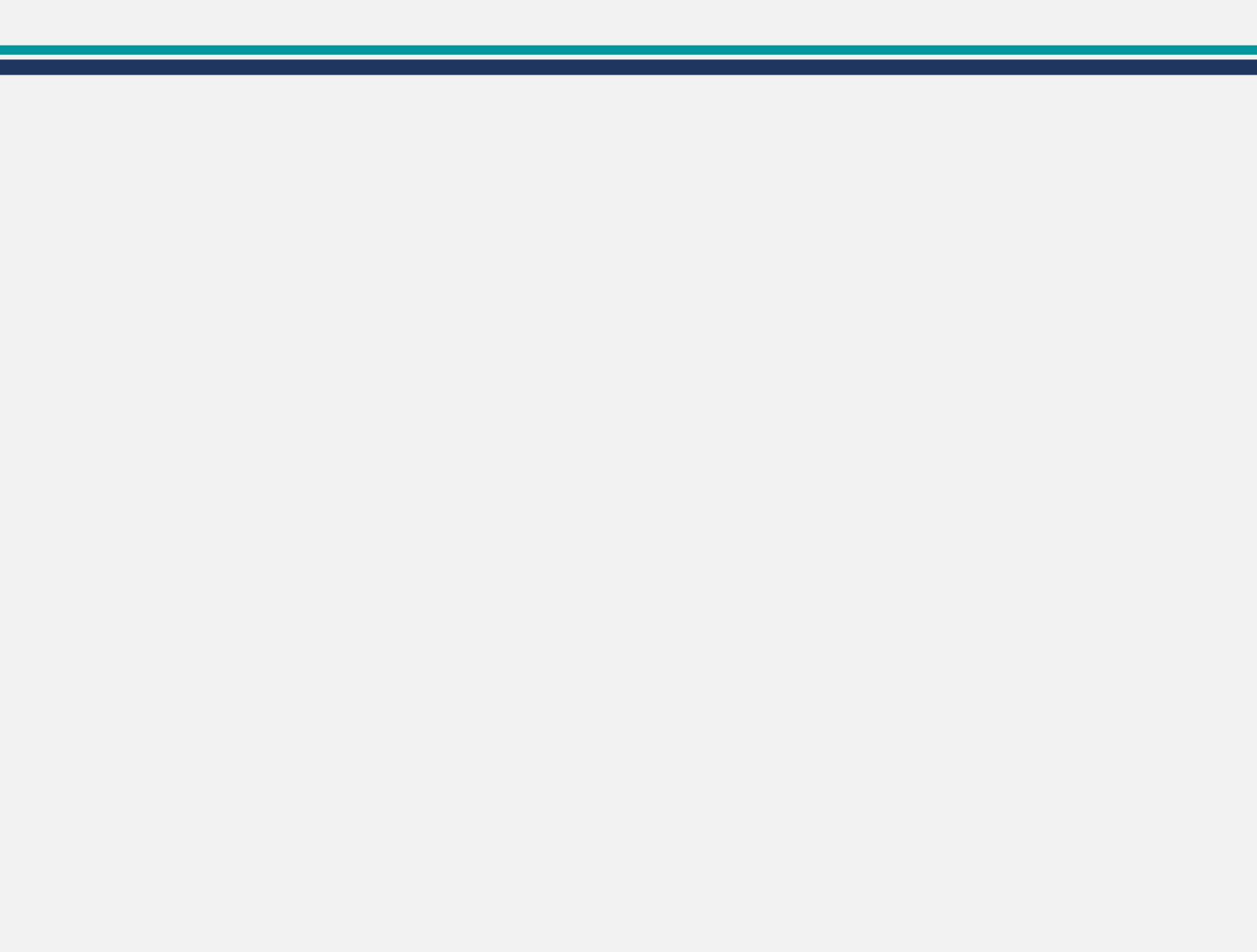
3- Governments needed to play a more active role in property issues, in particular they needed to intervene in order to reduce heightened speculation in urban lands which had resulted in the exclusion and marginalization of the poor, whilst strengthening ties among the more powerful landowners. Moreover, not enough efforts were being made to address blatant disparities in land ownership; in fact, productive agricultural lands remained in the hands of a small group of landowners, which explains increased criticisms of liberal policies whose consequences did not favour peasants.

4- Although the constitutions of most Latin American countries included the rights of indigenous people to their lands and abolition of customary and social discrimination against women in HLP issues, failure to address root causes was one reason behind the failure of solutions to achieve security in land tenure for decades. Meanwhile, institutional reform did not involve broader representation of women in various sectors of state and governance structures, and customary rules depriving women of property rights often prevailed over constitutional rules. Nevertheless, feminist movements in many of these countries pushed authorities to adopt more just and equitable policies, especially for state programs to redistribute property.

5- It helps to learn from the remarkable role played by CSOs in HLP issues in Latin America, and their role in compensating rights and property owners, most notably the Latin American coordination of CLOC - La Via Campesina and International Land Coalition. These are regional social movements that emerged in the mid-1990s, bringing together large numbers of landless peasants, small farmers, rural workers, women's organizations, and indigenous peoples across Latin America and the Caribbean. They had major impacts in formulating an alternative project based on integrated agrarian reform, sustainable development, food sovereignty, claims for the preservation of natural resources for refugee communities, and defending the principle of social ownership, including collective ownership and cooperatives, as potentially effective means of poverty reduction, food security, and the preservation of cultural identities.<sup>80</sup>

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[80] For more information, please refer to the booklet on participation of civil society organizations and donors in advocacy and compensation issues in Latin America.  
<https://reparations.qub.ac.uk/arabiccco>



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## **Section IV: The Role of Constitutional, Legal, and Institutional Reform in HLP Issues**

With the continuing conflict in Syria and missed opportunities for a political solution, repercussions of the disintegration of HLP laws, and systematic dispossession of refugees and IDPs of their properties, are becoming more pervasive and consolidated. This stresses the need to develop general remedial solutions for reparation and compensation based on international experiences, laws and best practices, whose success is built on provision of requirements for legal and institutional reform, considering this is the decisive factor in ensuring proper governance by authorities directly responsible for addressing HLP issues. In fact, political change is the main entry point for all desired reforms, and key to building a new constitutional and legal political system that guarantees the rights of all citizens without

discrimination, and reconsiders through constitutional and legal reform the cancellation, amendment or correction of laws and decrees relevant to property rights, which have covered up HLP violations by the regime's institutions and apparatus in various ways. As restoring power to the people as the source of legitimacy and reforming the state's executive, legislative, and judicial institutions, is at the heart of desired political change, establishing a new perspective for management of private and public property is based on preserving property rights and providing adequate housing, which in turn is based on developing paths to institutional reform and establishing successful governance. The final topic will present overall visions and suggestions on these, in the steps towards transitional justice for Syria.

