

RECLAIMING HOME

The struggle for socially just housing, land
and property rights in Syria, Iraq and Libya

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Edited by Hannes Baumann

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Contributors

Leïla Vignal
Nour Harastani and Edwar Hanna
Suliman Ibrahim
Javier Gonzalez
Ina Rehema Jahn and Amr Shannan
Sangar Youssif Salih and Kayfi Maghdid Qadr
Thomas McGee

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Cartographic Design: Thiago Soveral
Cover Illustration: Moshtari Hillal
Graphic Design: Mehdi Jelliti



من أجل تنمية أكثر عدالة
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Foreword

The ongoing wars and conflicts in the Middle East and North Africa have caused immense suffering and destruction. The wars in Syria, Iraq and Libya have displaced millions of people, both inside their countries and across the border. Many of those displaced, especially in Syria, hail from informal housing in urban areas and often do not possess reliable legal proof for their ownership of the properties they had built and used to occupy. During the conflicts, informal housing was mostly located in rebel-held areas, significantly increasing the prospect of destruction and damage. This uneven distribution of the burden of HLP (housing, land and property) rights violations and destructions, as shown in many of the contributions in this book, turns HLP very directly into a question of social justice.

HLP rights violations can take different forms in times of conflict: they can be the cause, tool and/or outcome of the war and still bear vast importance for the post-war reconstruction of both physical, legal and state infrastructure. While overlooking the issue carries the risk of reigniting conflict, a successful and just settlement of HLP issues can contribute to a sustainable peace. Violations of HLP rights have historical, legal and social layers, as shown in the chapters. Initial violations and displacement from the time of post-independence nation-building or neo-liberal authoritarian upgrading have caused long-simmering pre-conflict tensions. Additionally, the current armed conflicts and its ensuing displacements and expropriations are adding further violations.

Given the current political and military realities in all three countries addressed in this publication – Syria, Libya and Iraq – and the accumulated layers of violations, dispossession and secondary occupation, a solution that addresses all grievances and achieves full restitution or compensation seems impossible. The focus, therefore, should lie on finding a feasible solution that brings justice for as many as possible and, most importantly, without creating new conflicts.

While this publication aims to give insights into the dynamics of HLP in three countries in the region, other countries are left out due to numerous constraints. Mainly these are Yemen, where HLP violations are rampant but research is unfortunately still scarce, and Palestine, where the issue unfolds in a very different way than in the rest of the region. Every project has its limitations, and for reasons of feasibility and comparability Syria, Iraq and Libya emerged as case studies. We sincerely hope that this publication might help raise awareness on the relevance of HLP grievances for building sustainable peace and improve the understanding of HLP dynamics in the region among international donors and decision-makers.

From start to end, this project took just around one year and a half, an impressively short amount of time for such work. This is due to the commitment and motivation of the project's central actors:

First and foremost, I wish to express my gratitude to Hannes Baumann, the scientific advisor and editor of the publication as well as to another editor who unfortunately must stay anonymous. It was the anonymous editor, who helped develop the project's initial

conception and kept it going with his motivation. Without the commitment of both editors, this project would have never seen the light of day.

Equally, I wish to thank all contributors to this book for their commitment, scientific rigor and dedication to the project, in addition to all those who participated in the project's workshop and discussions in December 2018 in Tunis. Additionally, I am thankful for the fruitful cooperation with Thiago Soveral who designed the illuminative maps in this volume, as well as Moshtari Hilal for her excellent cover illustration and Mehdi Jeliti for his reliable type-setting and graphic design under time pressure.

Finally, I wish to thank the ten anonymous peer reviewers for their work. The reviewers' comments and critiques, including for chapters which did not make it into the final publication, have significantly improved the quality and rigorousness of the book's contributions.

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Thomas Claes

Project Director "For a Socially Just Development"

Tunis, September 2019

The struggle for socially just housing, land and property rights in Arab countries

By Hannes Baumann

As violent conflict has engulfed various Arab countries the region has become a focus for discussions on displacement and its effects on housing, land and property (HLP) rights. The framework of these debates are the Pinheiro Principles of 2005, which seek to provide practical guidance for governments, international organisations and non-governmental organisations to restore HLP rights after violent conflict.¹ The contribution of this volume is to put HLP violations in Syria, Iraq, and Libya into their political and social context. The authors provide the locally specific insights that domestic and international actors need to be aware of to address HLP violations and work towards social justice.

Academics and practitioners acknowledge that there is no ‘one-size fits all’ approach to dealing with HLP violations during and after violent conflict.² As Ballard puts it: ‘Remedying forced eviction involves understanding local physical evidence, grappling with secondary occupation problems that have unique geographical and economic contours, and constructing a process that comports with local norms governing human relations with regard to property.’³ The contributors to this volume present five in-depth case studies from Syria as well as one treatment each of Northern Iraq and Libya. The contributions reveal how historic struggles over HLP shape the current situation, the role of war profiteers, the travails of civil society under authoritarian or militia rule, the importance of ethnic and sectarian identity in some places but not others, and the role of external actors such as Turkey or Hezbollah. All contributions are based on extensive field research and they address the politics and history of HLP violations, sometimes in very specific locales.

1) Anderson, Miriam (2011): ‘The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles): Suggestions for Improved Applicability’, *Journal of Refugee Studies*, 24(2): 304-322; United Nations Economic and Social Council (2005): ‘Housing and property restitution in the context of the return of refugees and internally displaced persons: Final report of the Special Rapporteur, Paulo Sérgio Pinheiro’, available at: <https://www.unhcr.org/uk/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>, (accessed 18 Jul. 2019).

2) Huggins, Chris (2009): ‘Linking broad constellations of ideas: Transitional justice, land tenure reform, and development’ in De Greiff, Pablo and Duthie, Roger (eds.): *Transitional justice and development: making connections*, Social Science Research Council, New York. p. 349.

3) Ballard, Megan (2010): ‘Post-conflict property restitution: Flawed legal and theoretical foundations’, *Berkeley Journal of International Law*, 462, p. 493.

HLP AND SOCIAL JUSTICE

The concept of housing, land and property encompasses a wide variety of phenomena. The term arose as a practical response to the issue of refugees returning to their homes. While refugee return had traditionally excluded a restoration of property or housing, the violent conflicts of the 1990s saw an expansion of returnee rights to include HLP.⁴ All three components are accorded equal importance: HLP refers not only to property and land rights but also the right to housing.⁵ Furthermore, property and land rights are conventionally treated as a ‘bundle of rights’ or entitlements, ‘including the rights to possess; to use; to exclude others from using or to allow others to use; to sell; to give away; to dispose of by will; to recover from theft; and to receive compensation for damage.’⁶ This can include both formal and informal rights, customary and statutory rights. These rights may or may not be well-documented. HLP thus covers a wide range of issues under widely differing circumstances. It can give rise to a variety of societal struggles and the state plays a central role in those.

The breadth of the concept also puts the onus on analysts or aid practitioners to think very carefully about the aspects of HLP that are at stake. Let’s take the example of HLP issues as a potential cause of conflict. Analysts need to clarify what aspect of HLP causes conflict and how exactly it causes conflict. Is it conflict over access to agricultural land, or to land used by pastoralists to graze herds? Is it the inability or unwillingness of governments to provide adequate urban housing? Is it the arbitrary application of the rules that govern urban property rights? Is access to HLP reserved for, or denied to, certain ethnic or sectarian groups? Any of these have been linked to conflict but the politics surrounding these very different HLP aspects can differ substantially. Similar arguments can be made about HLP as a weapon of conflict: What aspect of HLP is being ‘weaponised’, why, and to what effect?

The Pinheiro Principles are designed to facilitate the return of refugees by restoring the *status quo ante bellum* of housing, land and property.⁷ They are meant to allow refugees to return to their homes. However, injustices over HLP did not begin with the start of the most recent conflicts. Arab rulers have long used property and tenure rights as instruments of authoritarian rule, both to shore up social coalitions supporting their rule and – at times – to exclude or reward particular ethnic or sectarian groups. The history of HLP in the Arab states is one of historic injustices and social struggles. This raises the question that Huggins asks about post-war land tenure rights in countries with long histories of dispossession: ‘How far should the government “turn back the clock”? And, how fundamental should reform be?’⁸ The contributors give no easy answers to these questions but they provide the context required to engage with it. International actors need to be aware of the political landscape – including their own political role – when they seek to address HLP violations. The contributions in this volume provide a guide to the political topography of HLP in Syria, Iraq and Libya.

4) Paglione, Giulia (2008): ‘Individual property restitution: From Deng to Pinheiro – and the challenges ahead’, *International Journal of Refugee Law* 20 (3): 392-393.

5) Leckie, Scott (2005): ‘Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework’, UNHCR Legal and Protection Policy Research Series, pp. 9-10, available at: <https://www.unhcr.org/425683e02a5.pdf> (accessed 19 Jul. 2019).

6) Huggins (2009), p. 337.

7) Paglione (2008), pp. 391-412, p. 430.

8) Huggins (2009), p. 350; see also Paglione (2008), p. 411.

Questions of social justice impinge on housing, land, and property rights. In the Arab countries the combination of selective neoliberal reforms and crony capitalism had resulted in rising inequality that drove the protest wave of 2011.⁹ The protests brought social justice to the top of the agenda. Even the World Bank and International Monetary Fund (IMF) had to reflect critically on the neoliberal recipes they had prescribed to Arab countries – although this change in rhetoric was not necessarily matched by a change in practices.¹⁰ Nor is the wave of protests in the Arab world over, as continuing demonstrations in Jordan, Morocco, Sudan, Algeria and elsewhere have shown.

The neoliberal restructuring of Arab economies since the 1990s also reshaped HLP. Neoliberal perspectives on land and property rights emphasise the importance of formal markets and regard tenure security as central to market functioning.¹¹ The most influential advocate of the neoliberal conception of property rights is Peruvian economist Hernando de Soto. He advocates extensive titling of informally held property as a means to unlock credit and – with the titled land as collateral – entrepreneurialism.¹² De Soto's critics point out that 'informal' land markets can be very vibrant and customary land tenure systems are not inherently insecure.¹³ The process of formalising land titles can itself be driven by corrupt and self-interested elites rather than considerations of economic efficiency. Leckie and Huggins cite research from Latin America which suggests that land titling disproportionately benefits large-scale farmers and can reinforce existing inequalities.¹⁴ Dealing with HLP in post-conflict settings requires more than just applying a simplistic formula – that land titling and markets spur economic growth. It also requires a consideration for less 'formal' and for communal forms of property ownership as well as an insight into the social and political struggles that have shaped current HLP regimes.

Neoliberal logics of HLP management were at play during reforms of agricultural land markets in several Arab countries since the 1990s.¹⁵ They were also at play when the Syrian regime passed Law 10 of 2018, which undermined the rights of holders of informal property documents and hit those displaced from former opposition-held areas particularly hard.¹⁶ 'Formalising' property rights was a form of expropriation – the application of neoliberal principles by an authoritarian state in the midst of a civil war. State management of housing, land and property rights has been an instrument of authoritarian governance in the Arab world: Political injustice has bred social injustice.

9) Achcar, Gilbert (2017): 'Social justice and neoliberalism' in Said, Salam (ed.): *Towards socially just development in the MENA region*, Friedrich Ebert Stiftung, Berlin; Bogaert, Koenraad (2013): 'Contextualizing the Arab Revolts: The Politics behind Three Decades of Neoliberalism in the Arab World', *Middle East Critique*, 22(3): 213-234.

10) Hanieh, Adam (2015): 'Shifting Priorities or Business as Usual? Continuity and Change in the post-2011 IMF and World Bank Engagement with Tunisia, Morocco and Egypt', *British Journal of Middle Eastern Studies* 42(1): 119-134.

11) Leckie, Scott and Huggins, Chris (2011): *Conflict and housing, land, and property rights: A handbook on issues, frameworks, and solutions*, Cambridge University Press, Cambridge, p. 3.

12) de Soto, Hernando (2000): *The Mystery of Capital*, Black Swan Press, London.

13) Huggins (2009), p. 340-342; see also Hanna and Harastani's chapter in this volume.

14) Leckie and Huggins (2011), p. 4.

15) Ababsa, Myriam (2014): 'Crise agraire, crise foncière et sécheresse en Syrie (2000-2011)' in Longuenesse, Élisabeth and Roussel, Cyril (eds.): *Développer en Syrie: Retour sur une expérience historique*, Presses de l'Ifpo, Beirut. Available at: <http://books.openedition.org/ifpo/6549> (accessed 25 Jul. 2019); Bush, Ray (1999): *Economic Crisis and the Politics of Reform in Egypt*, Westview, Boulder.

16) See the chapters by Vignal and by Hanna and Harastani in this volume.

AN OVERVIEW OF THE CASE STUDIES: SYRIA, IRAQ, LIBYA

The Syrian conflict emerged out of a series of peaceful anti-Assad protests starting in March 2011. The regime's quick and brutal crackdown on any form of civil unrest, in turn, gave rise to elements of armed resistance and Islamist extremism from within the opposition spectrum. The ensuing cycle of violence has led to the displacement of 6.7 million refugees¹⁷ and 6.6 million internally displaced.¹⁸ In 2017 the World Bank estimated that no less than 7 percent of Syria's housing stock had been destroyed and 20 percent damaged across 10 major cities.¹⁹ The Syrian government 'weaponised' land and property rights, for instance through targeted destruction of housing in opposition-held areas, the destruction or forgery of HLP records, or the confiscation of such records at checkpoints to gather intelligence on fleeing populations.²⁰ This is no new phenomenon in Syria: Housing, land and property have been an integral part of authoritarian rule at least since the first land reforms in the 1950s, which were themselves an effort at breaking the power of political elites that had concentrated land ownership since Ottoman times. Violence has been integral to governance by the Assad family, in power since 1970.²¹ The Baath regime not only targeted large landowners but at times also applied ethnic criteria to HLP restrictions, such as preventing formal property rights for Kurds in Syria's North.

Housing, land and property rights have also long been part of authoritarian governance in Iraq and have become part of the crisis of repeated rounds of displacement since 1991. A military coup in 1958 resulted in a series of land reforms to expropriate the Iraqi oligarchy, which had amassed landholdings since Ottoman times. Like in Syria, the manipulation of property rights then became part of the violent system of fear and rewards that kept autocrats in power.²² The country's Kurdish population in and around Kirkuk became a particular target of HLP violations during the regime's 'Arabisation' campaign.²³ The Iraqi invasion of Kuwait provoked the US-led war of 1991 and President Saddam Hussain's subsequent crackdown against a rebellion centred among Iraq's Kurdish and Shia populations. This resulted in refugee flows and internal displacement. The country's dark period of sectarian violence from 2006 to 2008 led to the internal displacement of 2.8 million Iraqis, while 1.7 million took refuge abroad.²⁴ The US-led invasion of 2003 had dismantled much of the Iraqi state, including the army. Prime Minister Nouri al Maliki's (2006-2014) failed attempt to reconstitute a deeply sectarian and neo-patrimonial version of Iraqi authoritarianism ended in the ISIS takeover of large swathes of Northern and Western Iraq in 2014.²⁵ During ISIS rule until 2017, Iraq saw the latest wave of internal displacement, estimated to have exceeded 3 million.²⁶

17) UNHCR (2019): 'Figures at a glance', UNHCR website, available at: <https://www.unhcr.org/figures-at-a-glance.html> (accessed 7 Aug. 2019).

18) UNHCR (2019): 'Syria emergency', UNHCR website, available at: <https://www.unhcr.org/syria-emergency.html> (accessed 7 Aug. 2019).

19) World Bank (2017): *The Toll of War: The Economic and Social Consequences of the Conflict in Syria*, available at: <https://www.worldbank.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria> (accessed 7 Aug. 2019).

20) See Vignal's chapter in this volume and also: Unruh, Jon (2016): 'Weaponisation of the land and property rights system in the Syrian civil war: Facilitating restitution?', *Journal of Intervention and Statebuilding*, 10(4): 453-471.

21) Ismail, Salwa (2018): *The Rule of Violence: Subjectivity, Memory and Government in Syria*, Cambridge University Press, Cambridge.

22) Sassoon, Joseph (2011): *Saddam Hussein's Ba'th Party: Inside an Authoritarian Regime*, Cambridge University Press, Cambridge.

23) Human Rights Watch (2004): 'Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq', available at: <https://www.hrw.org/report/2004/08/02/claims-conflict/reversing-ethnic-cleansing-northern-iraq> (accessed 7 Aug. 2019).

24) Chatty, Dawn and Mansour, Nisrine (2011): 'Unlocking protracted displacement: An Iraqi case study', *Refugee Survey Quarterly*, 30(4), p. 51.

25) Dodge, Toby (2014): 'Can Iraq be saved?', *Survival* 56 (5): 7-20.

26) Minority Rights Group (2017): 'Crossroads: The future of Iraq's minorities after ISIS', available at: https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_Iraq_ENG_May17_FINAL2.pdf, (accessed on 18 Jul. 2019).

The final country covered in this volume is Libya. Grievances over property expropriated under the country's dictator Muammar Gaddafi were a significant factor in mobilising the 2011 uprising.²⁷ After Gaddafi had assumed power in a coup in 1969, he had gone on to expropriate Italian landowners and Libyan landed elites.²⁸ After the overthrow of Gaddafi in October 2011, confrontations over property increased and, in the absence of functioning civilian institutions, these were often settled by force by militias, which had proliferated during the uprising. This included forced displacement of groups perceived to be Gaddafi loyalists, for instance in the town of Tawergha. UNHCR highlighted the plight of an estimated 70,000 internally displaced in a report from 2012. Regarding the expropriations of homeowners following a 1978 law, the report noted that 'the question of how to address their ongoing consequences will be one of the most divisive issues facing the leaders of the new Libya'.²⁹ Former owners who had been expropriated by Gaddafi formed the Association of the Owners Harmed by the Ruling of the Tyrant.³⁰

While this book covers Syria, Iraq, and Libya, other countries in the region also suffer from conflict-related HLP violations. After President Ali Abdullah Saleh stepped down in 2012, the new Yemeni government put in place mechanisms to deal with HLP issues in the south dating back from the period of unification in the 1990s and the civil war of 1994.³¹ The subsequent escalation of violence between Houthi rebels and a Saudi-led coalition since 2015 has resulted in further HLP violations. Land and property rights have also been at the heart of the conflict between Israelis and Palestinians. The conflict and its HLP aspects have been covered widely in the academic literature.³² Various Israeli and Palestinian civil society groups as well as international organisations are documenting the continued dispossession of Palestinians in the West Bank.³³ Although the geopolitical context of the Israeli-Palestinian conflict in particular is very different, it is hoped that the contributors' insights on Syria, Iraq and Libya in this volume can help inform debates about HLP issues elsewhere.

ARAB STATE FORMATION AND HLP GOVERNANCE

The state is the main guarantor of property rights and land tenure.³⁴ HLP violations must therefore be seen in the context of the formation of the Arab states under study here. Arab states were forming and developing in the absence of a dominant social group such as Europe's bourgeoisie, which forged a consensus with its working classes. This difference should not be overestimated: even European states only fully achieved this sort

27) The following account of housing, land and property in the Libyan uprising and its aftermath is based on: Fitzgerald, Mary and Megerisi, Tarek (2015): "Libya: Whose Land Is It? Property Rights and Transition", Legatum Transition Forum, p. 11-12, available at: https://www.academia.edu/36711433/Libya_Whose_Land_Is_It_Property_Rights_and_Transition_in_Libya (accessed 7 Aug. 2019).

28) Vandewalle, Dirk (2012): *A History of Modern Libya*, Cambridge University Press, Cambridge.

29) UNHCR (2012): 'Housing, Land and Property Issues and the Response to Displacement in Libya', available at: <https://terra0nullius.files.wordpress.com/2013/02/unhcr-report-hlp-issues-and-displacement-in-libya-copy.pdf> (accessed 18 Jul. 2019)

30) See Ibrahim's chapter in this volume.

31) Unruh, John (2016): 'Mass Claims in Land and Property Following the Arab Spring: Lessons from Yemen', *Stability: International Journal of Security & Development*, 5(1): 6.

32) See for instance: Forman, Jeremy and Kedar, Alexandre (2004): 'From Arab land to 'Israel lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', *Environment and Planning D: Society and Space*, 22, pp. 809-830; Yiftachel, Oren (1999): "'Ethnocracy': The Politics of Judaizing Israel/Palestine", *Constellations* 6(3): 364-390.

33) Israeli NGO B'Tselem documents the continued dispossession of Palestinians in the occupied West Bank: <https://www.btselem.org/> (accessed 7 Aug. 2019); the United Nations Office for Humanitarian Affairs (OCHA) in the Occupied Palestinian Territory documents property destruction: <https://www.ochaopt.org/theme/destruction-of-property> (accessed 7 Aug. 2019).

34) Leckie and Huggins (2011), p. 3; Huggins (2009), p. 337.

of consensus after World War II. Instead, the military coup leaders or absolute monarchs who were building post-independence Arab states were relying on often unstable social coalitions ruled over by 'fierce' states.³⁵

HLP entered Arab rulers' political calculations at the intersection of two concerns of state building. One is political economy: Every state needs to ensure its economic viability. At independence, Arab states were still predominantly agricultural and whoever controlled the land controlled the political economy. The military elites that seized power in Arab republican regimes such as Egypt, Syria, Iraq, and Libya therefore expropriated powerful landowning oligarchies through redistributive land reform from the 1950s to 1970s. Political calculations guided much of the practice of land redistribution, which tended to benefit 'middling' landowners rather than the landless. This often happened to be the milieu where many of the military elites who had plotted the coups had hailed from.³⁶ Arab monarchs did not engage in large-scale land reform but they did use land and property as instruments of rule. Morocco's king, for instance, ruled in close alliance with landed agricultural interests in the 1950s and 1960s.³⁷ The rulers of Gulf Arab states were assigning land as a way of distributing oil-based rents to privileged individuals.³⁸

Since the 1980s Arab states have seen a restructuring of statist economies along broadly neoliberal lines. Arab governments were implementing market mechanisms – trade liberalisation, privatisation, subsidy cuts etc. – which were enriching 'networks of privilege'.³⁹ This tended to involve the reform of land and property rights through the selective application of neoliberal principles, which aimed to foster a market-based system of land management. The main beneficiaries were powerful elites. The reforms excluded the rural poor from the land and they sharpened social inequality in Arab cities.

Yet HLP is not just a story of unaccountable elites. Arab populations are not simply passive recipients of authoritarian rule but make politics 'from below': Political action by citizens can include encroachment, squatting, or outright resistance to dispossession. HLP is contentious, highly political, and potentially unstable. Resistance to changes in land tenure was often met with state violence in rural areas.⁴⁰ Migration to the cities, meanwhile, raised Arab rulers' anxieties about urban unrest. Housing policies were developed as ways of governing possibly disruptive urban populations.⁴¹ Fears of urban unrest turned out to be well-founded, as urban space became the key battleground of the Arab protest movements of 2011.⁴² Various aspects of HLP – from rural land tenure to urban housing policy – have thus been crucial aspects of the maintenance of Arab autocratic rule.

The second challenge Arab states have been facing since independence has been the consolidation of a national identity. Arab citizens have multiple and fluid identities –

35) Ayubi, Nazih (2001): *Over-Stating the Arab State: Politics and Society in the Middle East*, IB Tauris, London.

36) Binder, Leonard (1978): *In a Moment of Enthusiasm: Political Power and the Second Stratum in Egypt*, University of Chicago Press, Chicago; Batatu, Hanna (1999): *Syria's Peasantry, the Descendants of its Lesser Rural Notables, and Their Politics*, Princeton University Press, Princeton.

37) White, Gregory (2001): *A comparative political economy of Tunisia and Morocco: On the outside of Europe looking in*, SUNY Press, NY, p. 124.