## **First: Political change and constitutional reforms**

United Nations Security Council Resolution 2254 of 2015 calls for adopting a new constitution for Syria and holding elections under international supervision within 18 months, "Reiterating that the only sustainable solution to the current crisis in Syria is through an inclusive and Syrian-led political process that meets the legitimate aspirations of the Syrian people, with a view to full implementation of the Geneva Communiqué of 30 June 2012 as endorsed by resolution 2118 (2013), including through the establishment of an inclusive transitional governing body with full executive powers, which shall be formed on the basis of mutual consent while ensuring continuity of governmental institutions". The Syrian opposition and its international supporters believe that President al-Assad, according to paragraph (5) of the aforementioned Resolution, must relinquish executive powers at the beginning of or early in the transitional period. The Syrian government and its supporters interpret this clause mainly to mean the formation of a unifying government or a power-sharing arrangement with some opposition representatives throughout the transitional period.<sup>81</sup>

Accordingly, it is not possible to discuss real political change in Syria without implementing Resolution 2254 as the basis for negotiation between the regime and the opposition. And in the event that agreement is reached regarding its implementation, any constitutional reform must include a national program for transitional justice, with the aim of revealing the truth and repairing damage, holding perpetrators of violations accountable before courts, and compensating victims of violence, arbitrary laws and illegal practices that have harmed HLP owners' rights, and to secure the return of refugees, IDPs and families of victims by providing a safe environment - all of which are indispensable components for achieving sustainable reconciliation. There are successful international precedents to learn from regarding HLP issues; the Bosnian experience is one of the best examples<sup>82</sup> of the importance of creating a

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[81] For more information, please revert to all provisions of Resolution 2245 and interpretations by the regime and the opposition of the contents of its clauses.

[82] For more information, refer to research issued by TDA on the role of transitional justice, "Reparation and Compensation Mechanisms" in addressing HLP issues in Syria. - <https://tda->



competent national body or agency to carry out compensation and reparation programs effectively. We can learn from other international examples, as discussed in the previous section, regarding HLP management policies and the role of institutional reform in ensuring their development, when reforms are comprehensive, integrated and organized. We will discuss this in detail when discussing the institutional reform required for the Syrian case.

## 1- Weak Guarantees of Ownership Rights

Syrian constitutions have stipulated to guarantee the right to property and consider it a social function, but they have worked to link the expropriation of property to two conditions: public benefit, and payment of fair compensation. The 2012 constitution, issued by the regime after the outbreak of the popular movement, did not differ much from the philosophy of the 1973 constitution, maintaining the social function of property ownership. It also maintained the cap on agricultural ownership and investment, without addressing compensation for lands previously seized during implementation of agrarian reform laws.<sup>83</sup> A noticeable point in the 2012 constitution was the authority's approach to expanding the parameters for confiscation during the war. Paragraph 4 of Article 15 stipulated the following: "Private expropriation for the necessities of war and public disasters is lawful, in exchange for just compensation." Although Paragraph 5 of the same article stipulates: "Compensation must be equivalent to the real value of the property." However, the extensive confiscation policies that took place during the conflict clarified the regime's real intentions of providing constitutional cover for these policies. Meanwhile, the constitutional text on compensation remains far from fair, as the experiences of Syrians with expropriated properties have always ended in disappointment in terms of their rights to fair and equitable compensation.

There are few guarantees protecting property rights in Syria and no clear constitutional provisions (e.g. the 2012 constitution), while the conditions and criteria for expropriation for public benefit are specified in detail, together with the role of the state in achieving the social function of property, and the absence of legal texts that define fair compensation; are some of the major gaps allowing the various kinds of appropriation, confiscation and expropriation to violate property rights, especially in recent years, while the constitution and legislation play no role in defining legal controls for management of public property in a manner that responds to the developing needs of society. Hence, we can learn from the constitutions of countries that have gone through the stages of democratic transition, such as South Africa, whose constitution stipulates in Article 25 "the right of the state to

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<https://www.sy.org/2022/03/05/%D8%AF%D9%88%D8%B1-%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%D9%91%D8%A9-%D8%A2%D9%84%D9%8A%D8%A7%D8%AA-%D8%AC%D8%A8%D8%B1-%D8%A7%D9%84/?lang=ar>

[83] Please view the 14th, 15th, and 16th articles of the 2012 constitution -

expropriate property under a law that applies to all people, and compensation is determined either by agreement between the two parties or through the judiciary, specifying the time and method of payment.” Paragraph 3 sets additional conditions for fair compensation, thereby balancing public interest and the interests of the aggrieved party, taking into account all relevant circumstances, including: current use of the property, history of ownership and use of the property, market value of the property, size of the state's direct investment, and the support it contributed to acquisition of the property and improvement of its remunerative capital.<sup>84</sup> Also weakening guarantees to property rights in the Syrian constitution, which needs to be corrected in the constitutional phase of the transitional process, is that its provisions are in the basic guiding principles section of the constitution, not in the rights and freedoms section, although placing them in the latter gives property rights enhanced judicial protection, especially in cases of arbitrary expropriation and confiscation. The constitutional loophole of not including property rights in previous Syrian constitutions, including that of 2012, is one of the problems that illustrate the absence of guarantees regarding this right, despite the fact that national constitutions and international agreements, most notably the International Covenant on Economic, Social and Cultural Rights, confirm it is a basic human right. The problem of informal housing in Syria reaches nearly 50% of all public housing,<sup>85</sup> and illustrates the lack of adequate housing factors and the absence of solutions under Baath rule for decades. What happened to informal houses during the war, with property laws and organizational plans issued by the regime, claiming it was reorganizing these areas, was in reality - as shown by extensive research and reports on the seriousness of these laws and plans - a means of violating the owners of these homes, exploiting their absence from due to asylum and displacement, in a bid to change urban and demographic identities for political and authoritarian purposes. This is why property rights must be included in the steps towards constitutional reform, by explicitly stipulating "the right of every person to obtain adequate housing", to ensure this loophole is closed, and to address the problem of informal housing in a way that achieves a balance between providing safe tenure conditions for residents and occupants, and deals with the reorganization of these areas to achieve required standards of adequate housing.

## 2- Flaws of General Guarantees for Ownership Rights

Constitutional guarantees for HLP rights are not sufficient in the Syrian case, because deficiencies and imbalances in general constitutional guarantees lead to negative effects on various ownership and housing issues in practice. Hence the importance of cancelling constitutional articles that restrict public rights and freedoms, including HLP rights, such as

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[84] Dr. Abdul Hamid Al-Awak - Constitutional Guarantees of HLP rights - research issued by TDA, 2022 <https://csgateway.ngo/media/xr4dz3zu/%D8%A7%D9%84%D8%B6%D9%85%D8%A7%D9%86%D8%A7%D8%AA-%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9-cmyk.pdf>

[85] Yassin Sweiha - "Fascism Speaks, Slums in Syria as an Example" - aljumiya.net - December 19, 2012 - <https://www.aljumiya.net/ar/203>

a total of 21 articles in the 2012 constitution that grant the President of the Republic unrestricted powers; and such as abolishing exceptional courts. Among these articles are: Article 97 which states: "The President of the Republic names and dismisses the Prime Minister, ministers and their deputies," and Article 111 states: "The President of the Republic dissolves the House of Representatives". Article 113: "The President of the Republic assumes legislative power when the House of Representatives is not in session, or if absolutely necessary". Article 114, which states: "The President of the Republic can take swift action when the country faces grave danger." Article 121: "The Prime Minister, his deputies and the ministers are responsible before the President of the Republic." Article 125 states in paragraph A - "The Council of Ministers is considered resigned at the end of the President of the Republic's term." Article 132 states: "The President of the Republic guarantees the independence of the judiciary, and is assisted by the Supreme Judicial Council". Article 133 states: "The Supreme Judicial Council shall be chaired by the President of the Republic, and the law shall specify the method by which it is formed, its competencies, and the rules for its work progress". Article 141 of the Constitution states, "The Supreme Constitutional Court shall consist of at least seven members, one of whom is the Head, all named by the President of the Republic by decree." Article 148 states: "The Supreme Constitutional Court does not have the right to review laws that the President of the Republic submits to a public referendum and is approved".<sup>86</sup>

## **Second: Legal and Judicial Reform**

### **1- Legal Reform**

The form of a constitution and nature of its texts and general principles play a pivotal role in determining the form of promised legal reform, since the constitution is the backbone of any legal system and supreme law in a country, and in reforming it, all other laws can be reformed. Therefore, constitutional reforms in Syria also reform property legislation and laws issued under the Baath regime, with their numerous restrictions and complications regarding ownership rights, which have in turn exacerbated HLP issues accumulating for decades.

#### **A- Before 2011**

Laws issued before 2011 were to achieve the objectives and interests of the ruling authority at the expense of protecting private property, such as the expropriation law No. 20 of 1983 which granted the right to all public agencies of the state, including the Arab Socialist Baath

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[86] The Transitional Phase in Syria: Governance and Constitutional Options - A working paper issued by the Carter Center - June 2016 - [https://www.cartercenter.org/resources/pdfs/peace/conflict\\_resolution/syria-conflict/principles-and-constitutional-provisions-may-8-2016.pdf](https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/syria-conflict/principles-and-constitutional-provisions-may-8-2016.pdf)

Party, to forcibly expropriate any property under the pretext of public benefit, while compensation was determined on the basis of the fixed value of expropriated real estate, which is much less than its current actual value.<sup>87</sup> Similarly, the Land Reclamation Law No. 3 of 1984 harmed the rights of agricultural land owners and turned them into co-owners, as the law granted the Minister of Irrigation and Agriculture broad powers to reclaim any area in Syria based on public interest.<sup>88</sup> Other laws were improvised and inconsistent in their management of the real estate system, including Law No. 9 of 1974 on zoning and urbanizing cities, and Law No. 3 of 1976 regulating the sale of land. Although the latter was issued to prevent land trade and limit the rise in prices, its practical application led to freezing large areas of land, due to restrictions imposed on their sale before full completion of construction, which prompted owners to evade its provisions in various ways.<sup>89</sup> Other laws targeting informal housing were unable to address the root of the problem, a problem which spread steadily during the 80s and 90s and increasingly between 2000-2010; such as Legislative Decree No. 59 of 2008 abolishing informal buildings and resolving building violations (repealed by Legislative Decree No. 40 of 2012), Real Estate Investment and Development Law No. 15 of 2008 appropriating informal areas where there are collective violations.<sup>90</sup> Other laws encouraged informal customary transactions to register and transfer ownership, and gave free rein to security services in granting security approvals, such as the Border Lands Law No. 41 of 2004.<sup>91</sup> Other laws caused stagnation in real estate markets and property disputes between landlords and tenants, such as rental laws remaining in effect following Legislative Decree No. 111 of 1952 until Rent Law No. 6 was issued in 2001 with its subsequent amendments.<sup>92</sup> As for housing issues, related laws did not fill the constitutional void in housing rights, and five-year plans that focused on providing social housing were insufficient to cover the growing requirements for social housing. Meanwhile, management of informal areas by government institutions was based on containing population increase in those areas, rather than on a sound urban planning strategy to reduce informal construction.

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[87] For more information, please refer to Expropriation Laws - Publications of the Syrian People's Assembly

[88] The Role of Transitional Justice (reparation and compensation mechanisms) in addressing HLP issues in Syria - *ibid.*

[89] The Property Issue and its Repercussions on Property Rights in Syria (Law No. 10 of 2018) - group of researchers - June 2019 - TDA and the Association for Peace and Justice - <https://tda-sy.org/2019/07/01/%D8%A7%D9%84%D9%85%D8%B4%D9%83%D9%84%D8%A9-%D8%A7%D9%84%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9-%D9%88%D8%AA%D8%AF%D8%A7%D8%B9%D9%8A%D8%A7%D8%AA%D9%87%D8%A7-%D8%B9%D9%84%D9%89-%D8%AD%D9%82%D9%88%D9%82/?lang=ar> -

[90] The New Property Law in Syria - Human Rights Watch - May 29, 2018 - <https://www.hrw.org/ar/news/2018/05/29/318436>

[91] How Numerous Syrian Laws were Used for Discriminatory Purposes - Syrians for Truth and Justice - November 2021- <https://stj-sy.org/ar/%D9%83%D9%8A%D9%81-%D8%AA%D9%85-%D8%A7%D8%B3%D8%AA%D8%AE%D8%AF%D8%A7%D9%85-%D8%A7%D9%84%D8%B9%D8%AF%D9%8A%D8%AF-%D9%85%D9%86-%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%A7%D9%84%D8%B3%D9%88/>

[92] The Evolution of Rental Laws in Syria - Enab Baladi Newspaper - 10/12/2020 <https://www.enabbaladi.net/archives/422399>

## B- After 2011

Decrees and laws issued by the regime became increasingly dangerous to property and housing rights, and were employed as per the regime's policies as a cover for widespread and systematic violations of property and housing rights. The threat posed by these property laws became apparent after revolution broke out in 2011 and Legislative Decree No. 66 of 2012 was issued to reorganize 2 areas: Mezzeh and Kafr Sousse Basatin, and two large urban projects commenced in the areas specified by Decree 66, areas severely damaged during the conflict and most of whose residents had been displaced. This decree, according to multiple human rights opinions, constitutes a prelude to Law No. (10) of 2018, and its threat quickly became apparent in the areas it targeted, the companies behind its implementation, its handling of absent rights holders, and its delays in compensating for alternative housing. Most importantly, it gave free rein to administrative units to create regulatory areas without taking into account rights holders, and to seize public property and plots designated for owners whose buildings had been marked for demolition following the establishment of regulatory areas.<sup>93</sup>