38) Beblawi, Hazem (1990): 'The Rentier State in the Arab World' in Luciani, Giacomo (ed.): *The Arab State*, Routledge, London, p. 90

39) Heydemann, Stephen (ed.) (2004): *Networks of Privilege in the Middle East: The politics of economic reform revisited*, Palgrave Macmillan, London; Heydemann, Stephen (2007): 'Upgrading Authoritarianism in the Arab World', Saban Center Analysis Paper Series, No. 13, available at: <https://www.brookings.edu/research/upgrading-authoritarianism-in-the-arab-world/> (accessed 7 Aug. 2019);

40) Bush, Ray (2002): *Counter-revolution in Egypt's countryside: land and farmers in the era of economic reform*, Zed Books, London.

41) Bogaert, Koenraad (2018): *Globalized Authoritarianism: Megaprojects, Slums, and Class Relations in Urban Morocco*, University of Minnesota Press: Minneapolis.

42) Gunning, Jeroen and Baron, Ilan Zvi (2013): *Why Occupy a Square: People, Protests and Movements in the Egyptian Revolution*, Hurst, London.

ethnic, religious, regional, etc. – and leaders had to forge a common national story for their political entities.⁴³ Again, this is a deeply political process, as part of which Arab nationalist rulers in Syria, Libya, and Iraq engaged in a variety of exclusivist practices. Specific regional, tribal, ethnic or sectarian groups were rewarded or side-lined, a process which could include violations of property rights. Segments of the Kurdish populations in Baathist Iraq and Syria were denied full citizenship and property rights. This history is still playing out during the most recent conflicts.⁴⁴

HLP RIGHTS UNDER ATTACK IN THE CURRENT CONFLICTS

HLP violations do not start with the onset of conflict but war tends to intensify them and bring in new actors. Vignal's chapter sets the scene by providing an overview of HLP violations in Syria. She identifies four modes of dispossession: as a military tactic, as an aspect of a war economy, with regard to legal documentation of ownership, and resulting from wartime urban planning and regulations. They affect mainly populations in areas currently or formerly held by the opposition. Vignal analyses the various military, economic, and political motivations for these policies. Beneficiaries are not only the military actors but also the ubiquitous war profiteers. The 'breakdown' or collapse of the Syrian state has not prevented extensive urban planning designed to gentrify through urban megaprojects, enrich well-connected businesspeople, and pacify urban space where informal neighbourhoods had proved to be the most restive.

Hanna and Harastani look at the implications for refugees and internally displaced who are affected by these schemes and other regime efforts at 'weaponising' HLP. They base their analysis on a survey of 176 Syrians to gain a handle on the HLP crisis that their respondents are facing. Hanna and Harastani look at the way in which present reconstruction policies and practices are impacting HLP rights, how Syrian refugees and internally displaced have been affected, and they draw conclusions on how Syrians can protect their HLP rights. An important part of their analysis derives from their reading of the history of HLP rights in Syria. One of the ways in which the regime had managed the rapid growth of Syria's cities was to tolerate and mitigate informality in the urban periphery. For instance, electricity and water bills became accepted ways of proving that a property exists and provided limited rights. Regime actions during the conflict – from the destruction of HLP records to Law 10's high threshold of documenting ownership – are now putting these rights at risk.

Several contributors confirm the importance of ethnic or sectarian criteria driving HLP violations in several locations. Salih and Qadr as well as McGee note that HLP violations by ISIS in Sinjar and by Turkey's local militia allies in Afrin are continuing the Baath era dispossession of Yazidis in Northern Iraq and Kurds in Northern Syria, respectively. Gonzalez detects sectarian discrimination in the way regime forces and Hezbollah tended to make return to the Syrian border region around al-Qusayr more difficult for Sunni Muslims than Shia or Christian inhabitants. This was because the former were more likely to be associated with the opposition. However, Gonzalez and McGee also note that the use of sectarian or ethnic categories can be highly strategic and is part of a wider logic of how the war in Syria

43) Zubaida, Sami (1993): 'The Nation State in the Middle East', in Zubaida, Sami (ed.): *Islam, the People and the State: Political Ideas and Movements in the Middle East*, I.B. Tauris, London.

44) See the chapter by Salih and Qadr on Sinjar and McGee's chapter on Afrin in this volume.

is being conducted. Ethnic and sectarian drivers are never the only or even main dynamic driving HLP violations and they are not ubiquitous. The overviews of the situation in Syria provided by Vignal as well as Hanna and Harastani show the multiple motivations at work in HLP violations. Jahn and Shannan's chapter suggests that sectarianism was a secondary issue in divided Aleppo.⁴⁵ The Syrian war is best understood as a 'semi-sectarian' conflict: Sectarianism is only one among many faultlines between actors in the Syrian civil war and its relevance varies across locations.⁴⁶

It is not just governments who engage in HLP violations. Militias also appropriate property, while abandoned refugee housing is taken over by secondary occupants who have themselves often lost their homes. On the other hand, opposition movements, civil society organisations, and international organisations sometimes take over the state function of preserving property rights. Vignal notes efforts in Douma in Eastern Ghouta when it was controlled by the opposition to record ownership, inheritance, and sales. Hanna and Harastani call for efforts to preserve HLP documentation, not least through novel IT solutions. Jahn and Shannan document the ultimately failed efforts by competing opposition factions to establish a functioning judicial system that could adjudicate property disputes in Eastern Aleppo. Salih and Qadr critique international aid efforts at providing HLP documentation to victims of ISIS violence in Iraq's Sinjar province because it failed to distinguish between Yazidis who had historically been prevented from owning property, and Arab populations who had been transferred to the area by the previous Baath regime. Ibrahim traces the post-Gaddafi efforts of a pressure group of former owners affected by Libya's housing expropriation of 1978. The association's strategy changed depending on the changing power constellations in the country. All these contributions show the extensive efforts by opposition movements and civil society to try to take on the state's HLP functions, but they also show the limits and frustrations of these efforts.

POST-CONFLICT HLP RIGHTS IN SYRIA, IRAQ, AND LIBYA FROM A SOCIAL JUSTICE PERSPECTIVE

The history of HLP before the conflict was shaped by the nature of the state in Arab countries. The future of HLP depends on the future of these states, which now face the task of 'reconstructing' the economy and re-imagining national identity. Wars have destroyed much of the physical fabric of the country and have entrenched communal differences in Syria, Libya and Iraq. The authors of this volume analyse the prospects for reconstruction and put forward a range of recommendations.

Reconstruction and the future of HLP are deeply political questions: political settlements shape post-war political economy – and HLP.⁴⁷ The Syrian regime had to rely on foreign intervention by Iran, Russia, and Hezbollah for its own survival. It also had to cede control to local militias only loosely integrated into the overall security structure. The Syrian state has become more 'transactional': The centre around Assad has to negotiate with various

45) For a further discussion of the intersection of class and sect in Aleppo, see Khaddour, Kheder (2017): 'Consumed by war: The end of Aleppo and Northern Syria's political order', Friedrich Ebert Stiftung, available at: <http://library.fes.de/pdf-files/iez/13783.pdf> (accessed 18 Aug. 2019).

46) Phillips, Christopher (2015): 'Sectarianism and conflict in Syria', *Third World Quarterly*, 36(2): 357–376.

47) See, for instance, Leenders and Baumann on the way that the political settlement of the civil war shaped Lebanon's post-war political economy: Leenders, Reinoud (2012): *Spoils of Truce: Corruption and State-Building in Postwar Lebanon*, Cornell University Press: Ithaca, NY; Baumann, Hannes (2016): *Citizen Hariri: Lebanon's Neoliberal Reconstruction*, Hurst, London.

power centres.⁴⁸ Despite this fragmentation of power – or because of it – the regime is trying to use reconstruction to stabilise its authoritarian rule and return to the status of a ‘fierce’ state in which the ruling clique is firmly in control.⁴⁹ A new crop of war profiteers at all levels – from local militia to powerful national cronies – is set to benefit from regime-directed ‘reconstruction’.

Authors caution international donors or aid agencies from becoming involved in reconstruction in Syria without taking note of the effect of their involvement on HLP violations. Hanna and Harastani note that the current reconstruction process is structured to exclude refugees and internally displaced. In Al-Qusayr, Gonzalez notes that Hezbollah and the Syrian regime changed the demographic make-up for strategic reasons. The author’s interpretation of the reconstruction plans for some of the municipalities there suggest that they will entrench these demographic changes. Vignal argues that foreign donors and aid agencies must take great care not to inadvertently fund violations of HLP rights. Finally, it is important to note the unevenness of the reconstruction effort. Jahn and Shannan comment on the lack of a meaningful reconstruction effort in Eastern Aleppo. At the same time, they note that the international community’s ability to fund reconstruction gives them some leverage over the regime. Gonzalez makes the same point about aid conditionality: Aid should not be allowed to be used to entrench sectarian changes in al-Qusayr. Another important role is to demand accountability. McGee argues that the international community should be holding Turkey responsible for HLP violations in Afrin ‘as the state actor that launched, coordinated and led the operation’.

In Iraq key state institutions remain dysfunctional due to corruption and political factionalism.⁵⁰ The failure to provide public goods leads to waves of public protests, most recently in Basra.⁵¹ There remains a lack of political reconciliation between social communities – not just between sects and between Arabs and Kurds, but also over the secular or Islamic identity of the state, how centralised or decentralised power should be, and whether the country should align with Iran or with Gulf Arab states. As Sayigh puts it: ‘Violence has become a medium for the conduct of politics in Iraq.’⁵² In Libya the United Nations have tried to put the various militias controlling the country on the path to a negotiated settlement and unified government. These efforts have faltered and armed factions – not least the forces of Khalifa Haftar, the strongest of Libya’s armed actors – continue to tussle over the institutions that control oil revenues, including the central bank.⁵³

The failure, collapse, or breakdown of the state does not imply a disappearance of all its functions. The state remains the focus of political and military energies and analysts

48) Khatib, Lina and Sinjab, Lina (2018): ‘Syria’s Transactional State: How the Conflict Changed the Syrian State’s Exercise of Power’, Chatham House Research Paper, available at: <https://www.chathamhouse.org/publication/syrias-transactional-state-how-conflict-changed-syrian-states-exercise-power> (accessed 16 Aug. 2019).

49) Heydemann, Steven (2018): ‘Beyond fragility: Syria and the challenges of reconstruction in fierce states’, Brookings report, available at: brookings.edu/research/beyond-fragility-syria-and-the-challenges-of-reconstruction-in-fierce-states/ (accessed 16 Aug. 2019); Said, Salam and Yazigi, Jihad (2018): ‘The Reconstruction of Syria: Socially Just Re-integration and Peace Building or Regime Re-consolidation?’, Friedrich Ebert Stiftung, available at: <http://library.fes.de/pdf-files/iez/14939.pdf> (accessed 16 Aug. 2019).

50) Sayigh, Yezid (2017): ‘The crisis of the Iraqi state’, Carnegie Middle East Center, available at: <https://carnegie-mec.org/2017/11/23/crisis-of-iraqi-state-pub-74794> (accessed 16 Aug. 2019).

51) Alshamary, Marsin and Al-Amin, Safwan (2018): ‘Who to blame for the protests in Basra, Iraq?’, Washington Post Monkey Cage blog, available at: <https://www.washingtonpost.com/news/monkey-cage/wp/2018/09/14/who-to-blame-for-the-protests-in-basra-iraq/> (accessed 16 Aug. 2019).

52) Sayigh (2017).

53) Lacher, Wolfram (2018): ‘Libya: Getting Serious about Negotiations’, SWP Comment, available at <https://www.swp-berlin.org/en/publication/libya-getting-serious-about-negotiations/> (accessed 16 Aug. 2019).

should always be alert to the state functions that remain intact. Jahn and Shannan note that residents of opposition-controlled Eastern Aleppo went to great lengths to have their property transactions registered by government registries, despite efforts by the opposition to provide their own mechanisms to govern property rights. At the same time, the state's ability to fulfil these functions is, of course, undermined by war. On Libya's post-Gaddafi governance, Ibrahim notes that the different legal initiatives of subsequent and competing state administrations have created a thicket of competing solutions to the property expropriations of 1978. None have been fully realised and none offer an easy solution to the conundrum. Qadr and Salih note that the fractious and at times violent party politics of post-2003 Iraq, in which sectarian politicians and Kurdish political parties were jostling for influence, did not allow Article 140 – designed to reverse Saddam's 'Arabisation' of Northern Iraq – to be fully implemented. Yazidis who lacked sustained political representation were in a particularly weak position when it came to defending their HLP rights in post-Saddam Iraq.

The wars brought in new actors, which will jostle for influence over the re-emerging state. Vignal notes the ubiquity of war profiteers as an integral part of the Syrian war economy, while Jahn and Shannan argue that post-war institutions must not entrench their gains. The issue of secondary occupation introduces yet another set of actors. Several authors in this volume touch on the issue of rights accruing to refugees or internally displaced who moved into abandoned properties, or others who may have acquired or rented such properties. Ibrahim argues that not only the owners who were expropriated by Gaddafi's law of 1978 have a right to the property, but also those who have lived in them for decades. He argues for a process of transitional justice, which involves not just the original owners of properties but also current occupants. Other new actors include civil society and quasi-state institutions' efforts to find alternative ways of registering property. Jahn and Shannan argue that decisions by bodies outside of government control must be taken into account under any post-war property regime: The realities that these institutions have created on the ground cannot be easily reversed. Vignal notes that the realisation of the Pinheiro principles – the return of refugees and internally displaced to their own homes – will only be possible with an inclusive political settlement. This is not on the cards as long as the current regime is set to remain in power. In Iraq and Libya, too, the constellations of power do not bode well for a resolution of the issues that Qadr and Salih identify in Northern Iraq and Ibrahim in Libya. Qadr and Salih therefore suggest alternative dispute resolution mechanisms as a way for the Iraqi central government to become more responsive.

A key issue is the documentation of informal property rights. As Hanna and Harastani note, while the Assad regime had tolerated urban informality prior to the uprisings against it, it curtailed informal property rights in its campaign against urban opposition. Vignal, Hanna and Harastani, as well as Jahn and Shannan are united in their demand that alternative documentation of 'informal' properties – such as electricity bills or evidence of a sales transaction – must be accepted as proof of rights to allow a return of residents or their compensation. Hanna and Harastani suggest ways to increase refugees' and internally displaced persons' awareness about the need to keep hold of forms of documentation. They also stress the need for ICT tools to document rights.

At first sight, refugees and internally displaced are politically the weakest players in Syria, Iraq and Libya but they do possess considerable leverage. Even if the Assad regime wins

the war in Syria, and if durable governments establish themselves in Libya and Iraq, they are unlikely to be able to direct hundreds of thousands or even millions of individual decisions about returning to and possibly reclaiming housing, land and property. If the Arab uprisings since 2011 have shown anything, it is that Arab rulers can no longer ignore their citizens. Several of the contributions to this volume highlight the struggles of Syrian, Libyan, or Iraqi civil society for socially just HLP rights – whether by documenting rights to property or housing, providing alternative HLP registration and dispute resolution to the authoritarian state, or imagining alternative future reconstruction. Outside donors and aid agencies should seek ways to support and amplify these initiatives.

HLP is a political tool for contemporary Arab rulers but European and North American aid agencies are also operating in a political context influenced by donor governments. These governments are keen to facilitate the return of refugees who have reached their shores. For instance, the Syrian government's use of HLP to expropriate citizens associated with the opposition has caused grave concern by refugee host nations, who see this as an obstacle to a future return of refugees. The German government – host to an estimated 500,000 Syrian refugees – called on the UN Security Council to condemn the Syrian regime's Law 10 of 2018, which would effectively have led to the wholesale expropriation of many Syrian refugees.⁵⁴ Officials in Lebanon – home to an estimated 1.5 million Syrians – also expressed concern over the law.⁵⁵ Aid organisations therefore not only navigate the political requirements of the country where the HLP violations are taking place, but also of the governments of those countries where the refugees have fled to.

The struggle over housing, land and property rights in Syria, Iraq and Libya continues. It involves refugees and displaced, some local civil society organisations, occupants of empty dwellings, war profiteers, foreign powers intervening in the conflict, external aid agencies and international organisations, different layers of state institutions in various stages of disrepair, and a 'fierce' and brutal regime at the apex (as in Syria) or factions forever squabbling over the spoils of the state (as in Libya and Iraq). The contributions to this volume provide an indispensable map for those who seek to navigate these struggles and work towards social justice in housing, land and property.

54) 'Bundesregierung will gegen Enteignung syrischer Flüchtlinge vorgehen', Spiegel online (27 Apr. 2018), available at: <https://www.spiegel.de/politik/ausland/enteignung-von-fluechtlingen-kritik-der-bundesregierung-a-1205171.html> (accessed 7 Aug. 2019); 'Assad's property law hits hope of return for Syrians in Germany', Reuters (14 Jun. 2018), available at: <https://www.reuters.com/article/us-mideast-crisis-syria-germany-insight/assads-property-law-hits-hope-of-return-for-syrians-in-germany-idUSKBN1JA1V1> (accessed 8 Aug. 2019); For the number of refugees, see: 'Why Most Syrian Refugees Want to Stay in Germany', Spiegel (3 Jul. 2019), available at: <https://www.spiegel.de/international/germany/most-syrian-refugees-want-to-stay-in-germany-a-1275389.html> (accessed 8 Aug. 2019).

55) 'New Syrian law could prevent refugee return, Lebanese officials fear', The National (30 May 2018), available at: <https://www.thenational.ae/world/mena/new-syrian-law-could-prevent-refugee-return-lebanese-officials-fear-1.735354> (accessed 8 Aug. 2019).

Locating Dispossession and HLP rights in the War in Syria

By Leïla Vignal

The transformation of Syria's human fabric is a profound, and possibly long-term, legacy of the conflict. Dispossession – understood here as the loss of home and security of tenure – lies at the heart of this transformation. To take just one figure, in 2019 more than half of Syria's pre-conflict population of 21 million has been displaced from their homes. Some seven million Syrians have sought refuge abroad and more than 6.5 million are internally displaced.¹

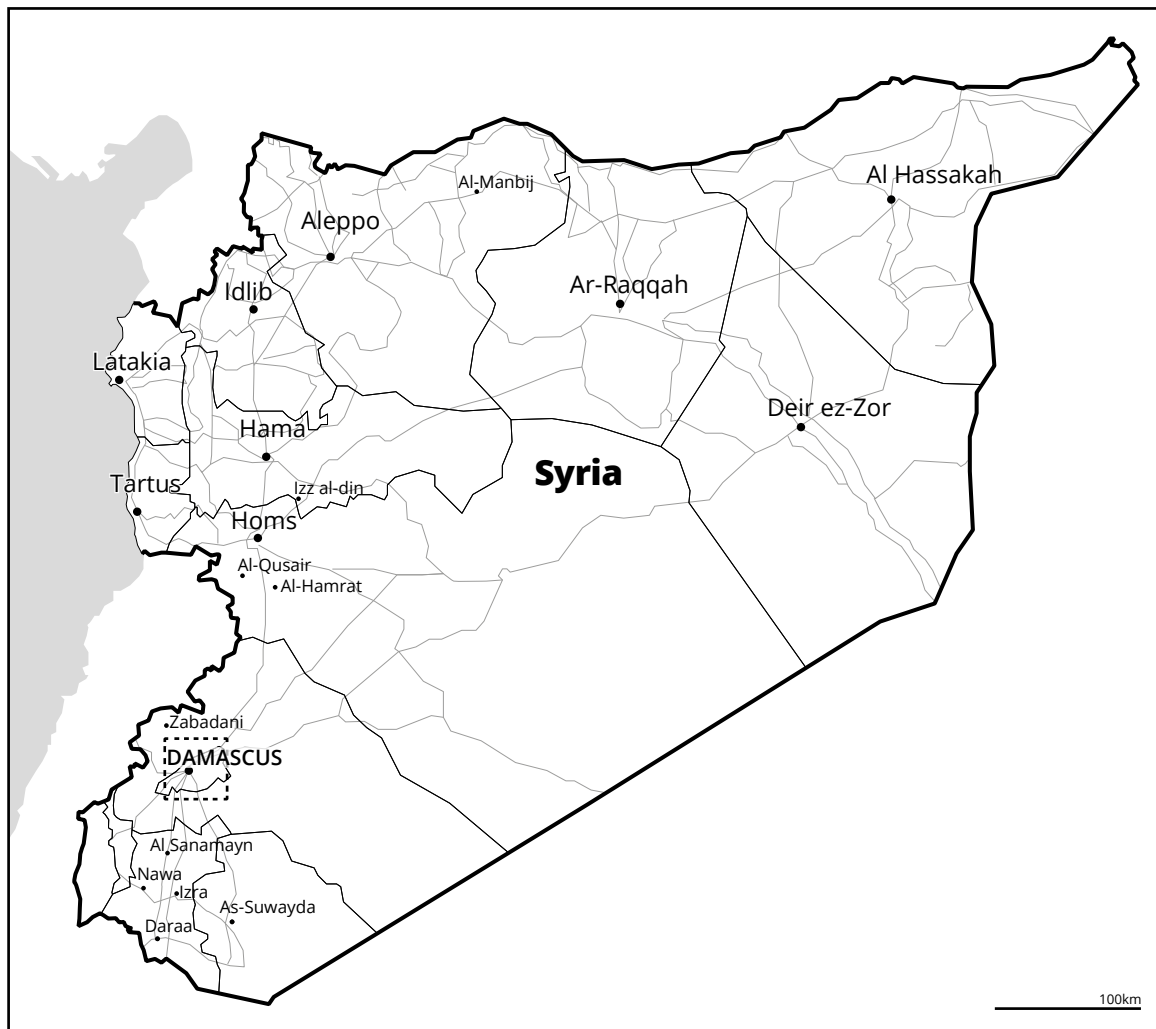
Displacement, destruction and dispossession are a constant in violent conflicts, throughout history and worldwide. That said, this chapter argues that the massive scale of dispossession in Syria compels us to analyse it – not as an inevitable consequence of warfare and destruction but as the result of multifaceted processes due to the different strategies of wartime actors. We must examine the various logics and actors involved in the transformations of Syrian land and urban tenure rights that are driving dispossession. The chapter analyses four modes of dispossession: dispossession as a military tactic, dispossession as an aspect of a war economy, dispossession with regard to legal documentation of ownership, and dispossession resulting from wartime urban planning and regulations.

These four interrelated modes of dispossession mostly affect populations in former or current opposition-held areas. All four modes serve military, political or economic objectives or the interests of specific groups and actors – and transform the HLP rights of the general population. They convey something important about how the war in Syria has been conducted and the conditions under which the country may (or may not) recover from the destruction of the 2010s.

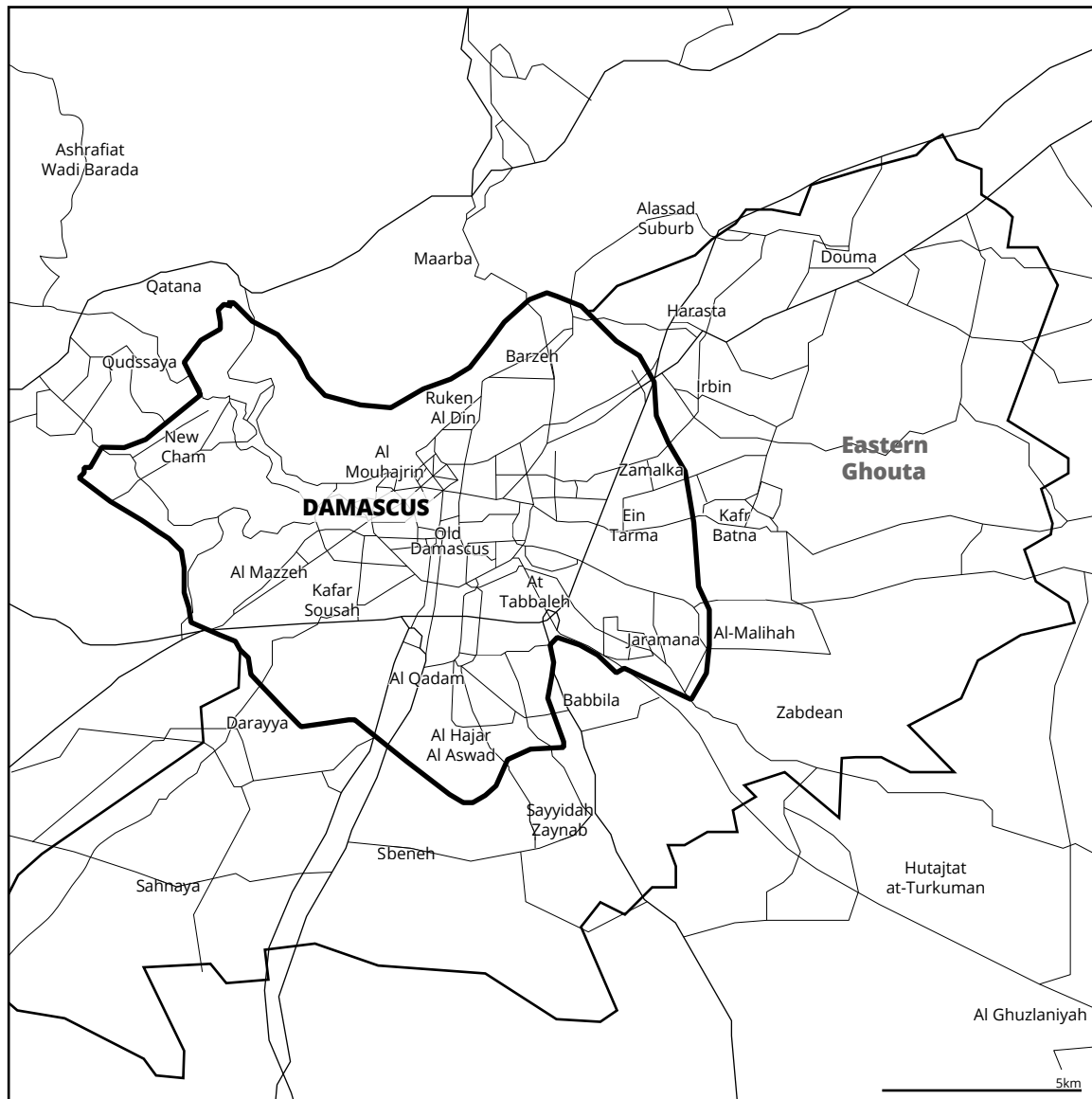
1) In 2019, media generally put the number of Syrian refugees at 5.6 million. However, this only accounts for Syrians registered with UNHCR (the UN Refugee Agency) in the Middle East. See: <https://data2.unhcr.org/en/situations/syria> (accessed 14 May 2019). This figure does not include unregistered refugees in neighbouring countries, for which there are no official numbers. Observers agree that unregistered Syrians number around 610,000 in Jordan (in addition to 655,000 registered refugees), 500,000 in Lebanon (plus another one million registered) and 175,000 in Egypt (along with 125,000 registered). Since 2011, another one million Syrians have applied for asylum in the European Union (Eurostat), while several hundreds of thousands of Syrians have made their way to Gulf countries (De Bel Air, Françoise (2015): 'A Note on Syrian Refugees in the Gulf: Attempting to Assess Data and Policies', Gulf Labour Markets and Migration 11, available at: http://gulfmigration.org/media/pubs/exno/GLMM_EN_2015_11.pdf (accessed 14 May 2019), and to the United States, Canada, Brazil, Argentina and Thailand, through resettlement programmes or other means – according to various national statistical databases. UN agencies in charge of the humanitarian response in Syria regularly publish estimates of the number of internally displaced persons (IDPs) that reflect the situation at a given moment. Most IDPs are stuck in situations of protracted internal displacement but some have been able to return to their homes. This means that, in eight years of conflict, a significantly larger share of the total population has experienced displacement than official figures suggest.

It was not possible to conduct fieldwork in wartime Syria. Instead, research material was gathered from various sources: Starting in 2014, interviews were conducted with Syrians abroad – mostly in Lebanon, but also in Egypt, France and the United Kingdom – and satellite imagery was used to assess the destruction and the transformation of urban land. These rich primary sources were then combined with secondary sources: data collected by international organisations such as the UN Office for the Coordination of Humanitarian Affairs (OCHA), reports by international agencies and NGOs operating in Syria, data produced by Syrian research centres and civil society organisations, along with media sources and specialised websites (in particular ‘The Syria Report’ that studies the Syrian economy).

MAP 1: SYRIA - PLACES MENTIONED IN THE ARTICLE



MAP 2: GREATER DAMASCUS



DISPOSSESSION AS A WAR TACTIC

In August 2017, Bashar al-Assad declared, ‘We have lost the best of our young people... but in return we have gained a healthier and more harmonious society’ – bluntly acknowledging that, at least for him and his regime, Syria has improved since a third of its pre-war population fled, and half of the country is in ruins. This section aims to demonstrate that Syrian government forces and its allies (especially Russia) used large-scale, repetitive bombing and shelling with a specific objective: to destroy opposition-held areas and force the population to leave.

These tactics were first implemented in 2012 when, following the progressive militarisation of part of the revolutionary movement that had taken to the streets in 2011, the regime had to fight on multiple fronts across the country simultaneously and was soon overwhelmed. It then made the most of its domination of the sky (only the Syrian army has planes and helicopters and no opposition groups had anti-aircraft weapons) and its pervasive capability to project power by using artillery. Bombing campaigns involved both conventional weapons (artillery, tanks, aviation and SCUD-type long-range missiles) and non-conventional weapons (cluster bombs, barrel bombs, chemical weapons and protracted sieges).² Starting in September 2015, Russia's aerial intervention in support of al-Assad's regime intensified those tactics. Relentless and efficient bombardment shifted the conflict dynamics in the regime's favour, allowing it to gradually recapture rebel-held areas – from the eastern neighbourhoods of Aleppo in December 2016 to Eastern Ghouta in Greater Damascus in April 2018 and Deraa that June.³

The geography of the devastation generally reflects the regime's political and strategic objective of crushing all the rebel groups and regaining full control of the national territory. Two main tactics have been used. On one hand, bombardments were used as scorched-earth tactics to destroy and empty areas to facilitate their retaking, such as in al-Qusair, a city to the southwest of Homs that was retaken in June 2013 after a two-month campaign had flattened it.⁴ On the other hand, relentless large-scale bombing of residential areas aimed to punish, and possibly force out, the population of opposition-held areas. This was the case in Eastern Aleppo, which was bombed constantly from 2013 until December 2016 when, with Russian and Iranian help, regime troops regained control of the opposition-held area. In Aleppo as in other places, regime bombardments and shelling did not discriminate between delimited military targets and the residential fabric and civilian infrastructure (schools, hospitals, bakeries etc).⁵ Many displaced Syrians have not so much fled an armed conflict as *a certain type of political violence* that has targeted specific sections of the territory and society in order to win the war.

These two main tactics cause widespread destruction, primarily in areas once held by opposition groups. (Some Syrian cities in the northeast were bombed by the US-led international coalition against the Islamic State group.) Estimates using remote imagery techniques indicate that at the end of 2015, 1.2 million housing units had been damaged and 400,000 destroyed.⁶ In 2017, the World Bank's broad-brush assessment of damage in ten Syrian cities estimated that 27 per cent of the housing stock had been impacted by the war, with 7 per cent destroyed and 20 per cent partially damaged.⁷ The situation obviously varies from city to city, from one neighbourhood to another and from one village to the next.

2) Barrel bombs are large oil drums weighing more than half a ton that are filled with explosives, scrap metal and chemicals. Dropped from helicopters, they inflict widespread and indiscriminate damage. These effects are documented and analysed in Vignal, Leila (2014a): 'Destruction-in-Progress: Revolution, Repression and War Planning in Syria (2011 onwards)'; Built Environment 40 (3).

3) Russian planes carried out 39,000 sorties between October 2015 and summer 2018, according to the Russian Ministry of Defence. 'Russia says 63,000 troops have seen combat in Syria', BBC (23 Aug. 2018), available at: <https://www.bbc.com/news/world-middle-east-45284121> (accessed 15 Oct. 2018).

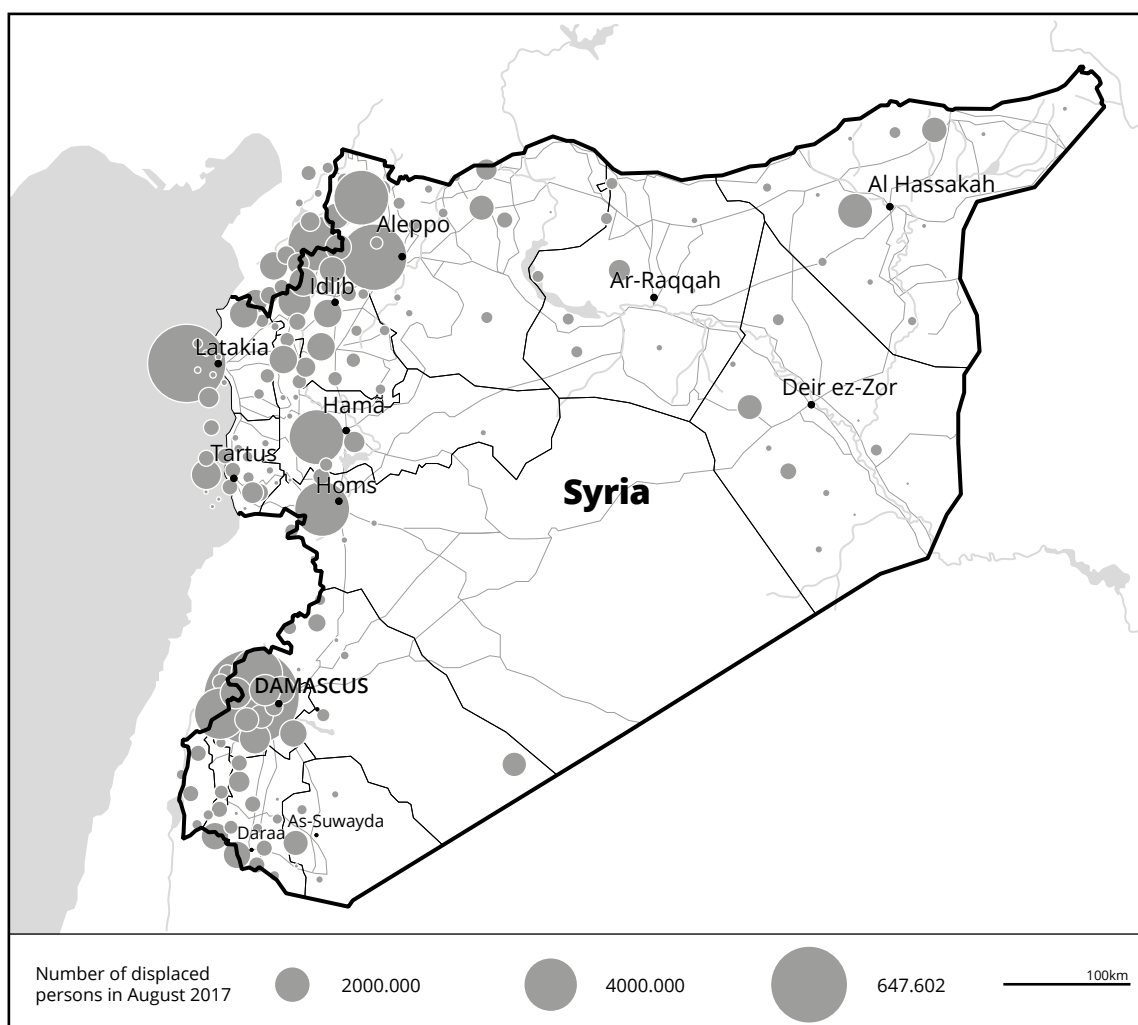
4) See Gonzales chapter on al-Qusair in this volume.

5) The targeting of civilian objects is forbidden by international humanitarian law (IHL).

6) United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (2015): 'Humanitarian Response Plan, January-December 2016. Syrian Arab Republic', available at: https://www.unocha.org/sites/dms/Syria/2016_hrp_syrian_arab_republic.pdf (accessed 10 May 2019).

7) World Bank (2017): 'Syria Damage Assessment', available at: <http://documents.worldbank.org/curated/en/530541512657033401/pdf/121943-WP-P161647-PUBLIC-Syria-Damage-Assessment.pdf> (accessed 13 Apr. 2019).

MAP 3: INTERNAL DISPLACEMENT AND THE TRANSFORMATION OF POPULATION PATTERNS IN SYRIA (SOURCE: UN OCHA)



These tactics have killed, wounded and traumatised people⁸ – inflicting huge suffering and triggering the largest share of the massive population displacement, which generally matches the pattern of destruction. Some towns and villages have been partly or totally emptied of their pre-war population; others have more or less the same number of inhabitants, either because the pre-war population stayed put or displaced persons compensate for lost residents. For example, in 2016, the city of Izra' in the southern governorate of Deraa, had retained less than 25 per cent of its original population. In sharp contrast, the population of neighbouring al-Sanamayn had hardly changed.⁹ A few areas have witnessed a clear population increase.

8) Although no precise figures exist, estimates count half a million Syrians dead ("More than 570 thousand people were killed on the Syrian territory within 8 years of revolution demanding freedom, democracy, justice, and equality", Syrian Observatory for Human Rights, 15 Mar. 2019, available at: <http://www.syriahr.com/en/?p=120851>, accessed 13 June 2019). The Syrian Human Rights Network (SHRN) documented 223,161 civilian deaths between March 2011 and March 2019. It estimates that 127,916 individuals have been or are still detained in the Syrian regime's official and unofficial detention centres, or were forcefully disappeared. ('Eight Years Since the Start of the Popular Uprising in Syria, Terrible Violations Continue', Syrian Human Rights Network, 11 Mar. 2018, available at: <http://sn4hr.org/blog/2019/03/11/53423/>, accessed 10 May 2019). It is generally reckoned that in conflicts that there are four wounded people for one dead, which means that by 2019, about 2 million people would have been wounded in the Syrian conflict.

9) REACH (2016): 'Syria: Humanitarian Situation Overview', available at https://www.unocha.org/sites/dms/Syria/2016_hrp_syrian_arab_republic.pdf (accessed 4 Nov. 2016).

This is particularly true of government-held areas such as coastal cities and villages that were shielded from bombardments. It is also the case of the northwest region of Idlib, where since 2016, increasing numbers of fighters and population from areas that were successively retaken by the regime and its allies have been relocated (see map 1).¹⁰ Many Syrians, especially in opposition-held areas, have lost their homes through destruction and displacement.

DISPOSSESSION AND THE WAR ECONOMY

War creates an economy marked by dispossession. This section focuses on two major processes linked to the economy's wartime transformation that cause the loss of homes and property: the occupation of property belonging to displaced Syrians by third parties and the confiscation of homes and property by armed forces, as well as constrained transactions – selling assets to survive.

Testimonies and reports indicate that abandoned properties risk being occupied¹¹ – sometimes by other displaced people who move in with or without the owner's agreement, and generally live rent-free. For example, most of the population of Izz al-Din near Homs city left the village which was subjected to bombing campaigns as early as 2012. Refugees reveal that in 2018, the few houses still inhabited were occupied by IDPs, who paid no rent.¹² Sometimes the Syrian army confiscates absentees' houses and flats to accommodate soldiers – for example, most of the houses in the village of al-Hamrat near Homs.¹³ The confiscation of private homes is also widely practiced by members of the numerous militias operating in Syria – on all sides of the conflict and from all origins: Syrian militias, foreign militias and the Islamic State.¹⁴ Beyond the need to shelter troops, confiscation commonly serves as in-kind compensation for soldiers and officers.

Sometimes confiscations are political, targeting properties belonging to people with specific political or community backgrounds or as punitive measures when an area is retaken. When the mother of Hikmat returned to Aleppo to check on their house in the east of the city she discovered a 'Confiscated' sign on the door.¹⁵

Generally, houses left empty, along with property such as workshops and factories, are at risk of being looted and stripped of everything, down to the electrical wiring and plumbing. This practice is so widespread in Syria at war that a word for it has been coined in the local dialect: *ta'fīsh*.¹⁶

10) The rationale for what the regime called 'reconciliation agreements' is found in the Russian-led so-called Astana Process that began in 2015: These range from compromises in which, after a ceasefire, opposition fighters remained involved in security and governance roles in their areas, to cases of the opposition's virtual surrender and the evacuation of combatants and sometimes whole populations. Hinnebusch, Raymond and Imady, Omar (2018): 'Syria's Reconciliation Agreements', *Syria Studies*, 9 (2), 1-14, available at: <https://ojs.st-andrews.ac.uk/index.php/syria/article/view/1558> (accessed 28 May 2018).

11) See, for instance, UN Human Rights Council (2018): 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', A/HRC/39/65, available at: <https://www.ohchr.org/en/hrbodies/hrc/iicisya/pages/independentinternationalcommission.aspx> (accessed 15 Oct. 2018).

12) Interviews in Lebanon with twelve families of Izz al-Din, April 2017 and March 2018.

13) Interviews in Lebanon with two families from al-Hamra, March 2018.

14) Many testimonies are posted on the website 'Raqqa is Being Slaughtered Silently' (in Arabic), available at: <https://www.raqqa-sl.com> (accessed 12 Feb. 2019).

15) 'Home may be forever lost for displaced within Syria', Associated Press (14 Jul. 2018), available at: <https://apnews.com/e0c4b19a74e14a7386b820c506dbcb88> (accessed 22 Jul. 2018).

16) *Ta'fīsh* comes from the word 'afash, which means household items (furniture, wooden panels, wiring etc). It is linked to the verb 'affasha: stealing, looting and reselling in second-hand markets. During the Lebanese civil war (1975-1990) the term was used to describe house looting by the Syrian Army.

For Syrians threatened by such looting and confiscation, and especially displaced persons, protecting their property becomes paramount: Not only does it usually represent a family's main patrimonial asset, the fruit of years of work and saving, but it also represents the promise of being able to return – one day.¹⁷ In this regard, protecting property is one of many explanations given for splitting up displaced families, both internally and across borders. Whenever possible, someone is left behind to guard the house. If no one remains, whenever it is safe to travel, a family member returns to check on the home.¹⁸

Constrained transactions are the second aspect of the process of dispossession found in war economies. Individuals are dispossessed of their main assets (household goods, car, professional tools or goods etc) and sometimes also property in transactions characterised as 'constrained'. Many Syrians the author has interviewed since 2014 found themselves forced to progressively sell most or all of their belongings and assets to survive, once they had exhausted their savings. 'When the bombardments started, we left. There was nothing we could take with us as we were at risk of having everything stolen from us at the [army] checkpoint. I could only take my jewellery with me, and I sold it. (...) But what was worth a thousand dollars, I sold for a hundred,' explains Nisrine, who comes from Nawa, a small city near Deraa.¹⁹

These sales are doubly 'constrained'. First, by the deep, generalised impoverishment found in Syria since the war started. According to the UN, 69 per cent of the population now lives below the poverty line (less than USD 1.90 per day) compared with 30 per cent before the conflict.²⁰ A UN report from 2017 indicated that 36 per cent of the assessed communities had resorted to selling assets in order to cope with the lack of shelter and other non-food issues (Table 1), and 7 per cent had sold their houses or land.

17) In an assessment conducted in some regions of Syria in late 2016, IDPs reported that their properties had been damaged (44% of all households), destroyed (36%) or looted (34%). Source: REACH (2017): 'Shelter and NFI assessment: Syria', available at: http://www.reachresourcecentre.info/system/files/resource-documents/reach_syr_unhcr_shelter_nfis_executive_summary_report_march_2017_0.pdf (accessed 29 Apr. 2017).

18) Interviews with Syrian refugees in Lebanon, France, Egypt and the United Kingdom, 2015-2019.

19) In Syria, a dowry mostly consists of gold jewellery. Interview, Nisrine, Beirut, Lebanon, 5 April 2017.

20) OCHA (2017): 'Syria 2018: Humanitarian Needs Overview: Millions of people face a daily struggle to survive', available at: <https://www.unocha.org/story/syria-2018-humanitarian-needs-overview-millions-people-face-daily-struggle-survive> (accessed 15 Dec. 2017).

TABLE 1: COPING MECHANISMS OF COMMUNITIES FACED WITH LACK OF SHELTER AND OTHER NON-FOOD ISSUES

Coping Mechanisms	%
Spending savings	22
Borrowing money/buying on credit	18
Selling household assets/goods	16
Selling productive assets or means of transport	13
Reducing non-food expenses	10
Selling house or land	7
High risk or illegal work	6
Reduce nutritional intake	5
Begging	3
Others/don't know	1

Source: OCHA, Humanitarian Assessment of Needs 2018, Nov 2017, p. 65; Author's own calculations

Although some sales are made in good faith, generally sales effectuated during the conflict reflect the pervasive war economy that tilts the balance of power toward buyers. Nisrine's story illustrates how, over the years, Syrians' assets have been sold at very depreciated prices. This further deepens the impoverishment of many people, while a few have built fortunes by acting as intermediaries or directly benefiting from these transfers. The war profiteer has become a central figure of economic life.²¹ Finally, criminal gangs are also reported to be exploiting the situation to make fraudulent transactions, forge false ownership documentation and force sales.²²

Such transactions – constrained by poverty or an asymmetric balance of power – have been made throughout the Syrian conflict. Although it is impossible to measure them now, they clearly lead to important transfers of private assets, including property.

DISPOSSESSION AND LEGAL DOCUMENTATION

In the war in Syria, people are losing their homes through many different processes. This section focuses on the changed recognition of property rights brought about by the war. Whereas alternative types of ownership documentation had enjoyed a certain degree of recognition in pre-war Syria, the provision of legal titles and documentation of tenure and ownership has become a key aspect of HLP dynamics.

21) Vignal, Leïla (2018): 'Produire, consommer, vivre: les pratiques économiques du quotidien dans la Syrie en guerre (2011-2018)', Critique Internationale, 80 (3) (numéro spécial), available at: https://www.academia.edu/37492280/Produire_consommer_vivre_les_pratiques_%C3%A9conomiques_du_quotidien_dans_la_Syrie_en_guerre_2011-2018 (accessed 30 Oct. 2018).

22) Hallaj, Omar Abdulaziz (2017): 'Urban Housing and The Question of Property Rights In Syria', State of Syrian Cities 2016-2017, available at <https://syrianechoes.com/2017/12/21/urban-housing-and-the-question-of-property-rights-in-syria/> (accessed 19 Apr. 2019)

HLP documentation issues are not new in Syria. Before the war, large shares of the urban population inhabited informal neighbourhoods and had no formal property titles.²³ In place of legal deeds, alternative documentation and procedures enjoyed a certain degree of recognition – enough to provide a base for transactions.²⁴ In one case, Baudouin Dupret and Myriam Ferrier gathered the various documents and procedural steps needed to establish the ownership of a flat to be sold in Yarmouk because there were no official deeds.²⁵ Before the war, when Syrian authorities were unable to provide sufficient housing, they implicitly recognised most of the informal neighbourhoods and connected them to the main electricity, water and road networks, and even provided some of them with schools, health centres and other public services. During the war, however, the issue of formal and legal documentation was replaced by destruction, the size of the displacement (more than half the Syrian population), and political and military objectives.