Legislative Decree No. (40) of 2012 was issued related to remove informal housing areas and demolish all unauthorized buildings in "illegal" neighbourhoods. Law No. (23) was issued in 2015 for implementation of urban planning, which allowed administrative units to expropriate proportions of private property amounting to 40% of its area. Law No. (3) of 2018, for removing the rubble of damaged buildings, and the most dangerous of all in terms of regional comprehensiveness, Law No. (10) of 2018 which stipulates the creation of one or more regulatory zones throughout the Syrian territory. This latter law faced widespread criticism leading to subsequent amendments, due to the significant restrictions it placed on proving ownership rights and to its granting administrative units the right to seize property if owners and occupants were unable to appeal decisions to create regulatory areas, as stated in its Article (22).<sup>94</sup>

The regime uses all these laws, regulatory schemes, and related real estate projects to rob and strip millions of Syrians of their rights to their property and homes, while enabling leaders of security services and loyal militias and its corrupt networks to control and seize private and public property, or to use these properties as rewards for the regime's allies, while imposing new realities on the ground with the aim of preventing the return of refugees and manipulating

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[93] The Status Quo and Challenges to Transitional Justice as a Major Part of Building Sustainable Peace in Syria - Report of the National Agenda Program for the Future of Syria - United Nations Beirut 2018-  
[https://nafsprogramme.info/sites/default/files/2019-06/Transitional%20Justice-Ar\\_0.pdf](https://nafsprogramme.info/sites/default/files/2019-06/Transitional%20Justice-Ar_0.pdf)

[94] For more information, please review texts of the aforementioned laws on the official website of the People's Assembly

the reconstruction process based on its selective criteria and built on the ruins of properties belonging to refugees, IDPs, and the detained and forcibly disappeared.<sup>95</sup>

There are other laws that have impacted properties, no less dangerous than direct real estate laws, as the regime issued many laws during the years of war permitting the seizure, confiscation, and expropriation of movable and immovable properties of absentees, in political revenge against its opponents, and in order to empower its security services and loyal affiliated networks, by seizing properties belonging to refugees and IDPs, forging and tampering with ownership documents, and transferring property illegally. Among the most dangerous are the Anti-Terrorism Law No. (19) of 2012 and Law No. (22) applicable to the Court of Terrorism, which allow confiscation “under the cover of the law” and the use of precautionary detention, to target families of persons on indictment lists as collective punishment, based on the person’s identity and not on the nature of the crime.<sup>96</sup> 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. This is a clear violation of the principles of litigation and rights of the accused, as the decree does not allow for appeal and people are not notified of their names being in the list.<sup>97</sup> Legislative Decree No. (31) of 2020 on military service exemption fees strengthened seizure and confiscation mechanisms adopted by the regime. According to this decree, as stated by the regime’s Head of Military Service Exemption Branch in early February 2021, the General Directorate for Military Recruitment can confiscate money and properties of every male over the age of 42, residing inside or outside Syria, who has not either performed military service or paid compensation. As for those who have no property, the property of their families and relatives will be confiscated instead. Additionally, the regime has issued a series of executive decrees placing restrictions on owners’ disposal of their own property, such as the circular No. (4554) of 2015, which includes some cases that require prior security approval: Selling or vacating properties (houses-shops) in formal or informal areas, which means that property cannot be disposed of without prior security approval.<sup>98</sup>

### C- Legal Reform Requirements

In light of the above, legal reform of real estate affairs and the repercussions of relevant laws pose many challenges, including how successful reform will be in the constitutional context and the vision for reforming all laws and decrees that contradict the principles of legitimacy, in order to abolish legislation entrenched in tyranny to provide legal cover for violations of

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[95] The Role of Transitional Justice (reparation and compensation mechanisms) in Addressing Property and Housing Issues - *ibid.*

[96] Syria: Confiscating the Assets of Suspects' Families - report issued by Human Rights Watch - July 2019  
<https://www.hrw.org/ar/news/2019/07/16/332103>

[97] *Ibid.*

[98] See official website of the Syrian Prime Ministry - <http://www.pministry.gov.sy/>



rights and freedoms, especially those that allowed the executive authority to dominate legislative and judicial institutions, an authority made possible through exceptional laws with excessive use of force, oppression and violation of rights and freedoms, to grant the security and military great powers, and protect them from accountability and judicial prosecution. In view of the multiplicity and complexity of these laws and their dangerous effects on property and housing rights, our vision for legal reform is based on reconsidering all laws and procedures related to real estate systems and land management, in a special department for real estate legislation, formed by decision of the general or constituent assembly after its election. It would study and review all real estate laws issued before and during the revolution. The committee would be composed of lawyers, judges, representatives of real estate registry departments, representatives of local councils, experts in land surveying processes, representatives of civil society, political parties, women, and representatives of affected property owners. Of course, constitutional reform prior to this process will form a supreme legal basis which works and guides the committee in the course of its work, and after completing its study of laws and determining what needs to be abolished, amended or preserved, it presents findings to the General Assembly for discussion and decision.

## **2- Judicial Reform**

For decades of Baath Party rule, two parallel judicial systems have been at work in Syria. One is the regular court system, which has roots in the Ottoman and the French Mandate eras, and amendments and updates that occurred after independence, and this deals with all civil, criminal, and personal status cases. The second is a network of exceptional courts, to which the executive branch has given great powers.

### **A - Regular Judiciary**

Regular courts in Syria are of two levels: the first are courts of first instance, such as the Magistrates' and First Instance courts, which hear civil and criminal cases. The second are courts of appeal, the appeal reference for judgments issued in the first instance in civil and criminal cases. As for the Court of Cassation, which convenes in Damascus through a specialized judicial body, it considers all forms of appeal submitted to it in terms of form and not subject matter. There are courts relating to personal status issues, i.e. family law, whose rulings are derived from Islamic law, and special courts for members of other sects in Syria according to the provisions of their own laws. There are also special juvenile courts for delinquents. The Syrian regime also has administrative courts affiliated with the State Council. Its role is to adjudicate administrative cases involving the state, and to act as an



advisory body to public bodies on various aspects of public law. The State Council also has the power to participate in arbitral proceedings.<sup>99</sup>

The 2012 constitution followed the same path as the 1973 constitution, in its stipulation that “the President of the Republic shall be the guarantor of the independence of the judiciary, and the Supreme Judicial Council shall assist him in this.”<sup>100</sup> Realistically, this council, which is considered the supreme judicial authority, could not be a guarantor of the independence of the judiciary while four of its seven members report to the executive authority, and in the event of a vote on any decision in the council, the members of the executive authority in the council are the ones who control the voting results.<sup>101</sup> The President of the Republic can remove a judge by decree, without giving any reason or opportunity for appeal. An example of this is his dismissal of 81 judges by decree in 2005 on charges of corruption, based on assessments by the security branches, even though the security branches had approved their appointment.

The dominance of the executive authority over the judiciary also extends to its role in forming members of the Judicial Inspection Department, which consists of a president for the Chamber of Appeals Courts and six advisors appointed by the Minister of Justice on the recommendation of the Supreme Judicial Council. Judges working in the Judicial Inspection Department report to the Minister of Justice and the President of the Supreme Judicial Council. They treat the Judicial Inspection Department as a tool of the executive authority, to exercise control over judges and the judicial system. Hence, through these and similar mechanisms, the executive authority is in control of judicial bodies and judges are subjected to security interventions and pressures, forcing them to issue rulings in certain cases in favour of those with power and money at the expense of the rights holders. Even the Supreme Constitutional Court, as the judicial body competent to consider and decide on the constitutionality of laws, has not escaped the dominance of the head of the executive authority; as established in the 1973 constitution and again in the 2012 constitution, the President of the Republic appoints the Court’s seven judges for a period of four years, subject to renewal, and he selects the Court’s president.<sup>102</sup> Despite asserting its independence in the constitution, as it is the only judicial body authorized to try the President of the Republic if accused of high treason, the fact that president and members of the court are appointed by the President of the Republic, even while it is responsible for supervising presidential elections, means this court is not independent but subject to the dominance of the executive authority.

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[99] Report on the assessment of the rule of law in Syria - issued by the ELAC organization 2017 - [file:///C:/Users/Ayman%20Abu%20Hashem/Downloads/Syria2017%20\(8\).pdf](file:///C:/Users/Ayman%20Abu%20Hashem/Downloads/Syria2017%20(8).pdf)

[100] See Article 132 of the Syrian Constitution of 2012 - [https://www.constituteproject.org/constitution/Syria\\_2012.pdf?lang=ar](https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=ar)

[101] See Article 133 of the 2012 Constitution - Ibid.

[102] Report on the evaluation of the rule of law in Syria - Ibid.

## B - Exceptional Courts

In addition to the regular judiciary, a parallel system has been established in Syria, namely exceptional courts, which are divided into military and civil courts. Military courts and military field courts are organized under the supervision of the Ministry of Defence. The Anti-Terrorism Court, which replaced the Supreme State Security Court in 2012, is affiliated with the Ministry of Justice.<sup>103</sup>

Military courts were originally established to deal with all cases involving military personnel; however, these courts also have the authority to try civilians for “state security crimes” as defined in Articles 260-339 of the Penal Code.<sup>104</sup> As a result, military courts consider cases not only related to soldiers, but also political and civilian activists, through a set of repressive laws set by the authority, and based on which thousands of Syrians were imprisoned before 2011, and many thousands more after 2011, when the Syrian revolution broke out. There is no clear delineation between the jurisdictions of regular courts and exceptional courts, or even between various exceptional courts. Security agencies can direct judges to treat a particular case as a security issue, even in cases that are very clearly ordinary crimes, such as drug trafficking. As for lawyers representing accused persons before exceptional courts, this is merely symbolic, as some of them act as mediators between judges and families of the accused for bribes. Meanwhile, security services and Baathist leaders in the provinces interfere with the work of the courts, imposing their orders and directives on judges' decisions in many cases. As such, exceptional courts are notorious for how they treat demonstrators and those opposing the regime. Throughout Baath rule they have always played a role in giving “legal character” to repression practiced by the authorities against citizens,<sup>105</sup> and the Syrian experience has repeatedly revealed the involvement of exceptional courts in covering up executions and enforced disappearances carried out by security branches against tens of thousands of Syrians, while those courts, without any regard for the minimum requirements of fair trials, especially the Military Field Court and the Terrorism Court, have issued death sentences of countless numbers, countless because of the secrecy in which those courts conduct their business. Not to mention rulings and decisions by these courts to seize and confiscate properties of the accused on a large scale in recent years.

## C- Problems of Real Estate Judiciary

The Establishment of the real estate judiciary in Syria goes back to the Limitation and Liberation Law No. 186 of 1926. Moreover, real estate judges, under Law 186, supervise real estate demarcation processes instead of judges of the “regular judiciary”, as well as

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[103] See the Syrian Penal Code Promulgated by Legislative Decree No. 148 of June 22, 1949

[104] Electoral Reform and the Process of Democratic Change in Syria - research issued by TDA - 2021 -

[105] Report on Assessing the Rule of Law in Syria - issued by ELAC 2017 - Ibid.

adjudicate disputes arising from the demarcation processes. According to the law, the Minister of Justice appoints real estate judges by decree, based on a proposal by the Minister of Agriculture. However, the Real Estate Judges Law No. 16 of 2014 introduced new changes to the work of these judges and to the mechanisms for appointing them. Now the Minister of Justice appoints Real Estate judges based on a proposal by the Director General of Real Estate Services, instead of by the Minister of Agriculture. It is noteworthy that in Laws 186 and 16, there was no explicit definition of Real Estate Judge or Real Estate Judiciary. Rather, both laws only defined terms of reference of Real Estate judges and mechanisms for their appointment. It can be concluded that the definition of this judiciary is based on Law 16: "the judiciary that gives legitimacy to demarcation processes, registration of real estate, and consideration of all disputes and objections related to this".

Accordingly, the real estate judiciary is of a special nature. It does not come under the jurisdiction of regular judiciary under the Supreme Judicial Council, which appoints, transfers, and dismisses judges. Likewise, it does not fall under the judicial structure, as stipulated in Law No. 98 of 1968. Rather, it is subject to the Basic Law of State Workers No. 50 of 2004, who are an independent authority within the General Directorate of Real Estate Interests, and who submit their periodic reports to the Director General of Real Estate Interests. Decisions for appointing, transferring or dismissing real estate judges, or imposing penalties against them, are within the competence of the Minister of Justice. The number of real estate judges in each governorate is determined by decision of the Minister of Local Administration, based on a proposal by the Director General of Real Estate Interests. The legislator called it "judiciary" without following other rules stipulated in the Judicial Authority Law, including the appointment, rights, immunity, promotion, dismissal and transfer of judges. Processes of identification and demarcation of real estate and immovable funds are, in all governorates, authorized by the conciliation judge, who is the permanent real estate judge; however, conciliation judges can be replaced by temporary real estate judges to carry out demarcation, aesthetic work and demolition, according to Decree 186 of 1926, in which case demarcation is handed over from the conciliation judge to the temporary real estate judge. Therefore, we note that the decisions of the real estate judge are administrative decisions, while the regular judiciary through the Magistrate and First Instance courts is concerned with disputes related to establishing ownership and confirming real estate sales. This is one aspect of the imbalance in the real estate judiciary and its lack of independence from the executive authority, by virtue of the fact that the direct superior of the real estate judge is General Manager of Real Estate Interests and a members of the executive authority. This is a clear violation of the principle of separation of powers, and a failure to address real estate problems and protect ownership rights according to proper judicial procedures.