The war has led to the increasing loss of documentation – both property deeds and personal identification. Property titles have been destroyed or damaged in bombardments, and many displaced people either left deeds behind to be looted or destroyed, or lost them as they fled. In a study conducted in Jordan in 2016, 75 per cent of Syrian refugees declared that before leaving they had had some sort of documentation, while only 20 per cent of IDPs said they still had their documentation; 35 per cent reported that their documents were destroyed or lost.²⁶ A study showed that in the south of the country, only nine per cent of displaced Syrian families had their property deeds.²⁷ Documentation is also lost through the confiscation of personal identification and property records at checkpoints by the army, militias and other armed groups. Confiscating IDs makes it possible to record exactly who is leaving and from where; confiscating HLP documentation deprives people of proof of ownership as well as the ability to reclaim their property and possibly return.

Other breaches of Syrian ownership rights stem from difficulties in creating documentation during the conflict. On one hand, violence, confrontation and the country's fragmentation impede access to local land and housing registry offices, while on the other, many Syrians do not take the necessary steps to replace lost deeds or register transactions because, fearing for their personal safety, they prefer to avoid the local administration. This is particularly true for people in rebel-held areas – the majority of IDPs – as well as for anyone associated with the opposition.

The destruction of registry offices further hinders registering transactions and replacing lost or damaged documentation. Some offices have suffered the general fate of neighbourhoods controlled by the opposition: They have been destroyed by bombardments. Others, however, seem to have been destroyed intentionally, such as the registry offices in

23) For instance, about 40% of the population of Damascus: Clerc, Valérie (2014): 'Informal settlements in the Syrian conflict: urban planning as a weapon', *Built Environment*, 40 (1), p. 34-51, available at: <https://halshs.archives-ouvertes.fr/halshs-01185193/document> (accessed 3 Sep. 2014) or 45% of the population of Aleppo: The Aleppo Urban Development Project (2009): 'Informal Settlements in Aleppo. Rapid Profiles of all Informal Settlements in Aleppo', a joint undertaking of the Municipality of Aleppo and the German Agency for Technical Cooperation, available at: http://c4sr.columbia.edu/conflict-urbanism-aleppo/seminar/Case-Studies/Informal-Settlements/img/Report_Informal%20Settlements.pdf (accessed 7 Mar. 2019).

24) See the chapter by Hanna and Harastani in this volume on alternative types of HLP documentation.

25) Dupret, Baudouin and Ferrier, Myriam (2012): 'Selling One's Property in an Informal Settlement: A Praxeological Approach to a Syrian Case Study' in Ababsa, Myriam, Dupret, Baudouin and Denis, Eric (Eds.): *Popular Housing and Urban Land Tenure in the Middle East: Case Studies from Egypt, Syria, Jordan, Lebanon, and Turkey*. American University Press, Cairo and New York.

26) Cunial, Laura (2016): 'Housing, land and property (HLP) in The Syrian Arab Republic', Norwegian Refugee Council Briefing Note, available at: <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf> (accessed 5 Nov. 2017).

27) Norwegian Refugee Council (2017): 'Displacement, HLP and access to civil documentation in the south of the Syrian Arab Republic', available at: https://www.sheltercluster.org/sites/default/files/docs/final_nrc_displacement_hlp_and_civil_doc_s_syria_23_07_2017_en.pdf (accessed 5 Nov. 2017).

Zabadani, Darayya, al-Qusair, or Homs – all by regime forces.²⁸ For instance, in Homs in July 2013, a fire burnt down one single building, that of the land registration department – which was located in the most secure part of the city.²⁹ The civil and land registry building in the northern city of Manbij was also destroyed by fire, in August 2016. The Syrian Democratic Forces (SDF),³⁰ which is dominated by forces linked to the Kurdish Democratic Union Party (PYD), had just captured the city from the Islamic State group. Opposition groups accused the PYD of setting the fire to deprive local Arabs of their property titles.³¹

These cases illustrate the significance formal documentation has acquired in a place where more than half of the population is displaced and fears dispossession. This may explain why, shortly after the fire in Manbij, Abdul Karim Idriss, head of Syria's General Directorate of Cadastral Affairs, announced that all property deeds in Syria were safely stored – electronically. Should copies actually exist, people with legal ownership deeds will have some protection against forced expropriation and eviction. However, Idriss did not mention that the programme to digitalise deeds was only intended to register acts beginning in 2010 – and that it had been halted soon after the uprising started.³²

The war has made securing deeds a central concern for Syrians. In opposition-held areas, local councils have tried to address this matter by setting up their own land and property registries. In the city of Douma in Eastern Ghouta, for instance, activists ran an office that recorded ownership and inheritance, and oversaw sales and other transactions.³³ Such registries have been crucial for protecting property from theft and settling disputes about ownership and rents. Civil society organisations have also addressed this question. The Free Syrian Lawyers Association (FSLA) operates four offices in the governorate of Idlib (in Maarat al-Numan, Jabal al-Zawiya, Saraqib and Idlib city centre) to register contracts and other types of civil administrative issues (sales, purchases and rentals).³⁴ The FSLA also launched a programme to protect the HLP rights of the population in parts of northern Syria by archiving land and property registers and smuggling them to a safe place outside Syria.³⁵ However, it is unlikely that alternative records will be recognised by the al-Assad regime: Legislative Decree 11 of 2016 clearly states that property registrations made in areas outside of regime control are null and void.

The conflict has put an end to the broad understanding and relative tolerance that characterised ownership and property rights in Syria before 2011. Indeed, as a consequence of the various dynamics of dispossession described in this chapter, the issue of land and property rights is now framed in strict legal terms that require registered documents for proving ownership. De facto and de jure, it excludes large swaths of the population: those

28) UNSC (2018): 'Letter dated 12 July 2018 from the Permanent Representatives of Germany and Turkey to the United Nations addressed to the Secretary-General and the President of the Security Council' (S/2018/700), available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFC-F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_700.pdf (accessed 14 Sep. 2018).

29) Unruh, Jon D. (2016): 'Weaponization of the Land and Property Rights system in the Syrian civil war: facilitating restitution?', *Journal of Intervention and State Building*, 10 (4), 459; The Syrian Human Rights Committee (2013): 'Harq Al-Sijl Al-Iqari fi Homsmiin Qibal Al-Quwat Al-'Askariya Al-Hukumiyah' (The burning of Homs land registry by the government military forces) available at: <http://www.shrc.org/?p=15314> (accessed 15 Apr. 2017).

30) The SDF is a coalition dominated by the People's Protection Units (YPG), the armed forces of the PYD.

31) 'Fire in Manbij Land Registry Highlights Issue of Land Property in Syria', *The Syria Report* (22 August 2016).

32) Unruh (2016).

33) Darwish, Sabr (2016): 'Syrians under Siege: The Role of Local Councils', *Arab Reform Initiative Policy Alternatives*, available at: <https://archives.arab-reform.net/en/node/976> (accessed 13 May 2019).

34) 'Safeguarding the Rights of Syrian Citizens', *Institute for War and Peace Reporting* (23 Aug. 2016), available at: <https://www.refworld.org/docid/57beb3494.html> (accessed 23 Jul. 2017).

35) 'In rebel Syria, a race to save precious property deeds', *AFP* (20 Jun. 2018), available at: <https://www.france24.com/en/20180620-rebel-syria-race-save-precious-property-deeds> (accessed 20 Jun. 2019).

who no longer have *any* documentation, as well as those who had never had *formal* titles. This is consistent with the regime's intention to displace and dispossess the populations deemed opponents.

DISPOSSESSION AND URBAN PLANNING

The government has been emptying whole neighbourhoods and transforming property rights through the 40 decrees and laws on housing, land and property that have been adopted since the beginning of the war. This section shows how these pieces of regulation and legislation have created a legal basis to justify the transformation of urban land status. They are also vehicles serving neo-patrimonial interests close to the regime of Bashar al-Assad. Finally, they formalise the transfer of valuable urban land – that is free of inhabitants.

Transforming the status and use of urban land

In 2012, the Syrian government adopted two important decrees on urban planning. Legislative Decree No. 40 of 20 May 2012 ordered the demolition of all unauthorised buildings in 'illegal' neighbourhoods. Decree 66 of 18 September 2012 aimed to 'redevelop areas of unauthorised housing and informal settlements' in two areas in the southern Damascus agglomeration: the southeast part of Mezzeh and Kfar Sousseh on one hand, and the areas of Qanawat, Basateen al-Razi, Darayya and al-Qadam that were opposition strongholds, on the other. Decree 66 included provisions for expelling the inhabitants, expropriating property owners and initiating real estate projects.

These decrees were timed with military operations that either destroyed housing through bombardments or cleared valuable urban land through razed-to-the-ground operations carried out by bulldozers and excavators. The targeted areas are mostly informal neighbourhoods in peri-central locations held by the armed opposition. Justification for these operations usually combines military reasons (emptying a neighbourhood of rebel fighters and securing frontlines) with political (retaliation for supporting opposition combatants) and administrative (implementing planning regulations) ones. Hence the two decrees of 2012 provide the legal grounds to pursue military strategies (targeting opposition areas) in violation of international humanitarian law. For instance, between October 2012 and October 2013, seven such operations – five in the Greater Damascus area and two in the Hama suburbs – were conducted under the supervision of regime forces, the army or security services.³⁶ They have been documented.

The two decrees of 2012 are also timed with re-launching 'the detailed studies' – pre-war urban renewal projects in informal neighbourhoods near central Damascus.³⁷ The studies were developed in the late 2000s, when private investment in real estate development projects was encouraged.³⁸ Private Syrian and foreign investors had hoped the studies

36) A detailed analysis of these operations and their justification is developed in Vignal (2014a), p. 335-338.

37) Urban renewal consists of demolishing and reconstructing areas targeted for redevelopment – as opposed to urban regeneration, which involves regularisation/legalisation and upgrading. See Clerc (2014).

38) Vignal, Leïla (2014b): 'Dubai on Barada? The Making of "Globalised Damascus" in Bromber, Katrin et al.: Under Construction. Logics of Urbanism in the Gulf Region. Ashgate, Farnham.

would pave their way to acquiring prime urban location for megaprojects that would upgrade Damascus into a more ‘globalised’ city. However, the Gordian knot for the potential implementation of these urban megaprojects was the fate of local populations. They could not be expelled en masse. However, just a few years later, the informal settlement areas that Decree 66 targeted for ‘redeveloping’ largely overlapped the areas considered for urban renewal in the late 2000s. In the meantime, bombardments, demolition operations, forced displacements, the lack of legal property titles and new urban legislation had conveniently emptied these areas of their populations.

Defining a new urban compact

Since 2015, Russia’s engagement, along with that of Iran, has tilted the war dynamics in favour of the al-Assad regime. This context makes it easier for the Syrian government to promote the economic interests of a small group of private investor-supporters who are defining a new urban contract based on exclusive, high-end real estate projects. Decree 19 of 2015 formalised the funding and management model for these projects: First, a holding company that is fully owned by an ad hoc Local Administrative Unit (LAU) is established. This publicly owned holding company then establishes private firms under its umbrella. However, since such joint ventures have no ownership ceilings, private partner firms are allowed to hold the majority of shares. This allows private companies to access public land for their own real estate projects.

Two large-scale urban projects have been announced in the areas defined by Decree 66 that were heavily destroyed in the conflict and mostly depopulated. The first, Marota City, launched in 2016, is to be built on 214 hectares – covering the former informal neighbourhood of Basateen al-Razi in Mezzeh, whose residents were at the forefront of the 2011 uprising. The second project, Basilia City, was announced in 2018. Its 880 hectares – four times the size of Marota City – will obliterate neighbourhoods in Mezzeh, Kfar Souseh, al-Qadam and Darayya. In 2019, only basic land preparation for Marota had begun.³⁹ The Damascus Cham Holding Company, set up by the Damascus governorate to operate Marota City in 2016, has created six joint ventures with private companies. All the affiliated companies belong to powerful Syrian businessmen close to the regime, including Samer Foz (Aman Group), who made a fortune during the war, and Rami Makhoul (Rawafed Company), the biggest pre-war Syrian tycoon and a cousin of Bashar al-Assad.⁴⁰

These examples show how urban legislation passed during the conflict is encouraging socially and spatially exclusive private-sector urban development projects that seem to be quite unrealistic given the current state of the society and country. The new laws also help perpetuate pre-war crony capitalist practices that allow a pool of loyal businessmen close to the regime to profit from privileged access to public assets.⁴¹

39) Source: Author’s analysis of satellite images of this area at different dates (10 Nov. 2016; 28 May 2017; 30 Nov. 2018; 23 Mar. 2019; 22 Jun. 2019). Satellite images sourced from Google Earth.

40) ‘List of Joint-ventures Established Between Damascus Cham Holding and Private Investors’, The Syria Report (17 April 2018).

41) ‘Factsheet: Marota City, Syria’s Most Controversial Investment Project’, The Syria Report (1 June 2018).

Securing the transfer of valuable urban property

Since 2016, numerous urban redevelopment projects that make use of a variety of legal vehicles have been announced. The projects are unlikely to be anywhere close to seeing the light of day in a country that has been heavily destroyed and bled dry, and is administratively dysfunctional.⁴² However, new legal frameworks make it possible to expel the populations of informal neighbourhoods, transform individual ownership rights and transfer property owned by individuals to public and private bodies.

In 2018, a call for tender was for instance published for redeveloping 23 areas under Law 15/2008,⁴³ amongst them the neighbourhood of al-Haidarieh in Eastern Aleppo, one of Syria's larger informal neighbourhoods before the war that was thoroughly destroyed in the four years the area was held by armed rebel groups. The 118-hectare development is planned for 45,000 inhabitants. The tender describes the government-owned land as 'expropriated', without explaining what that entailed.⁴⁴

The publication of Law 10 on 2 April 2018 marks a turning point in this process: By extending Decree 66 to the whole country, it allows any LAU to identify real estate redevelopment zones in informal neighbourhoods within its territory⁴⁵ and significantly reduces the rights of the original owners in these areas. Among the many contentious issues with regard to HLP rights are Law 10's provisions for expelling former inhabitants, inadequate compensation schemes that hinder the original owners' ability to retain their property and unrealistically short time periods (less than a year) for owners to take action – given the highly disorganised and understaffed administration, protracted displacements, political strife and safety issues. The loss, destruction and confiscation of many ownership titles during the war will likely hinder people getting their rights recognised. To this needs to be added that most of the inhabitants of informal neighbourhoods did not have legal titles in the first place, so even if they wanted to, they would not be able to claim any kind of compensation.

War has transformed access to valuable urban land in two ways. Firstly, it cleared large swaths of constructions in informal neighbourhoods and depopulated them. Secondly, urban regulation and legislation have been used to unlock access to valuable urban land – facilitating expropriation and ownership transfers that likely will benefit the private economic players close to and in the regime. This could result in projects that disrupt the physical, social and political urban fabric. Some of Syria's neighbourhoods wilfully erased by the war now risk being wilfully erased a second time – by regime-led reconstruction.

CONCLUSION AND POLICY RECOMMENDATIONS

This chapter presents a typology of post-2011 dispossession in Syria and shows how that stems from multiple interrelated processes. Dispossession results from military and political tactics (destroying opposition areas to forcibly displace the population inside

42) Syria's gross national product is estimated to have shrunk from pre-war SYP 60 billion to just SYP 15 billion in 2019.

43) 'List of Real Estate Development Areas', The Syria Report (13 March 2018).

44) 'Aleppo Announces Launch of Works on Informal Area', The Syria Report (30 March 2018).

45) A short video presentation of Law 10/2018 and its implications is found in English and Arabic on the Syrbanism website: <https://www.syrbanism.com/law10> (accessed 14 May 2019). See also the chapter by Hanna and Harastani in this volume.

and outside the country), which advance the aims of small groups of investors to secure valuable (empty) urban land. It is also a consequence of the very difficult circumstances that compel targeted populations to sell their assets to survive, and is an effect of asymmetric wartime power relations (resulting in the likes of constrained sales and occupation). War also transforms the definition of ownership. The need to present legal deeds and titles helps the al-Assad regime deprive large sections of the Syrian population of their ownership rights, which had been based on informal procedures. A new legal urban redevelopment framework for a select loyal business elite excludes large sections of the population and promotes a city that caters to the few. Wartime processes of dispossession facilitate massive asset transfers that deprive millions of Syrians of their HLP rights, and ultimately of their homes.

HLP rights in Syria heavily depend on future Syrian politics. If a political transition were to bring about an inclusive political solution (as enshrined in Resolution 2254/2015 of the UN Security Council), it would be possible to restore HLP rights following the Principles of Housing and Property Restitution for Refugees and Displaced Persons adopted by the UN in 2007.⁴⁶ These ‘Pinheiro Principles’ aim to secure the return of people not only to their country or city but also to their own homes. They address HLP restitution claims and present a framework for the restitution of lost deeds, compensation, recognition of alternative ownership rights and other competing ownership claims. They also deal with the various wartime transactions and changes.

The main obstacle to implementing this transparent, equitable, independent and non-discriminatory framework is the political and military situation in Syria. The current regime, which is likely to remain in power in the coming years – as long as its Russian, Iranian and Lebanese Hezbollah allies support it – will seek to obstruct this option. This chapter has shown that destruction, displacement and dispossession feed the regime, as Bashar al-Assad implied when he talked about how the armed conflict had created a healthier, more harmonious Syrian society. With the ruling elites bent on regime survival,⁴⁷ they have no interest in discussing transparent, inclusive, and rights-based reconstruction.

This chapter shows that reconstruction has already started in Syria: a regime-led reconstruction that excludes unwanted populations and advances the interests of regime cronies. The international community has no room to manoeuvre. Instead it is left facing a dilemma expertly crafted by the al-Assad regime since the beginning of the war: how to support the Syrian population without supporting its leaders?⁴⁸

In this context, policy options are definitely limited. This makes it all the more urgent to engage with initiatives by Syrian civil society, NGOs and all relevant actors that seek to protect HLP rights through ad hoc programmes. The international community should be reminded of the importance of protecting the HLP rights of Syrians inside and outside Syria in all relevant diplomatic arenas. This is crucial so that countries, investors and humanitarian agencies that fund well-intentioned programmes (including the delivery of humanitarian aid, small-scale infrastructure rehabilitation projects and service provision) do not inadvertently fund violations of Syrians’ HLP rights.

46) OHCHR (2007): ‘Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the ‘Pinheiro Principles’, available at: (https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf) (accessed 14 May 2019)

47) Heydemann, Steven (2018): ‘Beyond Fragility: Syria and the Challenges of Reconstruction in Fierce States’, Foreign Policy at Brookings, available at: (https://www.brookings.edu/wp-content/uploads/2018/06/FP_20180626_beyond_fragility.pdf) (accessed 11 May 2019).

48) Lynch, Marc and Yahya, Maha (eds.) (2018): ‘The Politics of Post-Conflict Reconstruction’, POMEPS/Carnegie Middle East Center, available at: (https://pomeps.org/wp-content/uploads/2018/09/POMEPS_Studies_30_Post-Conflict_Web.pdf) (accessed 14 May 2019).

Syrian ownership rights documentation and the challenge of ‘reconstruction’

By Nour Harastani and Edwar Hanna

INTRODUCTION

This paper presents a historical¹ and legal overview of the various formal and informal property ownership types in Syria, and analyses how they are being challenged by current ‘reconstruction’ and legal changes. New requirements for proving ownership are threatening millions of ordinary Syrians’ property rights. This is happening in a context of crisis and displacement, in which armed conflict has damaged or destroyed many properties, forcing many hundreds of thousands of Syrians to flee their homes.

Syrians are experiencing a crisis regarding their housing, land and property (HLP) rights. This chapter seeks to demonstrate the need for mechanisms and support to systematise and document both formal and informal HLP rights so that Syrians can access HLP justice. The research question is threefold: What are the various types of formal and informal property ownership in Syria? How are present reconstruction policies and practices impacting HLP rights? How are ordinary Syrians – both internally displaced persons (IDPs) and those who have sought refuge outside the country – affected, and how can they protect their HLP rights?

We have used a mix of methodologies to explore these questions: a historical review of the development of HLP rights in Syria; primary research with displaced Syrian property owners inside and outside the country using an online survey; an analytical literature review; and interviews with experts in/of the field on this issue. The survey presented a set of questions to determine Syrians’ knowledge, attitudes and behaviours regarding their property rights.² The authors’ social media networks were used to access (self-selecting) respondents. Although the sample is not representative, it illustrates a group of displaced Syrians. The literature review included academic papers, reports, legislation, articles and opinion pieces. Interviews were conducted with key experts who have been active in these research areas.

1) For more historical details, please see the annex.

2) Analysis of the survey is available at: <https://www.syrbanism.com/hlp-rights-survey>. Syrbanism is an urban initiative founded in 2017, which uses multidimensional methods to help Syrians challenge injustice. It tackles issues ranging from the community to the international level with initiatives to raise awareness, research, campaigns, rights-based mapping and advocacy.

The survey responses give an idea of the many different Syrian property types. Respondents report extensive damage to their properties and are aware when they are empty and vulnerable. They are concerned about their properties and protecting their property rights regardless of whether they are occupied, empty, damaged or undamaged, destroyed or intact. Strong knowledge networks link them with ‘back home’, although they are displaced and far from their homes and communities.

A key finding is that, although they are displaced, the majority of respondents still have their ownership documentation. However, they are not aware of how to use this documentation in the new reconstruction process and have little access to – and little engagement with – the relevant local authorities. Respondents are not optimistic about ‘reconstruction’: They don’t trust the ‘reconstruction’ agenda and have few hopes of securing their property rights.

HLP rights in Syria are under threat from the current ‘reconstruction’ agenda. The study’s key conclusion is that building a sustainable and inclusive reconstruction process requires policies that take into consideration the distinctive characteristics of ‘informal practices’. It is crucial to develop mechanisms to help people transparently and securely document their home ownership and property wherever they are. We recommend that further research be conducted to explore how the Syrian diaspora can protect their property rights in light of the limited access they have to their properties, and to explore the diaspora’s potential role in reconstruction.

The study aims to highlight possible solutions and potential areas for action on Syrian HLP rights by the international community and the Syrian government. A new legal and political approach is needed. The documents-only approach to HLP claims that the Syrian government has adopted is problematic in the post-conflict environment, where many claimants have only partial, informal, unverifiable and/or irrelevant documentary evidence. A rights-based policy for housing, land, and property rights should be developed in Syria. We focused on action areas including raising awareness about documenting rights, practical information, information and communication technology (ICT) documentation tools for individual and communities, and international advocacy regarding the legal, technical and political dimensions of Syrians’ HLP rights.

This research paper begins by introducing the research and context, then reviews current HLP policies. Next, the primary research findings are presented and recommendations offered. A historical review and glossary are found in the annex.

THE CURRENT CONTEXT

This paper examines the ongoing crisis in Syria that has thus far forced more than 5.5 million people to leave the country and displaced 6.3 million – who have left behind more than 600,000 damaged houses³ – in light of the government’s agenda to rapidly ‘reconstruct’. Reconstruction requires the millions of Syrians who fled their homes to produce new legal documents proving ownership – while they are displaced and the armed conflict is not over.

3) OCHA (2017): ‘World Humanitarian Data and Trends 2017’, available at: http://interactive.unocha.org/publication/datatrends2018/src/reports/World_Humanitarian_Data_and_Trends_2017.pdf (accessed 03 Oct. 2018); Aita, Samir et al. (2017): ‘Urban Housing and The Question of Property Rights in Syria’ in The State of Syrian Cities 2016-2017, available at: <https://drive.google.com/file/d/1bra99ucA6ELPQVj6p-wVlVxXdjThWh4B/view> (accessed 03 Oct. 2018).

New urban policies and laws are further excluding and dispossessing many Syrians, especially those who do not have the proper documentation to claim their HLP rights.