#### **D- Judicial Reform Requirements**

The Syrian constitution includes several articles aimed at ensuring the independence of the judiciary. Nevertheless, the judicial system in general lacked the principle of independence and was dominated by the executive authority from its highest bodies to its lowest. This necessitates constitutional reforms that guarantee the independence of the judicial bodies through the principle of separation of powers, and amendment of constitutional articles related to the Supreme Constitutional Court and the Judicial Inspection Department in a way that eliminates the hegemony of the President and the government over these bodies. In addition to restructuring the regular judiciary with all its various courts, and the abolition of exceptional courts which provide legal cover for violations by authorities against citizens, and whose unfair rulings are a tool of abuse and repression in and of themselves. As well as establishing the criteria of competence and professionalism when selecting judges, with no interference from the executive or security agencies, and no requirements for them to belong to any party or political organization. In addition to this, the restructuring of the security services, whose interference and pressures in the appointment of judges and the work of the courts were among the reasons that prevented the independence of judges. It is not possible for judicial sector reform efforts to be effective if they are not supported by the same efforts in security systems, police and law enforcement departments. In addition to this, the justice system must ensure that security institutions are held accountable for their actions, and it must adhere to the rule of law, and abolish all laws that protect security and police personnel from accountability during and outside of their duties.<sup>106</sup>

Judicial reform is accompanied by work to combat corruption and bribery, widespread and chronic phenomena in the Syrian judiciary, constituting a major obstacle to justice. The Syrian regime, through its executive and security agencies, has encouraged the corruption of judges in order to keep them under control through fear and extortion, and by maintaining low salaries that are not commensurate with their standards of living, or commensurate with the large workloads for which they are responsible. This has made it easy to influence judges in individual lawsuits through bribes. This requires working in parallel on raising and enhancing the professional performance of judges while raising their salaries in a way that protects them from corruption and bribery, and activating the roles of the Supreme Judicial Council and the Judicial Inspection Department in combating corruption in the judicial body, which has tarnished the reputation of the judiciary in Syrian society.<sup>107</sup>

The above-mentioned problems in the real estate judiciary highlight the need for real reforms to redefine under whose jurisdiction it falls, as a competent and independent judiciary, and one to which Judicial Authority Law applies in all matters relating to the appointment, transfer, promotion and dismissal of its judges; and to end the duplication and overlap between duties and competencies of permanent real estate judges and temporary

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[106] Providing Security and Good Governance in Syria After the War - The Importance of the Judicial System in Reforming the Security Sector in Syria - Working Paper - Nour Elise Beik and Lars Duber - Berlin and Beirut 2020 -

[107] Report on Assessing the Rule of Law in Syria - issued by ELAC 2017 - Ibid.

real estate judges, by establishing real estate chambers within regular courts that are concerned with all real estate disputes and property ownership claims, appointing and supervising a technical committee in charge of identification and demarcation processes, among whose members is a representative of the Real Estate Interests Directorate. Additionally, repeal Law No. 16 of 2014 as, through the Director of Real Estate Interests, it gives the executive authority broad powers over the work and appointment of temporary real estate judges.

Another concern for judicial reform is addressing the unprecedented problems that have accumulated during years of war in Syria, affecting the judiciary in various ways, especially with many regions outside the Syrian regime's control and under the control of different forces and parties, each with its own approach to managing judiciary affairs. Before ISIS expulsion, areas under its control witnessed Sharia courts, whose rulings were based on Islamic law, and some of them continue to apply them still, such as courts affiliated with Hay'at Tahrir al-Sham (HTS) in NW Syria; opposition areas in the south and north of Syria have court systems based on unified Arab law, and sometimes a mixture of Syrian state laws and unified Arab law. SDF courts in the east of the Euphrates apply their own laws through the Autonomous Administration. As a result of the multiplicity and conflict between these different judicial systems, many problems and complications have arisen with a significant impact on litigants' rights, especially in disputes on land management and ownership, and the verification of real estate sales.<sup>108</sup> This in addition to discretionary standards by those groups in appointing and supervising their judges, based on ideological and political considerations of the different forces controlling this or that region. Such problems, and the consequences on HLP rights, pose challenges that must be faced through judicial reform steps aiming to reunify the judicial system in Syria, during democratic transition, under a comprehensive institutional reform strategy, and of course with the commitment of all parties in the conflict to international humanitarian law, with regard to all issues of justice and rights.

### **Third: Institutional Reform in Government Structures and Societal Frameworks**

The first and second topics have shed light on the nature and type of problems and challenges facing HLP issues in Syria, gradually increasing during decades of Baath rule, and how they developed in the years following the outbreak of the Syrian revolution, and the nature of widespread and systematic collective violations of property rights, and the effective application of transitional justice mechanisms. This necessarily requires putting forward ideas and visions for the design of institutional alternatives that may, during the transitional period, develop solutions and remedies for property recovery and compensation,

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[108] Demographic Variables and their Impact on the Social Fabric, Property Rights, and the Return of Refugees - Ibid.

verification documents proving ownership, the identities of occupants of absentee properties, and amounts of compensation in case recovery is not possible; as well as other cases relating to tenants, owners of social housing, cooperative housing, Amiri lands, and other HLP issues that have resulted from different land management systems in the Syrian regions. There are also urgent reasons for carrying out real and comprehensive institutional reform in all bodies concerned with managing private and public property issues, and all aspects of the HLP system in Syria.

## **1- Proposed institutional mechanism for property recovery and compensation in Syria**

There are three main reasons to design an institutional mechanism, among other transitional justice mechanisms in Syria, that addresses the demands of property owners dispossessed and deprived of their properties, as follows:

**A-** The nature of the egregious violations committed mainly by the Syrian regime, as well as by other parties in the conflict, violations which affected entire cities, regions, and neighbourhoods subjected to complete or partial destruction and mass displacement of residents, loss and destruction of property records, and expansion of confiscation and appropriation of properties of absentees as a collective punitive method against those the regime classifies as its opponents; methods used on a smaller scale by military groups in NW and eastern Syria, who confiscated properties and lands in the areas they controlled.