Syria's legislative framework on ownership has a complex history that goes back centuries. Since before the Ottoman era, each ruling system has added new layers of legislation. Under the French Mandate, a 'cadaster' was established to register land in the statutory system. However, customary and informal transactions were not registered, and while a cadaster was opened in each governorate, there was no centralised record.⁴ Long before the conflict erupted in 2011, this convoluted and the lack of coherent urban policies, social services and affordable housing had forced Syrian citizens to use alternative methods to document their ownership.

In Syria, informal settlements are illegal, and although most have been provided with electricity and water, residents are not deemed legal owners. They had to use electricity and water bills to prove that their property exists; their receipts have provided limited rights akin to ownership. Because such rights are generally recognised, despite not being formally registered, in theory, residents must be compensated for being relocated.⁵ While electricity bills have been customarily acknowledged as documenting owners' rights, since they are unofficial, they cannot be used as verifiable documents. This shows the blurry line between formal and informal ownership. Alternative collective practices engendered a parallel – informal – system which, in the context of reconstruction, risks being disregarded.

While the armed conflict continued, the state issued laws overriding the collective practices and rights that had been developed in one neighbourhood and then were scaled up and duplicated in other informal settlements. Many residents are still displaced. The new regulations have ruptured the collective social contract for establishing ownership, leaving many people vulnerable to losing their rights. This is a huge risk during wars, when physical neighbourhoods are unrecognisable, communities dispersed, and collective rights lost and neglected.

DOCUMENTATION OF SYRIAN PROPERTY OWNERSHIP

In Syria, clearly distinguishing between legal/illegal and formal/informal is difficult. However, the following types of documentation are the most common:

- Certificate of title ('green tapu'): Cadaster records are commonly called 'green tapu'.⁶ In 2011, 30 per cent of Syrian properties fell into this category, according to a real estate banker.⁷ The green tapu is a title in the land registry that details all relevant information. Any act related to the property, such as a sale, relevant court decisions, division, inheritance, expropriation etc, is part of the record. This information is publicly available; anyone can obtain a copy. This is the most secure form of property documentation.

4) Cunial, Laura (2016): 'Housing, land and property (HLP) in The Syrian Arab Republic', Norwegian Refugee Council Briefing Note, available at: <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf> (accessed 28 Oct. 2018).

5) Based on previous decree issued in 1975.

6) The tapu is 'green' because the pages are usually made of carbon paper with a green-blue background. It contains a table of/with the land/property information.

7) As cited in the following newspaper report: 'Only 30% of all properties are registered under green tapu; there are no credits for informal settlements.' Al-Thawra (25 Jul. 2011), available [in Arabic] at: <http://www.syriasteps.com/?d=207&id=71919> (accessed 3 Oct. 2018).

- Court order (*hikem mahkama*): This type of document is used when a parcel of land is zoned for a particular use (mostly residential) by the master plan and the owner builds a property on the land without obtaining official permission, which is required even if the project conforms to the master plan's land use.

If a landowner sells apartments built without a permit, the cadaster only acknowledges the land, not the property. A court order documents the sale and secures the right of ownership of the property. The owner and the buyer, represented by lawyers, have to go to court to confirm the transaction. The court visits the apartment and makes a full description of it, then issues an order confirming the sale and adds a label in the cadaster. Later, this label can be used to formally register the sales – if the landowner pays a fine (for having built without a permit). It, *hikem mahkama*, is less secure than the green tapu because it only documents the transaction of a sale or purchase in the form of label in the cadaster. *Hikem mahkama* is problematic when multiple properties were built on the same parcel and sold to different buyers. Each of these properties require a label registered in the cadaster in the order they were sold. This can result in late buyers having to wait a long time to obtain formal certificate of title ('green tapu'), since labels are required to be transformed into formal titles following the same chronological order. Court orders can be rescinded if the buyer does not occupy the property for more than 15 years.

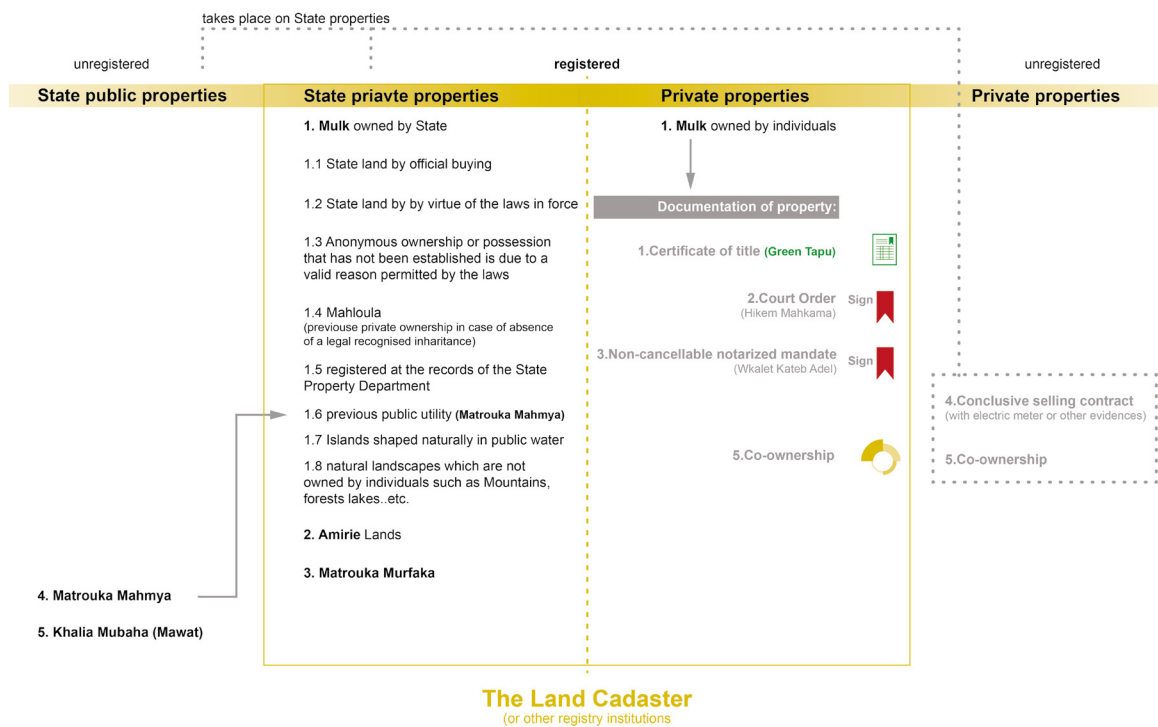
- Non-cancellable notarised mandate (*wkalet kateb adel*): This type of documentation resembles a court order because it, too, allows a new owner to secure ownership rights with a label in the cadaster. This type of documentation is used for property built on land not zoned for residential use in the master plan (agrarian land). To document ownership, the landowner has to sign an official consent (a mandate) to the buyer and register it in the cadaster. For each subsequent transaction, the mandate must be reissued to show the new buyer's name. If a landowner resells the same property to different individuals without providing a new mandate each time, a sale could be considered fraudulent, and the buyer won't secure ownership rights. Ownership rights go to the first person who marked a label in the cadaster.

- Conclusive sales contract: This is the most common type of documentation in informal settlements built on state land. Owners cannot register or document ownership in the cadaster or any other official registry but can use official institutions to obtain papers that may help them access compensation, as in the case of property demolition. A conclusive sales contract is drawn up between the current and future owner without any court documentation. After finalising the sale, the new owner must immediately take possession of the property.⁸ Then an owner should obtain more evidence from state institutions to strengthen their claim to ownership: get a property reconciliation from the Ministry of Finance to be able to register the property and pay taxes; pay bills in order to change the names on the electricity and water meters; or create a fictitious loan from someone using the property as security, and go to court to sue the debtor for non-payment – which serves as an official admission that the property exists. Over time such practices become accepted community practices rather than just individual actions. These collective practices provide the basis for the potential recognition of rights for the entire community.

8) 'Differences between types of ownership in Syria', Shaam Times (6 Apr. 2018), available [in Arabic] at: <https://bit.ly/2MDL0rz> (accessed 4 Aug. 2019).

- Co-ownership: Documentation of formally and informally owned properties in which different individuals own shares in a property. To have security in informal settlements, besides possessing the property, it is essential to buy over 75% of the shares.⁹

FIGURE 1: ALL SYRIAN OWNERSHIP TYPES AND THE CADASTER. SOURCE: AUTHORS.



CURRENT HLP POLICY CHALLENGES

Whether internally displaced, residing in neighbouring countries or in Europe and beyond, Syrian property owners are now required to defend their property rights. This must be done by providing documentation and participating in local urban reconstruction processes even if they are not residing in the area. This politicised approach is biased against owners and produces multi-layered challenges to HLP restitution.

On 18 September 2012, the Syrian government issued Legislative Decree 66 on the redevelopment and reconstruction processes in two informal zones in southwest Damascus – in accordance with the city's new master plan. This master plan raised the percentage of informal settlements to be completely demolished and reconstructed from 40 to 60 per cent of the informal settlements identified in the master plan. However, the settlements that were scheduled for demolition had not been devastated – or even affected – by the armed conflict: Redevelopment would take care of that.

9) 'Differences between types of ownership in Syria', Shaam Times (6 Apr. 2018), op. cit.

Legislative Decree 66 politicised urban renewal policies by revising a decree from 1975, which stated that an informal unit made of cement could only be destroyed if a replacement was offered in compensation – regardless of the unit's ownership status.¹⁰ While the 1975 decree provided some degree of security to informal property owners, Decree 66 classifies inhabitants according to their land tenure: (i) informal settlers who are illegally occupying public or private land, (ii) long-term tenants of informal units, (iii) owners of informal units built on agrarian land or (iv) owners of agrarian land. Categories (iii) and (iv) would be compensated with shares worth 80 per cent of the value of their property, (ii) would receive 30 per cent, and (i) would receive rent compensation for just two years. Residents in groups (ii) and (iii) only have the right to be rehoused if the shares they receive in compensation cover the cost of another apartment. This is not the case for many residents.

The decree requires a complicated process of documentation and strenuous efforts to provide proof of ownership. Many residents, including group (i), have lost their tenure due to insufficient documentation or have only managed to get rent compensation for a limited time. Others, like refugees who had no physical access to their property, lost it through their absence. In addition, the authorities did not take into account the fact that most of the informal units were much smaller than even the smallest planned rehousing units, meaning that when the value of the informal units are converted to shares, they will not suffice for even the smallest apartments in the new buildings. Informal residents will not be able to afford the extra shares needed to buy an apartment.

The documentation process exposed the municipality's lack of administrative capacity to administer Decree 66. It was necessary to extend the period allotted for the documentation process several times due to legal complications in defining types of land. The municipality also had to seek support from other state bodies. This raises the important question posed by Omar Abdulaziz Hallaj: 'If Damascus municipality has been executing Decree 66 since 2012 and they are not there yet, what municipality in present Syria has the capacity to administer the procedures proposed by Law 10?'¹¹

Decree 66 caused severe injustices and HLP rights violations, which a countrywide implementation of the policies in Law 10 are sure to exacerbate, especially given the challenge of submitting evidence for many among the 11 million people who have fled their homes. The history of Decree 66 is very pertinent to Law 10, which follows the same strategy on a much larger scale¹². In April 2018, the Syrian government issued Law 10, which permitted revising any master plan if the Ministry of Local Administration and Environment approves a feasibility study by the local administration unit (LAU). It also allows the Syrian government to award reconstruction contracts to national and international investors. Law 10 entitles the Syrian government to do nationally what was done in the single zone of Damascus five years ago – remove people from their homes, inadequately compensate them, dispose of their property rights, advance the agenda of external 'developers' and leverage urban reconstruction to wage war. Law 10 neglects the societies and cultures in

10) A presidential decree of 1975 stated that any 'informal buildings built of cement with a door and a window and covered with a reinforced concrete roof could not be destroyed without offering a dwelling in compensation'. See Clerc, Valérie (2011): "Mixity" in Urban Policies directed towards Informal Settlement Areas in Damascus, a Concept for Public Decision? 23rd ENHR Conference (European Network on Housing Research) Toulouse, France. ENHR p.4, available at: <http://www.enhr2011.com/node/28526>, 2011, WS09 - Housing and Urban Issues in Developing Countries, Session 1. <halshs-01185731> (accessed 30 Oct. 2018)

11) Interview with architect Omar Abdulaziz Hallaj, Beirut, 23 Oct. 2018.

12) Watch the online video by Syrbanism (2018): 'Property Law no. 10 and its applications on Syrian cities', available at: <https://www.syrbanism.com/law10> (accessed 30 Jul. 2019).

Syrian cities by targeting an area for reconstruction solely on the basis of the anticipated economic turnover of the projects planned there. Moreover, it places all decisions in the hands of the local administration, which does not have the capacity, experience or resources for such large-scale projects.

Despite its shortcomings, Legislative Decree 107 from 2011 foresees decentralisation, which increases local authorities' powers and opens the door for Syrians to participate in local councils. It presents the general definition, goals and mandate for administrative units such as governorates, cities, towns and municipalities, and provides for each to have an elected local council. Local councils are responsible for urban planning, industry, agriculture, trade, education, tourism, transport, services, and so forth. The decree paves the way for decentralisation by enabling local councils to execute development plans, increasing financial revenues for local councils, and enhancing public services.¹³ However, there is a big gap between the text of the law and its implementation, not only because of the way the Syrian government applies the law, but also because of the way citizens perceive it and the overall system of governance. There is a widespread sense that all reforms are futile; voters are too aware that the electoral process in Syria is one of mock elections.¹⁴

Decree 107/2011 means that people who own property that is not located where they were born and (civilly) registered may not participate in local council decisions regarding their property and neighbourhood reconstruction plans. For instance, in 2011, 30,000 to 40,000 people lived in the Damascus suburb of Qudsayya. Its civil registry now counts 3,500 people, only half of whom are eligible to vote: Less than five per cent of the original population can vote and have their interests represented and grievances heard.¹⁵ Most refugees and IDPs have no access to – or right to participate – in local council elections.

For its part, Law 10 decentralises reconstruction projects – in theory. But it also stipulates procedures that make it almost impossible for the more than 5.5 million Syrian refugees living abroad to claim ownership of their property. Although regenerating ownership evidence lost during the conflict is difficult, those with property registered in the cadaster can do it. However, those with property held under customary, tribal, or other forms of informal tenure¹⁶ see their documents or proofs become useless as they are not officially registered. Although these documents had value in the past due to the collective practice by communities, in the recent context of displacement these communities have dissociated and weakened, and so has their documents' value. While refugees and IDPs may have significant amounts of valid evidence, it may get lost or be neglected because owners do not understand the evidential value. Informal, unrecognised evidence – private information, photographs, anecdotes of elderly people and neighbours – that could help people with their claims gets lost through prolonged resettlement. All this evidence disappears during the long time of conflict. Evidence collection should start as soon as possible.

13) Syrian Law Journal (2018): 'The New Urban Renewal Law in Syria', available at: <http://www.syria.law/index.php/new-urban-renewal-law-syria/> (accessed 30 Jul. 2019)

14) Youssef, Myriam (2019): 'The 2018 Local Council Elections in Syria and their implications', in Turkmani, Rim and Theros, Marika and Hadaya, Sami (eds.), *Political Economy and Governance in Syria: Conference Presentations*, LSE Conflict Research Programme: London, available at: http://eprints.lse.ac.uk/100732/5/19_0110_Conference_Report_web_135.pdf, (accessed 31 Jul. 2019).

15) Interview with architect Omar Abdulaziz Hallaj, Beirut, 23 Oct. 2018.

16) Ibid.

Our survey shows that the Syrian diaspora are aware of whether their property is damaged, destroyed or occupied by third parties. But because they cannot access their properties, that knowledge does not make them feel confident they will be able to return home or help them conceive of how to reclaim ownership once they have become established in their host countries. The lengthy claim process discourages refugees and IDPs.¹⁷

Large-scale HLP restitution programmes are extremely difficult in a country recovering from war, which is challenged enough by the need to compensate and rehouse people.¹⁸

Amongst Syrian refugees, 89 per cent communicate with relatives and friends in Syria by mobile phone and social media.¹⁹ These tools could help address refugees' displacement issues until they can return. The online survey was conducted to capture the impact of the most recent urban legislation on Syrian IDPs and refugees.

SURVEY FINDINGS

The first part of this paper explained the various formal and informal types of property ownership in Syria and current reconstruction policies and practices. The survey helps to address our third research question: How are ordinary Syrians living in other countries or the internally displaced impacted and how can these groups protect their HLP rights? The survey uses a set of questions to discover Syrians' knowledge, attitudes and behaviour regarding their property rights: What types of ownership rights do they have – or did they have before the conflict? How do they perceive their situation? What types of practical resources are available? Do they know where to get information?²⁰

This sample of nearly 1,000 Syrian individuals is a modest start to researching and consulting displaced Syrians. Self-selected respondents were accessed through the authors' social media networks, which means they are not a representative sample of Syrian property owners, the Syrian diaspora or Syrian IDPs. They are, however, an illustrative sample of displaced individuals in all these categories.

This limited sample illustrates the war's impact and the potential effects of Law 10 on this set of respondents: people whose perspectives and situations deserve attention, but who are not being adequately consulted or researched during 'reconstruction' – whether by the international community or the Syrian national or local authorities empowered to 'reconstruct' their homes and communities in their absence.

It is not possible to conduct a more extensive survey in Syria with internally displaced homeowners at this time. However, it should be possible for the international community to survey Syrians outside the country. Unfortunately, the literature review and key experts' interviews reveal a lack of coordination and awareness of the need to research and collect data on HLP rights. Yet the level of property destruction and the mass displacement of

17) Unruh, Jon D. and Frank, Emily and Pritchard, Matthew (2017), 'A Digital Advance for Housing, Land and Property Restitution in War-Affected States: Leveraging Smart Migration', *Stability: International Journal of Security & Development*, 6(1), p. 15, available at: <https://www.stabilityjournal.org/articles/10.5334/sta.562/galley/449/download/> (accessed 4 Aug. 2019)

18) Ibid.

19) Ibid. p.11

20) The analysis of the survey is available at: <https://www.syrbanism.com/hlp-rights-survey>.

property owners and families, along with the rapidity of national and local ‘reconstruction’ programmes, make this an urgent necessity.

THE RESEARCH SAMPLE

- The online survey included 176 respondents representing properties related to 923 persons, with an average 5.2 persons per household. The online survey reached 9,200 persons and received 1,100 clicks and 39 shares.
- The sample was self-selecting, based on outreach to the researchers’ personal and professional networks amongst the diaspora in Europe, such as the Diaspora Network Alliance DNA (Brussels), The Aleppo Project (Budapest), Syrian Volunteers in the Netherlands SYVNL (Amsterdam), Heritage for Peace (Girona) and many others. Survey questions examined Syrians’ knowledge, attitudes and behaviour regarding property rights. They explored pre-conflict ownership rights, perceptions of the current situation, anecdotes about self-help measures, and awareness about where to seek information.
- The sample represents respondents inside Syria (48%) and outside (49%); three per cent of respondents did not disclose their location.
- The diverse geographical distribution of the sample ranges from countries in the Middle East (Syria, Turkey, Jordan, Lebanon, Egypt, UAE and Saudi Arabia), to Europe (Germany, UK, France, Denmark, Sweden and Netherlands), the USA and Canada.
- The sample is young (mostly under 50, with 70% of the respondents aged 18 to 35) – the same age group as the authors and many of their social contacts. It is also the age group of most displaced Syrians in the EU and North America, who use social media extensively. These networks are largely academic and professional, so the group and sample tend to be well educated. For that reason, it is not representative of displaced Syrians.
- The majority of respondents who self-identified as property owners were male (73% compared to 27% female), which reflects Syrian social norms of male responsibility for property ownership even amongst relatively young respondents.

While the respondents illustrate the situation, due to its modest size and self-selecting nature, the sample is not representative. The majority of displaced persons may be more diverse in age and income/education levels. Further research is required to examine the broader group.

KEY FINDINGS

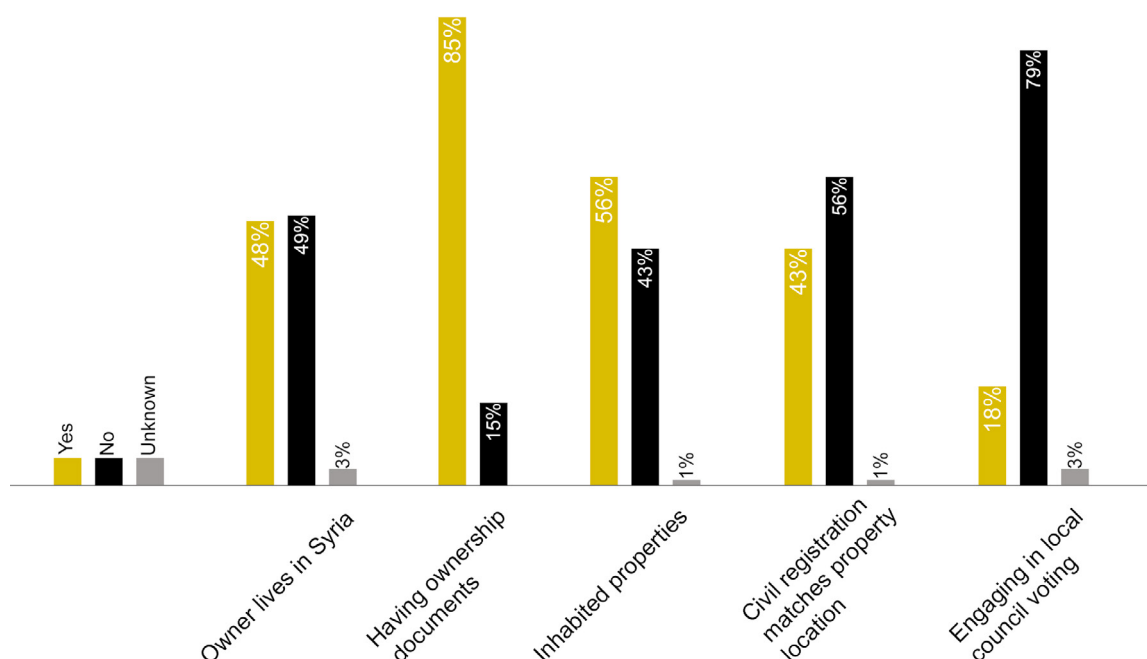
A high number of survey respondents own property or are related to property owners. This reflects the high degree of diverse types of property that include both formal and informal housing. The majority of respondents retain their ownership documentation despite their displacement – with 80 per cent reporting that they or their families still have the ownership documentation for their property, 60 per cent of document holders living outside Syria and 15 per cent lacking ownership documents.

The problem in protecting their rights arises from the nature of the documents. Even this small sample exhibits a diversity of property ownership types, which probably reflects the Syrian population. Of the respondents, 64 per cent reported having the most formal ownership documentation, the green tapu, which is registered in the cadaster.

Other ownership types include ‘court order’ ownership (9%) and the ‘non-cancellable notarised mandate’ (5%); four per cent report that they co-own property. Ownership includes both formal and informal property, with 12 per cent reporting informal ownership, 9 per cent a ‘conclusive sales contract with an electric meter’ and three per cent no documents. It is unlikely that these figures reflect the proportion of property types in the general population. However, they do show the diversity amongst a small group of owners.

‘Reconstruction’ laws must respect and honour this diversity of ownership types, rather than ignore them or use ‘informality’ to deny HLP rights. Robust systems are needed to process the documentation of all the different types of ownership in post-conflict ‘reconstruction’. The survey findings prompt the question whether local authorities have the capacity to manage such complexity under current government policy. These findings reinforce the urgency to defend property rights that were uncontested before 2011. Owners who are out of the country or internally displaced cannot defend their ownership claims.

FIGURE 2: RESPONSES ABOUT CURRENT RESIDENCY, OWNERSHIP DOCUMENTS, INHABITED PROPERTIES, CIVIL REGISTRATION AND ENGAGEMENT IN LOCAL COUNCIL ELECTIONS. SOURCE: AUTHORS.



Respondents reported owning large and small houses and apartments. This diversity of property types amongst such a small self-selecting sample shows the Syrian urban landscape’s diversity. ‘Reconstruction’ policies must not ignore this diversity in the interest of developing luxury apartment blocks and other building types that are central to the proposed reconstruction projects²¹.

The responses demonstrate that, conforming to Syrian ownership patterns, most respondents own apartments. Almost three quarters (73%) of respondents or their families

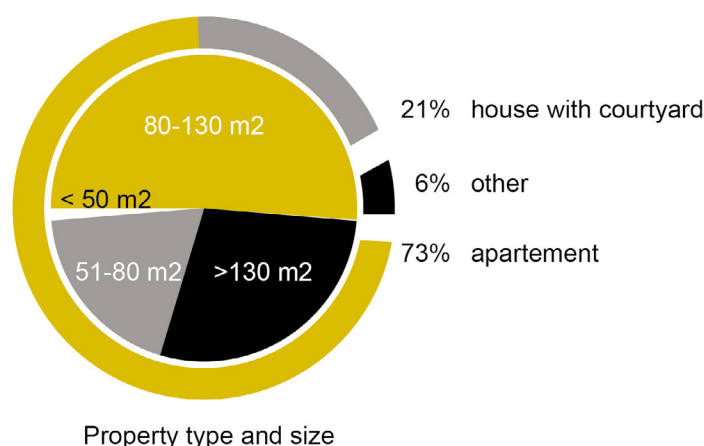
21) See the online video by Syrbanism (2019): ‘Marota city: Is this the type of reconstruction Syrians need?’, available at: <https://www.syrbanism.com/marotacity>.

reported owning apartments (35% of them relatively newly built). Another 20% own houses. In the context of ‘reconstruction’ this has serious implications because owners of apartments – as opposed to detached houses – are more vulnerable to being dispossessed under Law 10 reconstruction edicts that cover whole neighbourhoods where apartments are the dominant housing type.

Owners of detached houses have more independence in terms of what they can do with their property: They could repossess or rebuild them.

A property in a collective with other properties presents less freedom for independent action. Apartment owners must coordinate with neighbours on reconstruction and ownership issues.

FIGURE 3: PROPERTY TYPES AND SIZES. SOURCE: AUTHORS.



Survey respondents report extensive damage to their properties: Although a good 40 per cent of respondents’ property is undamaged, 32 per cent is partly damaged and 28 per cent is mostly damaged. Apartment owners (73%) reported that 25 per cent of their properties are heavily damaged or have been torn down; 18 per cent are partly damaged. This indicates the range of property conditions and challenges for owners who must attend to their damaged properties in order to ensure their value. Owner absence endangers properties with expropriation under the guise of ‘reconstruction’.

Respondents report that 55 per cent of the properties are presently empty and 42 per cent occupied, with the status of the remainder unknown. This suggests that a significant number of Syrian properties are uninhabited and that owners are aware of the situation. These properties may be inaccessible due to the owners’ internal displacement and exile, but they are not forgotten. The high figure speaks to the great threat of expropriation due to the owners’ absence: No systems are in place to bolster and advocate for their rights. Law 10 affects the whole country, raising concerns among Syrians about their properties and protecting their rights to them – whether they are occupied, empty, damaged or undamaged, destroyed or intact.

The high degree of knowledge about what is occurring ‘back home’ indicates that strong networks link the diaspora with those who have remained in Syria. Refugees and IDPs are individuals and families who have not ‘abandoned’ their homes. They are tied to their former neighbourhoods and very aware about what is happening to their properties, including the threat of dispossession.

In contrast, survey respondents demonstrate weak access to and engagement with local authorities in Syria, where 55 per cent own property located in a different community from that where they are civilly registered. These people are not allowed to vote in the relevant LAU elections and exercise their decision-making power to redevelop their areas as provided in Law 10. Even if exiled owners could access agents to act on their behalf ‘back home’ in matters of registration and documentation and actively take part in making decisions about reconstruction, this is precluded where they are not in the civil registry. Many owners will have no opportunity to be part of these decision-making processes.

Most respondents – 80 per cent – have never engaged with local politics, and haven’t even voted. This finding can be partly explained by the youth of the survey sample; older Syrians may be more engaged. Further research is required. Ordinary Syrians appear to be largely disengaged from local governance, although that is where the fate of their properties is decided. Decentralising property policy management means that property owners who do not engage with local political authorities have no part in making decisions about reconstruction. Furthermore, a lack of citizen participation makes the reconstruction process susceptible to increased cronyism and corruption.

Given such low engagement with the process, it is little wonder that only 14 per cent of the respondents are optimistic about reconstruction, while 32 per cent are relatively, and 51 per cent very pessimistic. This finding illustrates displaced Syrians’ distrust and despondency. Their mistrust of reconstruction plans and policies will affect people’s engagement in any recovery plan and create further insecurity regarding their HLP rights.

CONCLUSIONS

HLP rights in Syria urgently need defending, particularly in light of the current ‘reconstruction’ agenda. To make the process sustainable and inclusive, reconstruction policies must consider the distinctive characteristics of ‘informal practices’. It is also crucial to develop mechanisms to help people transparently and securely document ownership of their homes and property no matter where they are. Further research is needed on how the Syrian diaspora can manage their properties, keeping in mind their accessibility limitations and exploring the part they can play in reconstruction.

Defence of HLP rights in Syria is also urgent because of the way the conflict and the ‘reconstruction’ agenda are impacting diverse ownership types, the many types of documentation and displaced owners’ difficulty affecting local decisions. Respect for the distinctive characteristics of ‘informal practices’ is essential for sustainable and inclusive reconstruction – and to prevent the massive gentrification process that could result from current policies.

The restitution of housing, land and property (HLP) rights in the context of violent conflict

has technical, legal and political dimensions. In war-torn Syria, where the lack of a political solution conditions the entire process, these dimensions need to be addressed at different levels. The conventional approach of mass HLP claims that depends on documents is very problematic in post-conflict restitution programmes in Syria, where many claimants have partial, informal, unverifiable or irrelevant evidence. A different approach that recognises collective rights, such as customary, informal and musha (common land) rights, along with other modalities of ownership, is needed.

Displaced Syrians inside and outside the country, as well as other affected Syrian property owners, must be made aware of their rights and the importance of preserving their documents as evidence of ownership and possession. In Syria, collective rights are tied to custom and traditions; refugees and IDPs do not necessarily know that unofficial documents are valid evidence with corroborative power. They need to be made aware that the new legal developments compromise their property rights. Displaced people must understand the importance of proving documentation of their properties and begin assembling as much evidence as possible while in exile.

The study shows that with more than 5.5 million refugees and 6.3 million IDPs at risk of losing their documents during displacement, documenting and preserving evidence must start soon. Ownership types don't follow the binary of formal/informal, registered/unregistered, but are located along a spectrum of social, economic and political types (statutory, customary, tradition, social contract etc). HLP restitutions and mass claims will take a long time.

The study suggests the urgent need for an ICT-based solution for registering property documentation that can handle huge amounts of data. Claimants must begin to process their evidence quickly and efficiently.

Mechanisms are needed to support citizen participation in local urban policy implementation: Law 10 centralises all decisions in the hands of LAUs, which have neither the capacity nor the experience and resources for large-scale projects. Citizens lack effective channels to suggest ideas and voice concerns, and to monitor and evaluate the process and outcomes of the projects planned and implemented by LAUs.

The international community has to find solutions to protect the rights of traumatised Syrians who must take an active part in reconstructing their former homes and communities. They must not remain disempowered and legally dispossessed. The international community has expressed no interest in getting involved in Syrian reconstruction in the absence of a political deal, and is exerting no visible pressure on any aspect of this early phase of reconstruction – including HLP rights preservation. The few initiatives from NGOs and UN agencies concern research; they do not make recommendations or proposals. It is essential for the international community to prevent further injustice and crisis, especially since the Syrian government has started issuing reconstruction laws and awarding redevelopment contracts without acknowledging or considering the HLP rights of millions of Syrians at home and abroad. Ignoring this issue through a policy of not engaging without a political resolution will only perpetuate and exacerbate the crisis.

Further research is needed about how the Syrian diaspora can manage their properties in light of accessibility limitations, and their potential in the reconstruction process.

RECOMMENDATIONS

Given the broad context of post-conflict ‘reconstruction’ in Syria, we highlight possible solutions and areas of potential action to counter current injustices and address the challenge of ensuring rights. Our recommendations cover three areas:

- (i) increased awareness about the need for documentation at the individual and community levels,
- (ii) ICT tools to document rights and
- (iii) international advocacy regarding the legal, technical and political dimensions of Syrians’ HLP rights.

The international community and the Syrian government must adopt a new legal and political approach to the issue of Syrian HLP rights and develop a rights-based policy to housing, land and property. However, political realities make this unlikely: International pressure is needed to change the approach to HLP rights. The nature of collective rights differs from town to town and from city to city because of the many different ownership types that stem from historical circumstances. This calls for applying a decentralised approach to enable local government to process the huge number of restitution claims.

- Raising awareness about documentation: This includes initiatives such as a ‘Database for Information about Rights and Policy’, an online database that would provide information about Syrian HLP rights to displaced Syrians, inside and outside of the country.
- Documentation: The process should be started quickly and innovative technological tools developed for gathering and managing the documentation that will help people claim their HLP rights. An online resource database for collating and categorising evidence of collective rights is needed. Categorising patterns of evidence for certain groups who have collective rights (formal, informal, tribal, customary, and hybrid forms of tenure) or have dwelt in destroyed or evacuated areas will strengthen claims and create a pattern of collective evidence based on thousands of similar documents. This will help – virtually – to re-establish the community that had constructed the collective ownerships and provide evidence for group decision-making. Such a tool must take into account the need to verify and corroborate evidence using various types of documentary evidence – utility bills, stories, photographs, architectural plans etc. The database must guarantee digital security and be sensitively and confidentially designed because public disclosure of informal owners’ data could subject them to dispossession.
- Mechanisms should be developed to support and increase Syrian citizens’ monitoring and evaluation of the LAUs’ work.
- The international community should coordinate to address the critical non-respect for Syrian HLP rights. Advocacy options should be identified and implemented to dramatically highlight the HLP rights crisis in Syria.
- More large-scale research on internally displaced Syrian property owners and those in the diaspora is needed to learn more about their documentation issues.

ANNEX 1:

THE HISTORICAL BACKGROUND TO PROPERTY OWNERSHIP LAWS

The Syrian legislative framework of ownership types has a complex history that reaches back centuries. Understanding this multi-layered system and the current ownership types requires researching how Syrian property ownership developed.

The roots of these types are found in the Islamic heritage and the organisation of agricultural land in the region, which was first regulated during the late Ottoman era. Many reforms took place under the French Mandate (1923-1946) and after independence. The reforms instituted minor changes in reshaping the system's development till the 40s, followed by radical shifts in the 60s and 70s.

For a long time, Syrian tenure systems relied on agricultural and pastoral concepts of land ownership. Then, in the 1960s and 1970s, agricultural and industrial reforms transformed ownership modalities and impacted the social structure by accelerating unbalanced urban growth and driving the high demand to use agricultural land for housing, both formal and informal.

The state could not cope with the rapidity of the transformation process unleashed by the reforms, especially registering land in the cadaster. Syrian citizens simply divided parcels, built housing and then sought practical solutions for registering their property. These collective practices created the parallel ownership system that shapes the current structure of property documentation, where the lines between the formal and informal are unclear. Syrians used various, mostly informal, methods to officially secure tenure.

Urban policies could not keep up with developments. Compensation rights granted in the mid-1970s gave partial recognition to most of the many different practices: An electricity bill was accepted as legal proof of possession. Before the conflict, over 40 per cent of the population lived in informal settlements, where, for over 50 years, they used such land tenure practices. New urban policies and laws ignore most of these practices and deny this informal official recognition, thus excluding and dispossessing people, especially those who do not have proper documents to reclaim their HLP rights.

During the Ottoman era, the right to benefit from *musha* was important in defining tenure systems. Religion and customs (*urf*)²² were the main regulatory sources for determining tenure and defining rights.²³ Records of the Sharia court that addressed tenure issues help us understand the situation before 1858, when the Ottoman Land Code was formulated.²⁴

The terminology of earlier systems still dominates the language of current Syrian laws. Ownership types are distinguished by two main terms: (i) a property's '*rakabe*'²⁵ (nape of the neck) represents ownership but not necessarily user rights and (ii) owning the rights to benefit, access or act in a property while the 'nape' is owned by someone else.

22) An Arabic term used in Islam to refer to a society's customs or 'knowledge'.

23) Forni, Nadia (2001): Land Tenure Systems: Structural Features and Policies', Food and Agricultural Organization Technical Report, FAO, Damascus.

24) Abu Al Wafa, Mahmoud Rajeh (2013): 'The Land Ownership in Jenin (1858-1918)', unpublished MA thesis, An Najah National University, available at: <https://repository.najah.edu/handle/20.500.11888/6504>, (accessed 30 Oct. 2018).

25) Rakabe principally refers to living beings (humans and animals) in servitude. During the Islamic conquests, the 'land rakabe' referred to owning the land itself, even if in the Islamic tax system, other people continued to benefit from it. See the full text of the Ottoman land code at: https://archive.org/stream/ottomanlandcode00turkuoft/ottomanlandcode00turkuoft_djvu.txt

This classification comes from Muslim traditions in the region; Iraq, Jordan, Palestine, Lebanon and other countries use the same terminology.

The Ottoman land code, introduced late in the Ottoman era by Sultan Abdel-Hamid, marked the beginning of the tenure system's systematic reform. It transferred the tenure of *musha* to the state²⁶ in order to maximise tax revenue²⁷ and listed five categories of land:

1. *mulk*: freehold land owned by private persons, who may dispose of it at will.
2. *amirie (miri)*: the nape of the land owned by the state, with usufruct rights outsourced to different actors through special state deeds.
3. *waqef (suspension)*: The *rakabe* is 'locked' to the owner, with user rights and benefits dedicated to pious foundations administered by the religious administration or *waqf*. Such lands can be private or state-owned.
4. *matruka*: The state owns the nape and rights to it are used collectively.
5. *mawat*: empty lands unconnected to any inhabited area (within more than a half hour's walk) that are not owned by anyone.

In 1859, the *tapu* system was introduced: 'the document—title deed—by which an inhabitant of the Ottoman Empire could prove his right of usufruct (*hakk-ı tasarruf*) to the *miri* land in his possession'.²⁸ There were also *tapus* for other categories of land, such as *mulk* and *waqef*. The new system shifted the authority to regulate tenure from the *sharia* court to the civil court and created a new registration body. But it did not create a way to administer different types of tenure, which led to many local variations in the Ottoman Empire.²⁹

Under the French Mandate in Syria, the authorities started to establish a land registration system or 'cadaster'³⁰ through Laws 144 (1925) and 186, 187, 188 and 189 (1926) that regulated private and state land. The process used aerial photography and land triangulations to delineate and demark properties.³¹ This registration body remains in operation today.

In 1930 the High Commissioner of the French Mandate issued Decree No. 3339, Art. 2 (1-5) on types of ownership that was later incorporated into the Syrian Civil Code. Five categories were defined:

1. *mulk*: properties that could be fully owned (nape and rights) within the administrative borders of governorates.

26) Forni (2001).

27) Wafa, Abu Ali (2013); Hallaj, Omar Abdulaziz (2017): 'Who Will Own the City? Urban Housing, Land and Property Issues in Syria', Syrian Echoes, available at: <https://syrianechoes.com/2017/07/31/who-will-own-the-city-urban-housing-land-and-property-issues-in-syria/> (accessed 31 Jul. 2019).

28) Minkov, Anton (2000): 'Ottoman *Tapu* Title Deeds in the Eighteenth and Nineteenth Centuries: Origin, Typology and Diplomats', *Islamic Law and Society*, 7(1), p. 2.

29) Hallaj, Omar Abdulaziz (2017) 'Geographies of Absence: Radicalization and the Shaping of the New Syrian Territoriality', *New England Journal of Public Policy*, 29(1).

30) Many locals still refer to the cadaster registrations or institution as *tapu*.

31) Hallaj (2017).

2. *amirie*: state land in which the state owns the nape while the rights to it can be outsourced.

3. *matruka murfaka*: the land belongs to the state, while certain groups have the right, defined by customary or administrative systems, to use it.

4. *matruka mahmya*: The land is part of the public domain and belongs to the governorate or municipality.

5. *khalia mubaha (mawat)*: This is *amirie* land that belongs to the state but has not been inventoried and delimited³².

Rights of land ownership are acquired by virtue of registration in the cadaster. In 1946, when Syria became independent, the cadaster was part of the Ministry of Justice.

After independence, there were many different political and economic changes. Numerous policies reforming tenure distribution were introduced while Syria was united with Egypt (1958-1961) that continued until the 1970s. They mainly concerned agricultural land and nationalising industrial properties. A number of laws were passed which limited the number of hectares that an individual could own and redistributed land to the poor. However, the redistribution mechanisms failed, precipitating a huge migration flow from the land to cities that gave rise to informal settlements.³³ In 1959, Legislative Decree No. 945 placed the General Directorate of Cadastral Affairs within the Agricultural Ministry, where it was to help with land reform measures. Then, in 2010, Law 7 shifted the General Directorate of Cadastral Affairs to the Ministry of Local Administration and Environment.³⁴

According to the Syrian Civil Code, ownership rights to private lands and private state lands are acquired through registration in the cadaster. Records for public state lands (*matruka*, *mahmya* and *khalia mubaha*) are not kept in the cadaster unless they are reclassified as private state land.³⁵ Institutions such as the Housing Ministry and housing corporations provide temporary registry systems for their own projects.

32) Norwegian Refugee Council (2016): 'Housing Land and Property (HLP) in the Syrian Arab Republic', NRC Briefing Note, available at: http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/syria/briefing-note-hlp-in-the-syrian-arab-republic-may-2016.pdf (accessed 3 Oct. 2018).

33) See also: Aziz-al Ahsan, Syed (1984): 'Economic Policy and Class Structure in Syria: 1958-1980', *International Journal of Middle East Studies*, 16(3): p. 301-323; Batatu, Hanna (1981): 'Some Observations on the Social Roots of Syria's Ruling Military Group and the Causes for Its Dominance', *Middle East Journal*, 35(3): p. 337-338; Goulden, Robert (2011): 'Housing, Inequality, and Economic Change in Syria', *British Journal of Middle Eastern Studies*, 38(2): p. 187-202; Joya, Angela (2007): 'Syria's Transition, 1970-2005: from Centralization of the State to Market Economy' in Zarembka, Paul (ed.): *Transitions in Latin America and in Poland and Syria*. Emerald Group Publishing, Bingley; Lababedi, Zara (2008): *The Urban Development of Damascus: A study of its past, present and future*, unpublished MSc Thesis, University College, London, available at: <http://discovery.ucl.ac.uk/14328/> (accessed 31 Jul. 2019); Yazigi, Jihad (2017): 'Destruct to reconstruct: How the Syrian regime capitalises on property destruction and land legislation', Friedrich Ebert Stiftung, Beirut.

34) General Directorate of Cadastral Affairs (2018): Retrieved from the Ministry of Local Administration and Environment: <http://www.mola.gov.sy/mola/index.php/plans-and-laws-4> (accessed 30 Oct. 2018).

35) For example, when a *matruka mahmya* is no longer for the collective public, it becomes 'private state land' that can be registered in the cadaster.

Seeking justice for property grievances in post-2011 Libya

By Suliman Ibrahim

This paper examines the introduction, application and effect of the Gaddafi regime's Law No. 4 of 1978 as well as the efforts to seek justice by those affected by the law and the transitional authorities' response. In an effort to increase social justice, Law 4 significantly restricted private ownership of real property such as land, dwellings, and shops – thereby depriving tens of thousands of Libyans of their property with little or no compensation. In 2006, the Gaddafi regime created a compensation committee (the 2006 Committee) to address the law's 'misapplication'. However, many victims regarded this as merely cosmetic. Unsurprisingly, after the regime was overthrown in 2011, the deprived persons demanded justice and, at first, they were relatively successful. However, when the situation in the country worsened, these victims turned to the 2006 Committee, which they had found so dissatisfying in the past, as the best way to resolve their demands, and successfully lobbied the government to revive it.

However, these efforts and responses are problematic and unlikely to yield enduring solutions for grievances related to Law 4. Solutions should instead be found through transitional justice (TJ), with property grievances treated as part of the larger legacy of human rights violations. Reparations should not be limited to monetary compensation, and solutions must be the outcome of dialogue between the former owners and the current occupants.

The paper is based on current research on property conflicts in Libya, especially those caused by Gaddafi's expropriation and redistribution laws. The author recently headed a research project on solving conflicts over real property in post-Gaddafi Libya.¹ The project paid special attention to Law 4 grievances and the mechanisms established to address its effects, notably the 2006 Committee. Besides analysing policy documents, laws and draft laws, interviews were conducted with relevant parties, such as legislators and committee members in Libya's three major cities: Tripoli, Benghazi and Sabha, as well as former owners and occupants.²

1) This project was a joint initiative of Benghazi and Leiden Universities. Special thanks to Professor Jan Michiel Otto (Leiden University) whose role was instrumental in carrying out the project. Thanks are also due to the Dutch embassy in Tripoli for its sponsorship, and to the Libya-based research team: Professor Koni Abouda (Tripoli University), Judge Youssef El-Hanesh, Dr Kholoud Saadi (Tripoli University), Judge Ali Abu Raas, Mr Mohammed Yousuf (Benghazi University), Mr Fathi Mousa (Benghazi University), Dr Salem Al-Hag-Ali (Sabha University) and Mr Moussa Ali (Sabha University).

2) Mr. Salah El-Marghani (former minister of justice) helped us gain access to the ministry archive about the 2006 Committee. This included much unpublished subsidiary legislation, correspondence between the 2006 Committee and various state institutions, and the minutes of relevant meetings. The material only exists in Arabic; unless otherwise stated, the author made the English translation.

The author was also involved in organizing a thematic meeting on land and property rights on 9-10 Jul. 2018. Part of an UNSMIL (United Nations Support Mission in Libya)-UNDP project on Libya's national reconciliation, the meeting included representatives of relevant state institutions and former owners. The author also advised the Ministry of Justice in Tripoli about recent efforts to address the effects of Law 4.

In tracing and examining these justice-seeking efforts, the paper introduces Law 4 before tackling the Gaddafi regime's efforts to redress its misapplications, notably through the 2006 Committee. Next, the paper presents former owners' strategies for redress after the February 2011 revolution, before looking at how the country's political division since 2014 has affected former owners' efforts, concluding that it has led to quite limited responses. The following section presents the former owners' success in having the 2006 Committee revived. Despite appreciating their demand, the paper argues that recourse should be a matter of TJ. The paper thus recommends implementation of the existing, but still largely unenforceable, Law 29 on Transitional Justice (Law 29) through an executive regulation, reconstructing the Fact Finding and Reconciliation Commission (FFRC) and having it supervise committees to address Law 4 grievances.

LAW 4: IN THE NAME OF JUSTICE

The Gaddafi regime (1969-2011) always maintained that it sought to create social justice. In December 1969, three months after the monarchy was overthrown, the Constitutional Declaration announced the state's aim to be 'achieving socialism through the application of social justice that bans any form of exploitation'. The state was to work 'on achieving sufficiency in production and justice in distribution, with the aim of dissolving peacefully gaps between classes and reaching a welfare society inspired by socialism with an Arab Islamic heritage, human values and the circumstances of Libyan society'.