**B-** Collapse of the Syrian state and its employment of its institutions to serve security and military goals of the regime during years of war; and lack of confidence on the part of affected rights holders in the ability of government bodies concerned with HLP issues to address their demands fairly. Under the Pinheiro Principles, “states should seek the support of international agencies to set up such mechanisms, especially when there has been a general breakdown in the rule of law or when states are unable to implement measures themselves.”<sup>109</sup>

**C-** Fear of applying regulatory laws and plans issued by the regime after 2011, which would create new HLP and demographic facts at the expense of the rights of original owners and former occupants; and priority of beginning transitional justice and finding an institutional mechanism that facilitates and guarantees the return of properties to owners or compensation. Time plays a major role in the Syrian case, with increasing fears of millions of refugees and IDPs losing their rights the longer the war continues.

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[109] See the Pinheiro Principles on Restitution - [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)



additionally, there are the obstacles to establishing a mechanism of this kind in the Syrian context, even in the event that a transitional justice process is launched after reaching a final political solution. This proposed mechanism will be faced with huge numbers of requests for recovery and compensation, including disputes dating back to pre-2011, complex problems of proving ownership and personal identity of owners, after damage to property records in some areas, loss of identity documents, and forgery of many real estate transactions, multiplicity of owners and good-faith owners, difficulties of carrying out surveys and assessing damages in destroyed areas, the problem of heirs of absentees whose fate is unknown, and other problems that will depend on the nature of the administrative or judicial competencies and objectivity of the mechanism.

Perhaps lessons from international experiences, which have established mechanisms specialized in addressing these tasks, can help in designing a practical, effective and appropriate mechanism for the Syrian case, especially since the principles of response and compensation adopted by the United Nations, particularly the Pinheiro Principles, and international commitment to applying them, have become the legal ground on which a proposed Syrian mechanism must rely.

Among those optimal experiences, compared to other experiences of collective property claims, is the experience of Bosnia, which witnessed a bloody internal conflict ending with the Dayton Peace Agreement in 1995, which recommended the establishment of the Real Estate Property Claims Committee (CRPC) with its mandate to handle housing, land and property issues that occurred during dispute.<sup>110</sup>This body followed an administrative process that allowed for faster processing of claims. It was composed of a mixture of 3 international members and 6 local members, to ensure a balance between different groups (Bosnian Muslims, Bosnian Croats, and Bosnian Serbs). The Real Property Claims Commission issued 300,000 decisions during its tenure between 1996-2003, and given the damages and losses to land records, claims could be submitted without evidence, so one of the roles of the Real Property Rights Protection Commission was to collect evidence on behalf of the claimants. During its work, the committee assumed several tasks, namely: Verifying property for recovery, or confirming eligibility for reconstruction, and creating a database in cooperation with municipalities to avoid double occupancy of people who continued to occupy a property after reclaiming their own. During its tenure, the Real Property Claims Commission had offices in several countries hosting Bosnian refugees as well as mobile teams in countries of the former Yugoslavia to facilitate access to claimants.<sup>111</sup>

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[110] See the 1995 Dayton Peace Agreement - Appendix 7 - Chapter 2

[111] Barbara McClain and Mary Kusters - Lessons Learned from International Experiences Related to Housing, Land and Property in Syria - Research Issued by TDA - March 2022 - <https://tda-sy.org/2022/03/24/%D8%A7%D9%84%D8%AF%D8%B1%D9%88%D8%B3-%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D9%81%D8%A7%D8%AF%D8%A9-%D9%85%D9%86->



The CRPC in Bosnia contributed to enhancing victims' confidence in transitional justice mechanisms in a relatively acceptable manner, compared to the experiences of other countries. The intervention of international will supporting implementation of these programs, under supervision of the Office of the UN Envoy, was a key factor in the response of local institutions, pushing them to enact legislation and establish bodies charged with restoring IDPs' properties and homes. Indeed, property recovery rate reached 93% in 2005. Compensation can be an important mechanism in achieving best reparation in the event survivors' demands for individual compensation are implemented, in addition to collective compensation.<sup>112</sup>The Bosnian experience highlighted the absence of principles determining monetary compensation in the event in-kind response is not possible.

If a similar mechanism is established in Syria, its priorities will be securing the return of millions of refugees and IDPs to their areas of residence, if conditions for a safe environment are met; and the huge amount of claims, some with official documents proving ownership while the majority are based on informal property transactions, widespread in Syria for reasons relating to the types of ownership in Syria, and real estate registration systems. In this case, it will have to adopt informal transactions as well. The problem will be if these properties have been destroyed, especially in informal areas; the committee will face difficulties with real estate survey and evaluation, to match property documents with the reality on the ground, especially since entire regions and neighbourhoods in Syria have been subjected to total or partial destruction, or were co-owned and fell outside of urban regulation. Even if a property cannot be returned as a result of this, it will not be easy to compensate the affected owners, because this requires sufficient financial support to cover the large compensation amounts expected in the Syrian case; on the other hand, providing alternative housing instead of cash compensation takes a long time, and may not be desirable for those who prefer not to return, especially since claiming compensation according to international law does not require returning to the country. This requires the necessary financial resources to ensure fairness in compensation payments.

Another priority and challenge facing this mechanism will be its administrative and judicial powers to return confiscated properties to their real owners, and its power to annul judgments of seizure and confiscation, whether those issued by regular or extraordinary judiciary, or executive bodies. In this case, it is preferable to learn from the experience of South Africa, which established the Land Restitution Commission and the Land Restitution Court<sup>113</sup> through a judicial track within the property restitution and compensation

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[112] Maya Al-Arza - Permanent and Just Solutions: Lessons learned from the experience of Bosnia and Herzegovina - BADIL Centre for Citizenship Rights - Issue (70) - November 2018-<https://www.badil.org/ar/publications/haq-al-awda/issues/items/3465.html>

[113] Report of the Truth and Reconciliation Commission in South Africa - *ibid.*

mechanism, which complements its administrative work and has the competence to consider the claims of those affected by judgments preventing them from disposing of their property, either by seizing or confiscating it, then using it and investing it as in decisions of public auctions which targeted absent land owners. After adjudicating, decisions of the judicial body shall have the power to enforce the return of properties to their owners who prove their entitlement, achieving the strategy of response and compensation in addressing all violations that occurred. It is likely that this type of judicial and administrative task will encounter great resistance from parties that seized other people's properties and benefited from them for a long time, whether under legal cover or by virtue of actual control. This can be mitigated through negotiation between concerned parties or arbitration before the real estate court in one of the following ways: Returning expropriated land and giving the plaintiff an alternative land, or paying satisfactory compensation, or providing special financial aid in the form of services.<sup>114</sup>

Success of the response and compensation mechanism in Syria in meeting demands and claims of rights holders will depend to a large extent on how the members of the judicial and administrative bodies constituting it are selected, based on professional and specialized expertise needed. We suggest the Syrian mechanism includes no less than 13 members, that women have an active participatory role, and that its offices and regional committees cover all Syrian governorates, so it can carry out its huge judicial, administrative and technical tasks and responsibilities; as long as it is integrated as a specialized body within democratic transition, and as long as institutions cooperate with it as an integral part of comprehensive reform, it is expected to accomplish its tasks better and faster in quantity and quality. International institutions must also support its programs through a UN special mission which has a supervisory role over the Syrian national mechanism; an important role to develop it and protect it from political tensions in some cases, as we saw in the Bosnian experience.