Property reform was key to achieving social justice and closing the gaps between those connected with the former king who had gotten large estates after the Italian colonizers left and the big capitalists on one hand, and the significantly larger numbers of deprived Libyans on the other.³ This was reflected in Gaddafi's 'Third Universal Theory', his alternative to capitalism and communism. His *Green Book* outlined an important proposition: No individual can be free unless they 'control' their basic needs: a house, an income, and a vehicle.⁴

Law 4 translated this statement into law.⁵ According to the Supreme Court, Law 4 'aims to prevent exploitation by providing housing to those who do not own private houses, and to protect craftsmen and workers who practice their crafts and work in premises owned by others'.⁶ While Law 4 allowed each citizen to own one house or a plot of land on which to build one and deemed this right sacred, it prohibited ownership of anything else except in special cases, for limited periods. The state could seize excess property, and, among other things, assign it to citizens in need.⁷ In compensation, a former owner would be paid the value of their property.

3) Fitzgerald, Mary and Megerisi, Tarek (2015): 'Libya: Whose land Is It?', The Legatum Institute, London. p. 8.

4) Quite tellingly, the second volume of *The Green Book* is entitled 'The Solution of the Economic Problem: Socialism'. See Vandewalle, Dirk (2012): 'A History of Modern Libya', Cambridge University Press, Cambridge. pp. 104-108.

5) The tenant of the dwelling seized would be given priority in accordance with a slogan based on Gaddafi's 'Third Universal Theory': 'al-bayt li-sākinihi' (Arabic: The house belongs to [those] who live in it). See Vandewalle (2012), p. 105.

6) Civil Appeal No. 101/25, 22 Dec. 1981. The Supreme Court Journal, 18, Part 1, p. 35.

7) Law 4/1978 Enforcement Regulations. See Al-Jarida Al-Rasmi (Official Gazette) 4, 31 May 1978.

Law 4 was applied nationwide. Along with measures targeting private businesses, it resulted in ‘merchants, business owners, professionals and landed families’ losing power.⁸ The exact number of properties affected by Law 4 is unknown. The Authority for State Property (ASP), which is responsible for managing, protecting and documenting the state properties, including those seized under Law 4, announced two figures: 56,000 (in 2006) and, more recently, 75,000.⁹ Given that the number of properties just in Tripoli and the surrounding area is 50,000, the figure of 75,000 seems to be more accurate for the entire nation¹⁰, although it is far below that mentioned in a UNHCR study, which claimed that three-quarters of Tripoli’s 2.2 million residents had been affected by Law 4.¹¹

The regime admitted that the law was misapplied many times. Less than five months after issuing Law 4, the minister of justice warned public prosecutors of the phenomenon of citizens using force to enter vacant dwellings without authorisation¹² – apparently dwellings abandoned by their owners because of Law 4. Not only citizens took advantage of the law: In 1986, the Public Administrative Control Authority published a report detailing misapplications by state officials: assigning ownership to more than one person, assigning more than one property to one individual or to the person who occupied it by force or without fulfilling the requirements, as well as basing ownership on favouritism and personal connections.¹³ Gaddafi admitted misapplications occurred but made clear that they did not call into question his Third Universal Theory.¹⁴

The law was also flaunted with regard to compensation of former owners. In many cases, the state did not pay any or all the compensation due. Many former owners refused to accept the compensation offered because they considered it too low.¹⁵ The regime later tried to address this injustice by creating the 2006 Committee to ‘complete’ the compensation provided for in Law 4.

THE 2006 COMMITTEE: COMPENSATING WITHOUT ADMITTING GUILT

In the 2000s, the regime made many attempts to buy off those aggrieved by its international and domestic policies.¹⁶ In 2003, it agreed to pay compensation for the Pan Am and Air France bombings,¹⁷ as well as for that of the Berlin nightclub.¹⁸ At home, it tried to redress

8) Fitzgerald and Megerisi (2015), p. 9.

9) The first figure was reported by the head of the 2006 Central Committee in his letter to the prime minister on 23 Aug. 2007. The second was announced by the ASP head in a presentation at a conference on ‘Real Property Ownership between Law and Reality’ in Tripoli on 5 Mar. 2012. https://www.youtube.com/watch?v=_Os3-jSYhCM, (accessed 15 Mar. 2019).

10) Interview with Faraj El-Zirgani, ASP representative to the 2006 Central Committee, Tripoli, 7 Aug. 2016.

11) UNHCR (2013): ‘Housing, Land and Property Issues and the Response to Displacement in Libya’, available at: <https://terra0nullius.files.wordpress.com/2013/02/unhcr-report-hlp-issues-and-displacement-in-libya-copy.pdf> (accessed 19 Dec. 2018).

12) Circular No. 5/1978, 14 Oct. 1978.

13) See the Inspector General’s Circular No. 2/1986 in Muzughy, Ali Abd Al-Salam (not dated): ‘Mawsu’at tashri’at mahkamat al-sha’ab wa-maktab al-ida’a al-sha’abi’, Part 1, Scientific Center for the Study and Research of the Green Book, Tripoli. pp. 470-472.

14) Gaddafi’s speech in a meeting with the Peoples’ Court and the Peoples’ Prosecution Office on 10 Oct. 1988, in Muzughy, pp. 27-28.

15) Ibrahim, Suliman and Otto, Jan Michiel (2017): ‘Solving the Real Property Conflicts in Post-Gaddafi Libya, in the Context of Transitional Justice’, Van Vollenhoven Institute, Leiden. See also ‘Thousands of Libyans Struggle With Recovery of Property Confiscated by Qaddafi’, The New York Times (13 May 2012). The article attributes this statement to the head of the 2006 Committee.

16) These reforms were conducted under the auspices of Saif al-Islam, Gaddafi’s son and presumptive heir. For more details, see Vandewalle (2012), p. 173.

17) On 21 Dec. 1988, Pan Am Flight 103 exploded over Lockerbie, Scotland, killing 259 people on board and 11 on the ground. A Libyan citizen was convicted.

18) On 5 Apr. 1986, a bomb exploded in West Berlin’s La Belle disco, killing two US servicemen and a Turkish woman. Libya was accused of “state-sponsored terrorism, and a Libyan citizen was convicted.

the 1996 massacre of hundreds of Islamists in Abu Salim prison¹⁹ and property grievances caused by laws like No. 4.²⁰ The regime's approach was to pay compensation without fully admitting its guilt.²¹ Resolution 108/2006 created a committee to 'complete' the compensation provided for in Law 4,²² implying that the law *per se* was not wrong but had simply been misapplied, notably by not sufficiently compensating former owners. The resolution completed what the 'revolutionary' Law 4 had intended.²³ However, Resolution 108 allows the 2006 Committee to order the restitution of property subject to Law 4 in certain situations, for example, properties occupied by legal entities like public companies.

The 2006 Committee consisted of a central committee based in Tripoli and 19 branches around the country, with each committee headed by a judge and composed of representatives of government institutions. The 2006 Committee was not quasi-judicial: It did not adjudicate disputes. Instead, it received former owners' applications for restitution and/or compensation and ruled on them – in the absence of the occupants.²⁴

The 2006 Committee had difficulty verifying the validity of the applications. Real property claims have to be supported by Real Property Registration office records. These, however, were destroyed in 1985 on orders from the Gaddafi regime,²⁵ which invoked Law No. 11/1988 on Socialist Real Property Registration to refuse to certify earlier registrations of a property's legal value. Had the 2006 Committee consistently respected this legal requirement for proving real property claims, it would have rejected most, if not all of them.²⁶ In fact, it accepted not only certificates based on old registration records as proof, but also personal testimonies²⁷ – practices that increased the risk of accepting false claims.²⁸

Former owners' views of the 2006 Committee differed, with many expressing dissatisfaction. Some refused compensations awarded because they considered them too low.²⁹ Many complained about how slowly the 2006 Committee handled the applications.³⁰

19) Abu Salim is a prison in Tripoli where the Gaddafi regime is said to have killed more than 1,200 political prisoners. See Obeidi, Amal (2013): 'From Forced Reconciliation to Recognition: The Abu Salim Case in Historical Perspective' in Otto, Jan Michiel, Carlisle, Jessica, and Ibrahim, Suliman (eds.): *Searching for Justice in Post-Gaddafi Libya. A Socio-Legal Exploration of People's Concerns and Institutional Responses at Home and From Abroad*, Van Vollenhoven Institute, Leiden, pp. 142-150; Wierda, Marieke (2015): 'Confronting Qadhafi's Legacy: Transitional Justice in Libya' in Cole, Peter and McQuinn, Brian (eds): *The Libyan Revolution and Its Aftermath*, C. Hurst & Co., London, pp 153–174.

20) Fitzgerald and Megerisi (2015), p. 10.

21) Gebril, Jazia and El-Tobuli, Mohammed (2013): 'Compensation for Unlawful Detention under Gaddafi's Regime' in Otto, Jan Michiel, Carlisle, Jessica, and Ibrahim, Suliman (eds.): *Searching for Justice in Post-Gaddafi Libya. A Socio-Legal Exploration of People's Concerns and Institutional Responses at Home and From Abroad*, Van Vollenhoven Institute, Leiden, pp. 130-141; Fitzgerald and Megerisi (2015), p. 10.

22) Resolution No. 108/2006 on Procedures, Foundations and Safeguards of Completing the Compensation of Real Properties Subject to the Provisions of Law 4 of the Year 1978.

23) Interview with Youssef El-Hanesh, head of the 2006 Committee, Leiden, Netherlands, 10 Jan. 2017.

24) Resolution 108 permitted the 2006 Committee to visit a property to meet the occupant and hear their demands. Visits were not mandatory, however, and records show that if the occupant was not available, their absence was simply noted. The 2006 Committee head admitted that its decisions were based on applications submitted by the former owners in the absence of the occupants. Interview with El-Hanesh, Leiden, Netherlands, 10 Jan. 2017.

25) According to Guma' Zirigi, who directed Tripoli's real property registration, registrations were burned in an attempt to deprive exiled Libyans opposed to the regime of proof. He also said that the members of revolutionary committees who burned the records obtained properties for themselves, including luxurious villas, under the provisions of Law 4. Zirigi, Guma' (1987): 'Qisat haraq al-tajil al-'aqari sanat 1985' (The Story of Burning Real Property Registrations in the year 1985), available at: <http://www.g-zrigi.ly/burn%20Documentation%20five.html> (accessed 21 Dec. 2018).

26) El-Hanesh letter to the Katib al-'am li-lajnat al-sha'abiyat al-'ama. No. 1-1/25, 23 Jan. 2010.

27) El-Hanesh, Youssef (2017): 'Lajnat al-ta'awidat 'an al-'aqarat al-khadiat li-al-qanun raqm 4 li-sanat 1978' (The Committee for Compensation of Real Properties Subject to Law 4 of the Year 1978) in Ibrahim, Suliman and Otto, Jan Michiel (eds.) 'Ilaj munaza'at al-malikiya al-'akariya fi Libia ma ba'ad al-qadhafi, fi itar al-'adalat al-intiqaliya' (Resolving Real Property Disputes in Post-Gaddafi Libya, in the Context of Transitional Justice), Benghazi University: Centre for Law and Society Studies and Leiden University: Van Vollenhoven Institute, pp. 66-89. Available at: <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-metajuridica/papers-on-solving-real-property-conflicts-in-libya.pdf> (accessed 2 Aug. 2019).

28) For example, the ASP director's 22 Aug. 2016 letter to the head of the 2006 Committee referred to three decisions in 2007 and 2008. In one of these cases, the 2006 Committee had returned a property to a woman and her children – and later discovered that her father had already sold the property on 7 Dec. 1975. The director concluded that the restitution decision was issued in favour of a non-owner and should be revoked.

29) N. M. maintained that the 2006 Committee ordered payment of LYD 488,000 for a property whose market value was LYD 15,000,000. He refused it. Interview conducted by Kholood Esaade, Tripoli, 8 Oct. 2016.

30) Interview with A. L. conducted by Mohammed Yousuf, Benghazi, 8 Oct. 2016; interview with A. A. conducted by Kholood Esaade, Tripoli, 7 Oct. 2016; interview with A. S. conducted by Kholood Esaade, Tripoli, 7 Oct. 2016.

Some said they optimistically submitted applications when the 2006 Committee was first established,³¹ while others were suspicious of the regime's intentions and saw it as just a cosmetic measure.³² When, in the aftermath of the 2011 February revolution, the opportunity came to redress their grievances, former owners sought to do that without the limitations imposed by the 2006 Committee.

THE FEBRUARY 2011 REVOLUTION: GIVING MOMENTUM TO VICTIMS' DEMANDS

Immediately following the February 2011 revolution, with revolutionary fervour at its peak, calls were made to cleanse Libya's legal system of Gaddafi regime laws, institutions and staff. The Islamists' growing influence meant that such calls were largely associated with demands for a legal system based on Sharia.³³ A group of former owners tactically exploited the calls by presenting themselves as victims of Gaddafi's regime and accusing occupants of being regime loyalists. They also maintained that Law 4 violated Sharia, which supposedly protects private property, and called for it to be abolished. This narrative is reflected in the name of the former owners' organisation, the Association of Owners Harmed by the Ruling of the Tyrant (the Association), and their lobbying discourse.³⁴ Although the Association was not the only organisation established by former owners to defend their interests, it became the most prominent one by describing itself as the representative for victims of Law 4 before state institutions.

Partly due to the Association's efforts, Libyan political institutions attempted to redress the problems in Law 4 by drafting new legislation. In late 2011, Judge Youssef El-Hanesh, head of the 2006 Committee, drew up a draft bill to address the effects of Law 4. Upon receiving it, then Prime Minister Abdurrahim El Keib formed a committee headed by the minister of justice to review it. This committee presented another version to the legislature, the General National Congress (GNC). Unlike Judge El-Hanesh's text, and contrary to the former owners' wishes, the new version did not propose abolishing Law 4. The committee opined that Law 4 had been applied for more than three decades and established rights for many bona fide citizens, such as secondary occupants who had purchased property at market value in good faith, and it would be legally unacceptable to end these rights through a retrospective abolishment of the law. Instead, the effects of Law 4 had to be assessed on a case-by-case basis, distinguishing where restitution was possible and where only compensation could be awarded.³⁵ Dissatisfied with the new draft bill, the Association lobbied the GNC for another.³⁶

31) Interview with S. H. conducted by Kholood Esaade, Tripoli, 7 Oct. 2016; interview with A. A. conducted by Mohammed Yousuf, Benghazi, 12 Oct. 2016; interview with A. S. conducted by Mohammed Yousuf, Benghazi, 12 Oct. 2016; interview with A. L. conducted by Mohammed Yousuf, Benghazi, 8 Oct. 2016; interview with S. B. conducted by Mohammed Yousuf, Benghazi, 11 Oct. 2016; interview with A. M. conducted by Moussa Ali, Sabha, 29 Jun. 2016; interview with T. A. conducted by Moussa Ali, Sabha, 28 Jun. 2016; an interview with B. H. conducted by Moussa Ali, Sabha, 27 Jun. 2016.

32) N. M. interview, 2016.

33) Ibrahim, Suliman (2018): 'The Role of Sharia in Lawmaking: The Case of Libya' in Bedner, Adriaan and Oomen, Barbare (eds): *Real Legal Certainty and Its Relevance: Essays in Honour of Jan Michiel Otto*, Leiden University Press, Leiden. pp. 213-234; Fitzgerald, Mary (2015): 'Finding their Place: Libya's Islamists during and after the Revolution' in Cole, Peter and McQinn, Brian (eds), op. cit., pp. 177-204.

34) See the Facebook page that the Association actively maintains: https://www.facebook.com/PropertyOwnersLibya/?epa=SEARCH_BOX&locale=ar_AR%252F (accessed 2 Aug. 2019).

35) The draft bill and explanatory memorandum are available on the Ministry of Justice webpage: <http://aladel.gov.ly/home/?p=1439> (accessed 2 Aug. 2019).

36) Letter by Shakir Dakheel, head of the owners' association, to the Minister of Justice on 17 May 2012, explaining the association's position regarding the draft bill.

Several GNC committees worked closely with the Association on a third draft bill, the ‘Law on the Restitution of Real Property’, which favoured the former owners’ demands: ending Law 4 and deeming the restitution of lost property the preferred remedy. When that was not possible, fair compensation would be paid. The draft bill envisaged a limited number of cases where compensation would be chosen over restitution, notably, if the former owner or heir(s) chose compensation, and/or if the former owner or heir(s) consented to the occupant keeping the property.

The GNC contemplated enacting this law along with a law on transitional justice: The latter would address TJ in general and the former would focus on TJ concerns about real property, such as those relating to Law 4. However, the GNC enacted Law No. 29/2013 on Transitional Justice (Law 29) but did not pass the bill on real property. Real property grievances are subject to Law 29, which lacks the necessary detail.

Nevertheless, Law 29 should significantly impact real property grievances. It foresees a Fact Finding and Reconciliation Commission (FFRC) for dealing with these grievances, with courts no longer involved unless the FFRC refers the matter to them.³⁷ Furthermore, when addressing real property disputes, the FFRC must comply with Law 29. Unlike the 2006 Committee, the FFRC must hear all parties involved, including the occupants. It is free to diversify remedies, and is not required to award pecuniary damages. Law 29 legally abolished the 2006 Committee and replaced it by the FFRC.³⁸ However, more than five years later, because Libya has been divided politically since July 2014, Law 29 has not been implemented. The House of Representatives (HoR) has neither issued the required executive regulations, nor nominated members to the FFRC. Law 29 ended the 2006 Committee as a mechanism for addressing property grievances but has not supplied a functioning alternative. This is why former owners oppose the law.

SEEKING JUSTICE IN A DIVIDED COUNTRY (2014-2018)

In June 2014, after elections for the HoR (that replaced the GNC as Libya’s national legislature), armed groups seized control of the western city of Tripoli and reinstated the GNC.³⁹ Backed by General Khalifa Haftar and his self-proclaimed ‘Libyan National Army’, the HoR opened offices in the far eastern city of Tubruq. Since autumn 2014, two legislative bodies – each with its own government, army, central bank and national oil corporation – have been competing for legitimacy. The GNC camp claims to be protecting the February revolution against a counter-revolution by Gaddafi loyalists, while the HoR camp claims to be protecting Libya from Islamist extremists who had controlled the GNC and refused to accept the 2014 election results.

The Association, whose management is based in Tripoli, focused its efforts on the GNC and achieved limited success. On 24 May 2015, the GNC amended the Constitutional Declaration of 2011 – Libya’s supreme law – to make Sharia the principal source of all

37) Kuni, Aboda (2017): ‘Munaza’at al-malikiya al-’akariya wa-al-’adalat al-intiqaliya fi al-muqarabat al-libiya’ (Real Property Disputes and Transitional Justice in the Libyan Approach)’ in Ibrahim, Suliman and Otto, Jan Michiel (eds.), op. cit., pp. 66-89.

38) El-Hanesh (2017).

39) Wehrey, Frederic and Lacher, Wolfram (2014): ‘Libya’s Legitimacy Crisis. The Danger of Picking Sides in the Post-Qaddafi Chaos’, *Foreign Affairs Magazine*, available at: www.foreignaffairs.com/articles/middle-east/2014-10-06/libyas-legitimacy-crisis (accessed on 6 Oct. 2014); Wehrey, Frederic (2018): *The Burning Shores: Inside the Battle for the New Libya*, Farrar, Straus & Giroux, New York.

legislation, and voided all legislation that violates the provisions and objectives of Sharia.⁴⁰ On 28 May, the Association issued a statement that Law 4 violated sharia and the GNC had to address its consequences, and also that it would request redress. On 1 June, the Association requested Law 4's abolition. On 14 October, the GNC complied by issuing Law No. 16/2015 (Law 16) that abolishes 'twelve laws that were unjust and did not comply with sharia', including No. 4.⁴¹ On 17 December, the GNC issued Law No. 20/2015 (Law 20) to address the consequences of abolishing Law 4.

Laws 16 and 20 invigorated Judge El-Hanesh's 2011 draft bill: Law 16 abolished Law 4 and Law 20 addressed its consequences. Minimal differences to El-Hanesh's text were intended to strengthen the former owners' position. For example, his draft had stated that evicted occupants could not be compensated if they owned other property, but Law 20 stipulated that they also had to be *unable to rent* one. Since renting a house is easier than purchasing one, Law 20 was expected to deprive many occupants of compensation.

In practice, however, Laws 16 and 20 have had only limited impact – largely because the GNC issued them when its legitimacy was in peril. Furthermore, the GNC could only enforce new laws in the western area it controls, with their enforcement conditional on executive regulations that were never issued. Nonetheless, some courts in Tripoli used these laws to evict occupants and create fear amongst them.⁴²

Addressing the legacy of Law 4 was not a priority for the HoR, which did not claim to eliminate Gaddafi's legacy, defend the February revolution or favour sharia-compliant law. Given post-2011 governments' failure to deliver their promises of a better life, along with the deteriorating security situation, many Libyans began to have second thoughts about the benefits of the revolution and even started to openly appreciate the former regime's positions, policies and legislation.

This decline in revolutionary momentum is not necessarily bad. In the early years, revolutionary fervour sometimes led to unbalanced political decisions. The former owners' association played a key role in drafting laws to address the effects of Law 4, characterising the occupants as beneficiaries of Gaddafi's unjust laws. The latter were even accused of being loyal to the ousted regime – which was why the regime had granted them property in the first place.⁴³ Also, the Authority for State Property (ASP) viewed the effort to address the former owners demands, including those of the 2006 Committee, as sacrificing state interests for those of individual former owners; in more than one occasion, the Chairperson of the ASP told the author, restitution of property owned or managed by the State to former owners was decided without sufficient proof. The state, according to him, was likened to Gaddafi.⁴⁴ The draft bills illustrate that more attention was paid to the concerns and demands of former owners than those of the occupants and society at large. Now that this fervour has somewhat died down, it should be possible to make a more balanced assessment of Law 4: how it affected the interests of owners, occupants and the state, and

40) Al-Jarida Al-Rasmia (Official Gazette), 1, 1 Oct. 2015.

41) This GNC statement is published on the Facebook page of the Institute of Libya's (religious) Scholars Hay'at 'Ulama' Libia: https://www.facebook.com/permalink.php?story_fbid=1185708528145100&id=233722960010333 (access 2 Aug. 2019).

42) See Esaade, Kholood (2017): 'Lajnat al-ta'awidat al-far'iya li-mu'alajat athar al-qanun raqm 4 li-sanat 1978 bayna al-tashri'a wa-al-waqi'a' (Branch Compensation Committees for Addressing the Effect of Law NO. 4 of the Year 1978 between Law and Reality), in Ibrahim, Suliman and Otto, Jan Michiel (eds.), op. cit., pp. 98-117.

43) Ibrahim (2013): 'Developing the Case Against Law 4/1978: Property Claimants in Tripoli' in Otto, Jan Michiel, Carlisle, Jessica, and Ibrahim, Suliman (eds.), op. cit., pp. 117-129.

44) An interview with ASP Director Samir El-Belaazi, Tripoli, 27 Dec. 2015.

what redress might be appropriate. Nevertheless, for any redress to be implementable, the political divide must end.

On 17 December 2015, the Libyan Political Agreement (LPA) was signed under the auspices of the United Nations Support Mission in Libya (UNSMIL).⁴⁵ The LPA foresaw an extended transitional period with four bodies: (1) a Presidency Council (PC) and Government of National Accord (GNA), (2) a legislative authority (the HoR), (3) a High State Council (HSC) comprised of GNC members and (4) a Constitution Drafting Assembly (CDA). Article 62 of the LPA stipulated that the GNA would form an expert committee to review the laws and decisions taken between 4 August 2014 and 17 December 2015 ‘with the aim of finding suitable solutions’. The LPA thus provided a more encouraging environment to deal with the legacy of real property legislation, with the GNA reviewing Laws 16 and 20 and the HoR supporting its recommendations.