It is expected that this mechanism will have the added value of guidance, benefiting, directly or indirectly, all bodies and institutions concerned with HLP in Syria, given it will present data and facts in the context of its practical experience and illuminate the nature of HLP problems in Syria, and provide initiatives aimed at reforming this system with a national database that helps form future solutions to develop it comprehensively.

## **2- Proposals for reforming government structures and community frameworks**

Although it is important for constitutional and legal reforms to amend HLP laws in Syria, general and real estate judicial reforms in particular, and for a special Syrian mechanism to

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[114] Ahmed Adali - Reconciliation and Truth in South Africa: Research on the achievements and dilemmas of transitional justice - *ibid.*

be established for property restitution and compensation to address the egregious violations affecting rights owners - as the research has explained - yet all these necessary reform steps, which are imposed by the obligations of transitional justice, cannot guarantee real reform in the real estate and housing system, and in systems for managing private and public property, without reforming all specialized and concerned institutional structures. In fact, the challenges of rebuilding and providing housing for millions of refugees and IDPs after a peace process has begun, will increase the necessity for institutional reform. This is especially true since state institutions will be free of the domination of the current political system, which is key to correcting their structural imbalance and addressing deficiencies, overlaps, and conflicts in many authorities concerned with real estate registries, urban planning, estate development, investment programs, and land reclamation - together with a re-examination of the functions and roles of governance structures concerned with property and housing issues. We therefore suggest the body who manages the transitional phase carries out institutional reforms that contribute to unifying the property and housing system in Syria, preserving, and protecting owners' rights, and building a participatory national strategy that achieves the social and developmental function of property and housing systems and programs.

- 1-** In addition, unifying the central land registry and approving all documents relating to ownership registration transactions and real estate sales, in accordance with judicial, legal and procedural controls proving the authenticity of these transactions, after removing illegal restrictions on verifying ownership including transactions in areas outside the regime's control. In addition to ending pluralism in ownership systems, whether official or unofficial transactions, by adopting two permanent record systems: that known as "Tapu", and the temporary registry which includes all other ownership processes pending the completion of removing communal ownership and real estate division in unregulated areas, then adding the temporary register after completion of these processes to the permanent register, to become a single central register for all private and public property in Syria. In addition to modernizing registration systems through the wider use of technology and decentralization and increased capacities of regional and local units.
  
- 2-** As well as re-examining all governmental bodies and institutions concerned with HLP in the fields of urban development and organization, each based on specific real estate laws and decrees. For example, the General Authority for Real Estate Development and Investment was established, by virtue of Decree No. 15 of 2008, as an administrative body, while the General Housing Corporation, whose tasks of securing social housing, participating in handling informal housing, and acting as real estate developer, were defined in Decree No. 26 of 2015. There is no clear vision on the roles and tasks of these institutions, and they are not transparent about the work they carry out. In fact, we only

hear about them issuing plans and studies, although housing projects have not been implemented for many years, and some of them are limited to demolishing and removing rubble. It seems that the regime is trying to promote "that state institutions exist and are carrying out their tasks in construction and housing affairs." This requires examining and evaluating the feasibility of the existence and expansion of these institutions, and practical alternatives that meet reconstruction and housing needs for refugees and IDPs.

- 3- In addition to addressing discrepancies in registry systems and HLP management in areas outside the regime's control. The second chapter dealt in detail with discrepancies in registering and managing property in accordance with applicable regulations, according to the forces controlling those areas. In the future, this disparity in real estate policies, if it continues for long, is likely to cause fragmentation of the real estate system, accumulation of HLP problems and disputes, increase in informal transactions, and great difficulties in reunifying the real estate system. Accordingly, governing bodies in those regions must abide by provisions of international humanitarian law in establishing and documenting property in unified records, managing property in a manner that preserves the rights of its owners, even absentees, and stopping violations and encroachments on private and public property, which have been documented in several local and international reports.
- 4- In addition to correcting defects in the structures of many bodies concerned with urban planning and with issuing building permits, and those responsible for services and infrastructure, from provincial councils and their executive offices to local councils of cities and municipalities, where Baath Party and the security services control over these bodies has led to the spread of corruption, chaos, negligence of public interest, spread of nepotism and clientelism, resulting in poor institutional performance and transformation into tools in the hands of power. Even elected bodies and councils according to local administration law were not spared, due to sham elections and their failure to truly represent the rights and interests of those they are supposed to represent. This makes structural reform an essential task which cannot be separated from the requirements of institutional reform in all issues affecting HLP rights.
- 5- Additionally, halting regulatory plans issued by the regime's institutions in recent years, which clearly targeted areas that were subjected to great destruction and the majority of whose residents were forced to flee and were unable to return, such as Yarmouk camp and Qaboun in Damascus, and Al-Haidariya in Aleppo, whose people are highly suspicious of the intentions of the regime which may be to change urban and demographic identity at the expense of pre-war property owners and occupants.

- 6- In addition to strengthening roles of societal frameworks in defending HLP issues and enabling Syrian women to participate in all institutional reform processes, as they have a direct interest in addressing property violations and developing laws and governance institutions that abolish the discrimination they suffer on the basis of their gender. Especially since changes in the Syrian landscape during the war have shown the great burden that women bear and the necessity of treating them fairly in all their rights and on an equal footing with men. It is possible to benefit from the experiences of women in some Latin American countries, and their roles in overcoming customary restrictions that prevented them from owning lands on which they work with their husbands, and in obtaining under new laws their ownership rights.
  
- 7- In connection with the above, civil society organizations play a pivotal role in supporting collective property claims. As a clear example of this, civil society organizations in Latin American countries have played a pivotal role in supporting the rights of indigenous peoples and their demands to recover their property, through coordinating among their active networks and uniting their efforts in urging governments to implement response and compensation programs. Fuelling the movement in this direction in the Syrian case is the fact that the Syrian civil society organizations were the first to raise the voices of those affected by property violations, and they have taken important practical steps in spreading the need to defend HLP issues and inform public opinion to play an essential participatory role in this process in the future.

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