The LPA has not yet been fully implemented and Libya remains politically divided. The GNA has been established but the HoR has failed to approve the cabinet. Although the HSC has been formed, not all GNC members have joined it. With LPA rejecters continuing to defend the old GNC, it is unsurprising that the GNA has not yet conducted a review. Instead, thanks to the Association’s efforts, the GNA passed a resolution entitling former owners to receive compensation at market value.⁴⁶

REVIVING THE 2006 COMMITTEE

Apparently losing hope that Laws 16 and 20 would be implemented, the Association lobbied for a faster measure: reviving the 2006 Committee. On 31 May 2018, the GNA Presidency Council (PC) issued Resolution No. 684/2018 (Resolution 684) that amends Resolution 108/2006 so that compensation to former owners is determined in accordance with the ‘current market price’. Previously, the 2006 Committee had had to comply with Resolution 195/2002 when awarding compensation, which put compensation significantly lower than a property’s real value – at least according to former owners. Restitution was not easy for owners as it involved evicting the occupant, which, in light of Libya’s current security issues and state institutions’ limited enforcement capacities, is not always possible. Resolution 684’s preamble states that it grew out of a consultation with the head of the 2006 Committee and the Association’s representative. It is interesting that the PC ignored the Minister of Justice, who heads the Follow-up Committee entrusted to oversee the work of compensation committees such as the 2006 Committee.⁴⁷ On 6 June 2018, the latter wrote to the head of the PC objecting to the new resolution, and urging its immediate withdrawal. He argued that the PC should instead focus on implementing Law 29 of 2013 on TJ.

45) St. John, Ronald Bruce (2017): ‘Libya: From Colony to Revolution’, Oneworld Publications, Oxford. p. 314.

46) In Jan. 2018, the Association met with Faiz Saraj, the President of the Presidential Council, who agreed that those affected by Law 4 should receive compensation through an appropriate mechanism and instructed the Council’s legal department to prepare a legal memo on the issue and the Association’s proposals. The Association’s second meeting with Saraj on 17 Mar. 2018 was apparently key to Resolution 684/2018, as its preamble mentions. See ‘Ta’awidat wa-shurut li-al-mutadaririn min al-qanun raqm 4’ (Compensations and Conditions for Those Harmed by Law 4), broadcast on Channel 218 on 22 Jan. 2018, available at: <https://www.218tv.net/78261-2/> (accessed 21 Apr. 2019).

47) On 5 Jun. 2006, the Follow-Up Committee was established by Resolution No. 30 to ‘follow up the work of the compensation committees, direct them, and remove obstacles facing them in performing their tasks’.

Such recommendations did not go down well with the Association. Given that the HoR is required to take the necessary measures to implement Law 29, which is unlikely to occur anytime soon,⁴⁸ the Association sees references to Law 29 as attempts to ignore their problems. They made this clear in a meeting about land and property rights on 9-10 July 2018.⁴⁹ The author took part in organising the meeting, which was attended by Association representatives, as well as occupant representatives. HoR, HSC, GNA and CDA representatives also attended. Most participants agreed that property grievances should be addressed through TJ, but the Association insisted that in accordance with Resolution 684, only the 2006 Committee should address Law 4 grievances. In its statement issued right after the meeting, the Association completely rejected ‘all calls aimed at hindering the process of existing reconciliation mechanisms, i.e., the compensation committees’. The Association also rejected ‘any attempt to put back to the unknown [addressing their grievances] via legal or administrative excuses.[...] The current reconciliation mechanisms are the ideal and only framework for achieving the important national project [of reconciliation].’ It also demanded implementation of Resolution 684 of 2018.⁵⁰

Thanks to the Association’s determination, on 3 December 2018 the PC issued Resolution No. 1599, which required the 2006 Committee to perform its tasks as described in the amended Resolution 108/2006. The new Resolution deemed the Committee’s compensation decisions immediately enforceable, without need for approval by the Follow-Up Committee. The Association appeared to have won its demands: They were henceforth entitled to receive compensation from a committee headed by a sympathetic person and calculated at current market prices, which are staggering in major cities like Tripoli and Benghazi – without the need for any further approval.

Resolution 1599, like its predecessor Resolution 684 was legally problematic, however, as a prominent law professor at Tripoli University, Kuni Abuda, has said. Both texts violate Law 29 that abolished the 2006 Committee. The PC, being the executive, cannot make resolutions contradicting acts of parliament such as Law 29. Instead, Abuda argues, the PC should collaborate with the HoR to implement Law 29 on TJ.⁵¹

TRANSITIONAL JUSTICE AS A FRAMEWORK: FINAL THOUGHTS

This paper argues that Law 29 should be the framework for addressing grievances regarding Law 4. The other options are problematic.

Implementing Law 20/2015, which addresses the consequences of abolishing Law 4, is neither possible nor desirable because it refers to executive regulations that have never been issued. Furthermore, along with Law 16 (that abolished Law 4), Law 20 was enacted by the GNC at a time when only half of Libya considered it legitimate. The other half does not recognise these laws. Law 20 deems restitution as the default, albeit not always the

48) See section 4.

49) The meeting was organised by the United Nations Support Mission in Libya (UNSMIL) and the United Nations Development Programme (UNDP) as part of their project on Libya’s national reconciliation.

50) The Association published the statement ‘Rabitat al-mulak al-mutadaririn min qawanin ghasib al-malikiya’ on its Facebook page: <https://www.facebook.com/PropertyOwnersLibya/photos/pcb.1418824044919962/1418865321582501/?type=3&theater> (accessed 21 Apr. 2019).

51) Koni Ali Abuda’s update, ‘al-Ri’asi fuq al-qanun’ (the Presidential (Council) is above the law!), on Facebook, 11 Dec. 2018, available at: https://www.facebook.com/permalink.php?story_fbid=1655215017913531&id=100002751451866 (accessed 2 Aug. 2019).

preferred, solution – particularly when a property has become the occupant's *home*. For example, a tenant in the old city of Tripoli who was assigned ownership of an apartment in application of Law 4 in 1978 and has lived there since then might have a stronger claim to stay in the apartment than the former owner – or the heir – who no longer regards the property as 'home'. It seems unfair for occupants to be evicted from their long-time homes and only be awarded compensation. In *Demopoulos v. Turkey* of 2010, regarding a property dispute in North Cyprus, in the European Court of Human Rights (ECHR) similarly rejected the claim that restitution must be prioritised over compensation. It 'implied that the passage of four decades since the Turkish invasion had ended the connection between Greek Cypriots and their former homes while giving rise to residential rights on the part of longstanding Turkish Cypriot occupants'.⁵² Although Libya is not a party to the ECHR convention, its statutes provide similar legal bases.⁵³

The Association chose the other option: reviving the 2006 Committee, and empowering it to award compensation based on current market value. Thanks to the Association's efforts, the PC has issued two resolutions to this effect – which are of dubious legality due to the fact that the PC is bound by Law 29, which abolishes the 2006 Committee: It may not enact contradictory resolutions. Besides, the HoR regards the PC as illegitimate and argues that the PC's legitimacy is based on the LPA, which has not yet been incorporated into the Constitutional Declaration (CD). Since the HoR has not introduced the necessary amendment, it considers that the Interim Government based in the east is the legitimate executive and PC resolutions are not recognized in the areas that accept the HoR's authority – in more than half the country.

In addition, Law 4 grievances constitute only part of the human rights violations in Libya awaiting redress. Given the country's under-funded infrastructure, it would be unfair to victims of other violations and the wider society to award Law 4 victims the redress they demand: full compensation at current market prices or the complete restitution of their property and compensation for lost earnings. That would exhaust the state's resources – and awarding such compensation or complete restitution of their property to large landlords risks reinstating an extremely wealthy propertied elite.⁵⁴

Durable and just redress requires addressing Law 4 grievances within the TJ context, with grievances regarded as part of and in relation to the former regime's human rights atrocities. TJ often proposes reparations that are neither complete nor purely monetary. Fortunately, the existing TJ law, Law 29, recognizes Law 4 grievances as TJ *injustices*. Law 29 need only be implemented.

Implementing Law 29 is far from easy, however. Executive regulations must be issued and an FFRC formed, two steps that the HoR has not seriously attempted to take. Its inaction could be justified by the serious problems in Law 29. Enacted when revolutionary fervour was at its peak, Law 29 clearly and unequivocally condemned only the human rights violations committed by the Gaddafi regime – not those committed by the revolutionaries. A new non-discriminatory TJ law is needed.

52) Fitzgerald (2017); Williams, Rhodri and Gürel, Ayla (2011): 'The European Court of Human Rights and the Cyprus Property Issue', PRIO Cyprus Centre, Nicosia.

53) See Articles 11 and 12 of the 2011 Libyan Constitutional Declaration, which closely resemble Article 8 of the European Convention on Human Rights, regarding the right to a home.

54) Ibrahim (2013), p. 127.

Enacting such a law would be desirable, but that may not be feasible in light of the current political stagnation. Efforts should be made to lobby the HoR to implement Law 29 now and leave its problematic provisions, which have no direct impact on Law 4 grievances, to be amended later. Law 29, which is very general, requires additional provisions that spell out how real property disputes can be resolved within its framework, a lack that could be addressed in the anticipated executive regulations. Since the law allows for committees supervised by the FFRC, executive regulations could name the 2006 Committee as one of them. Thus the new committee would be a full-fledged institution that is part of TJ mechanisms and bound by Law 29's rules, especially those on fact finding and the variety and extent of reparations.

Although such suggestions may not fully satisfy the former owners' demands, they are more likely to yield feasible solutions that are not only acceptable to owners, but to other Libyans as well – especially occupants.

ANNEX: INITIATIVES TO REMEDY THE EFFECTS OF LAW 4

DATE AND TITLE	ACTOR/S	MAIN PROVISIONS	EFFECT
27 Apr. 2006: Resolution No. 108/2006 on Procedures, Foundations and Safeguards for Completing the Compensation of Real Properties Subject to the Provisions of Law 4 of the Year 1978	Issued by the General People's Committee (Council of Ministers) as part of reform initiatives overseen by Saif al-Islam Gaddafi	Establishes a committee to compensate former owners, and in some cases, order restitution of their property	The Committee received 25 148 applications, and ruled on 10 526.
31 Dec. 2011: 1st draft bill on Abolishing Law 4/1978	Judge El-Hanesh, head of the 2006 Committee	Retrospectively abolishes Law 4 Deems restitution of property to former owners as the default rule, with compensation awarded in exceptional cases Allocates evicted occupants who do not own another dwelling a state property, along with an obligatory mortgage, or provides them adequate compensation	Although not enacted, it constituted the basis for the 2nd draft bill and Laws 16 & 20/2015.
11 Jun. 2012: 2nd draft bill on Establishing Some Provisions Concerning Real Property Transferred to the State by Virtue of Law 4/1978	The prime minister formed a committee (Resolution No. 13/2012) headed by the minister of justice to review it.	Deems restitution of property to former owners as the default rule, with compensation awarded in exceptional cases Allocates a state-owned property with an obligatory mortgage to evicted occupants who do not own another dwelling or awards them adequate compensation.	Not enacted by the General National Congress (GNC)
Nov. 2013: 3rd draft bill on the Restitution of Real Property	GNC committees	Retrospectively abolishes Law 4 Deems restitution to be the default rule Pays former owners an amount equivalent to the rent that they would have collected since their expropriation, and another payment to refurbish the property Awards compensation instead of restitution in exceptional cases Allows occupants to remain in the residence for a maximum of one year as tenants, and provides them a state-owned property if they are unable to purchase one Establishes a special commission to address the effects of abolishing Law 4	Not enacted by the GNC
2 Dec. 2013: Law 29/2013 on Transitional Justice	Enacted by the GNC	Deems Law 4 grievances transitional justice ones Abolishes Resolution 108/2006 and the committee it established Addresses Law 4 grievances by the FFRC, and a special commission for addressing real property grievances	Not yet implemented, awaiting formation of a FFRC and executive regulations
14 Oct. 2015: Law 16 on the Abolishment of Some Laws	Enacted by the GNC	Abolishes Law 4 retrospectively	It has a very limited effect as it was issued by the GNC when its legitimacy as legislature was questioned and its actual control was limited to less half of the country.
17 Dec. 2015: Law No. 20 on the Establishment of Special Regulations on the Treatment of the Effects of Ending Law 4	Enacted by the GNC	Establishes provision/s identical to those of the 1st draft bill, with a few exceptions.	It has a very limited effect as it was issued by the GNC when its legitimacy as legislature was questioned and its actual control was limited to less half of the country.
31 May 2018: Resolution No. 684/2018 Amending Resolution 108/2006	Presidential Council (PC) of the Government of National Accord (GNA)	Makes current market prices the reference when estimating compensation for former owners.	Not yet implemented.
3 Dec. 2018: Resolution No. 1599/2018	GNA PC	Requires the 2006 Committee to perform its tasks as detailed in the amended Resolution 108/2006.	Not yet implemented.

Land, housing occupation and destruction in a strategic area: The case of al-Qusayr in Syria

By Javier Gonzalez

INTRODUCTION

Located about ten kilometres from the Lebanese border, the district of al-Qusayr in Homs governorate is emblematic of the uprising that shook Syria in 2011. A rural area which benefited from the agrarian reform in the 1960s and 1970s, al-Qusayr used to be a popular base of the Syrian regime which eroded in the 2000s due to deteriorating living conditions resulting from the liberalisation of the economy.¹ For decades, inhabitants of the district's 60 communities also used to have fairly good relations with the Syrian regime, which turned a blind eye to the smuggling over the nearby porous border with Lebanon - from which it also benefited.² In 2011, the area quickly became a stronghold of the opposition, with its members violently repressed by the Syrian authorities. In November 2011, al-Qusayr city was besieged by pro-government forces.³

What had started as peaceful demonstrations morphed into an armed movement that went on to seize control of parts of al-Qusayr district during the summer of 2012. Killings and shelling perpetrated by the Syrian Arab Army (SAA) targeted civilians of the district.⁴ Its sniper attacks targeted local civilians and became a daily concern for those living in the city.⁵ Al-Qusayr is also associated with the turning point created by the 2013 offensive of pro-government forces, in which the participation of Iran-backed Lebanese Hezbollah was decisive for the SAA to retake the area. The resulting shift in the balance of power between pro-government forces and armed opposition groups triggered other offensives that made

1) Jaubert, Ronald and Haj Asaad, Ahmed (2014): 'Geostrategic stakes and the impact of the conflict in the Orontes River basin', *Confluences Méditerranée*, 2 (no.89): 173-184, <https://www.cairn.info/revue-confluences-mediterranee-2014-2-page-173.htm> (accessed 12 Aug. 2019).

2) Interviews with inhabitants from al-Qusayr conducted in the Bekaa Valley, Lebanon and Europe, Mar. 2019. Smuggling oil from Syria to Lebanon and operating a petrol station in al-Qusayr was only possible with the tacit approval of Syrian authorities. See also Mouawad, Jamil (2018): 'Lebanon's border areas in light of the Syrian war: New actors, old marginalisation', EUI/RSCAS Middle East Directions 2018/03, available at: http://cadmus.eui.eu/bitstream/handle/1814/52564/RSCAS_PR_2018_03.pdf?sequence=1 (accessed 21 Jun. 2019).

3) The author uses the term 'pro-government forces' to denote the Syrian Arab Army (SAA) and armed groups fighting alongside its soldiers, such as Hezbollah and National Defense Forces. In this theatre of operations, these armed groups have significantly helped re-shift and maintain the balance of power in favour of the regime.

4) See especially Agenda item 4, part III, annex V and annex VI, United Nations General Assembly Human Rights Council (2012): 'Report of the independent international commission of inquiry on the Syrian Arab Republic', A/HRC/21/50, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf (accessed 21 Jun. 2019).

5) Human Rights Watch (2012): 'Syria: Government Uses Homs Tactics on Border Town. Indiscriminate Shelling, Sniper Killings, Attacks on Fleeing Residents', available at: <https://www.hrw.org/news/2012/03/22/syria-government-uses-homs-tactics-border-town> (accessed 24 June 2019).

it possible for the Syrian regime to reassert control in key areas along the Lebanese border.

Syrians who have sought refuge in Lebanon also consider al-Qusayr as ‘the red line’: an area which is visible to the naked eye from the Lebanese border, but where the overwhelming majority of its inhabitants are forbidden to return. At the time of writing, al-Qusayr is largely destroyed and uninhabited. Although thousands of Syrians have returned to their homes in other parts of the country, for al-Qusayris access to their district remains off-limits. On 10 October 2018 the al-Qusayr city council published a new reconstruction master plan that raises concerns about the fate of land and housing of those who are not allowed to go back.

This paper discusses how the Syrian authorities and Hezbollah have used population displacement and violations of housing, land and property (HLP) rights to reassert control of the area. The paper argues that this process includes an attempt to consolidate the sectarian polarisation in al-Qusayr – a consequence of the war – to impose lasting control. Indeed, conditions for the displaced as well as the illegal occupations of property are detrimental to Sunni inhabitants from al-Qusayr, who were the main constituents of the civilian uprising and armed opposition groups. The paper further argues that the sectarian dimension observed during the reassertion of government control over al-Qusayr – which is not systematically applied to other areas retaken by pro-government forces – is mainly due to Hezbollah’s significant involvement in the area. The paper then discusses the Syrian authorities’ attempts to formalise violations of HLP rights by using legal means, enabling lasting demographic change. Finally, the author explores how urban and economic projects planned in the context of reconstruction have been used to make these demographic changes durable, for the benefit of citizens who remained neutral or loyal to the Syrian regime since 2011.

METHODOLOGY

For this paper, 40 interviews were conducted in Lebanon between September and November 2018 and March 2019. Most fieldwork was done in the eastern Bekaa Valley and the northern governorate of Akkar in communities that host refugees from al-Qusayr or maintain strong historical, family and economic links with the area. The author interviewed respondents from all the communities present in al-Qusayr before 2011, and from all political sides. Interviews were also conducted with key informants who have technical knowledge about Syrian property laws, land reform and land management in al-Qusayr, as well as relevant information about negotiations for the refugees’ return.

The author faced several challenges during the research. Firstly, the author was unable to visit al-Qusayr district. Secondly, the al-Qusayr inhabitants’ highly conflicting narratives required extensive crosschecking. In the eight years since the conflict began and because of the many traumatic experiences they have gone through, respondents tend to forget or confuse the chronology of events. Respondents also tend to conflate their perception of the events with what actually happened. Moreover, many respondents reported facts that are extremely difficult to verify without access to official documents. The author used only information that could be corroborated by at least three sources, or by photos, satellite imagery and/or official documents. Some information shared by respondents was

impossible to confirm and thus was not used, – even if they could be potentially interesting leads for further examples of the normalisation of HLP violations.

Thirdly, the high sensitivity of the topic required great caution during the field work in order not to put any respondent in danger. Syrian refugees' vulnerable situation in Lebanon as well as the ubiquitous presence of Hezbollah, Lebanese and Syrian intelligence services at the Syrian-Lebanese border made conducting interviews difficult and risky. Some persons with access to al-Qusayr were reluctant to be interviewed for fear of reprisals from Syrian authorities. Out of concern for the respondents' safety, all interviews have been anonymised. Research and interviews were complemented with and verified using satellite imagery generously provided by the NGO Syrian Archive.⁶

DISPLACED AND REFUGEES' RIGHT TO RETURN AND SECTARIAN DISCRIMINATION

Prior to the war, al-Qusayr district counted between 107,470 and 108,102 inhabitants.⁷ In 2014, the UNDP estimated its population at 138,000, of whom 77,000 were thought to be displaced.⁸ Many different religious communities had coexisted within the district's main city and countryside until 2011. The population is mostly Sunni, with significant numbers of Christians in both the city and the countryside. Some two dozen villages were inhabited by Shias, Alawites – a few of them also lived in al-Qusayr city – and Murshidis.⁹ There were also mixed Shia and Sunni villages. Most of the Shias - between 20,000 and 30,000 - had Lebanese citizenship. Their villages happened to be located on the Syrian side of the border when France drew the borders of the state of Greater Lebanon in 1920. However, when the 1932 population census occurred, these inhabitants registered in the Hermel area, a few dozen kilometres away in Lebanon, and thus got Lebanese citizenship.¹⁰ Strong family and economic bonds therefore exist between al-Qusayr and Hermel.

By 2012, the first testimonies of sectarian violence occurring in al-Qusayr appeared. The vast majority of respondents insists that the various communities had lived together peacefully until the uprising began. Despite the rise of hostile feelings resulting from the war, many respondents have nuanced recollections. Sunni interviewees remember food their community received from surrounding Christian villages during the pro-government forces' siege of al-Qusayr city, as well as the extreme poverty of Alawites in al-Qusayr who received little support from the regime – in contradiction to the usual narrative of Alawite privilege.¹¹ Some Christian respondents emphasise that not all of al-Qusayr Sunnis supported the violent Islamist and Jihadi groups that targeted their communities.

6) Syrian Archive provides support to human rights investigators, advocates and journalists in their effort to document human rights violations in Syria by sharing their expertise in the analysis of open source visual documentation, see <https://syrianarchive.org/en/about>.

7) The official figures vary depending on the document. See 'Results of the population and housing census for 2004, available at the city/village level' (in Arabic), Central Bureau of Statistics, available at: <https://archive.is/1UOp> (accessed 28 Jun. 2019) and 'Repartition of inhabitants and housing in Homs governorate for 2004' (in Arabic), <http://cbssy.sy/General%20census/census%202004/pop-man.pdf> (accessed 28 Jun. 2019). Informants say that in 2012 the city had about 40,000 inhabitants.

8) See Section B. Background, in 'UNDP Request for Quotation', UNDP, 13 Jan. 2019, available at: http://procurement-notice.undp.org/view_file.cfm?doc_id=164597 (accessed 28 Jun. 2019).

9) Murshidiyya is a religious community that emerged in the twentieth century when its members split from the Alawite community. See Sevruck, Dmitry (2013): 'The Murshidis of Syria: A Short Overview of their History and Beliefs', *The Muslim World*, vol. 103/1, pp. 80-93.

10) Hamadé, Kanj, and Blanc, Pierre and Jaubert, Ronald and Saadé-Sbeih, Myriam (2015) : 'De part et d'autre de la frontière libano-syrienne: les mutations de l'agriculture du Haut Oronte' [From both sides of the Syro-Lebanese border: agriculture mutations in High Orontus], *Confluences Méditerranée*, 92: 19-32, available at https://www.cairn.info/revue-confluences-mediterranee-2015-1-page-19.htm?try_download=1# (accessed 28 June 2019).

11) Bachar al-Assad belongs to the Alawite community, and his regime is often perceived as privileging Alawites vis-à-vis the other communities.

Nevertheless, sectarian violence did happen in the area. Sunni refugees in Lebanon accuse Alawite neighbours of shooting at them,¹² while Shia villagers accuse Sunni rebel groups of trying to chase them from their villages, looting their homes and stealing their crops.¹³ Christians, too, remember how they were the target of kidnappings and arbitrary attacks by some armed opposition groups.¹⁴

Christopher Phillips calls the Syrian civil war a ‘semi-sectarian conflict’, meaning that sectarianism is only one of its many elements.¹⁵ Besides the violations conducted on a political basis – commonly observed in Syria – sectarian-based HLP violations have been occurring in al-Qusayr. The local factors stoking sectarianism therefore require explanation. In 2012, threats to the Syrian regime increased as armed opposition groups took control of parts of the district. On both sides, leaders and financial backers politicised and encouraged sub-state identities, which led to sectarian violence. For its part, the regime ‘revived the old “fears of sectarianism” card’¹⁶ by describing the emerging opposition as Sunni sectarian forces that were threatening minorities. It also sectarianized the conflict by providing weapons to local minorities and receiving crucial support from Hezbollah.¹⁷ On the opposition side, rebel groups were very quickly supported by Gulf countries eager to counter what they perceived as the threat of a ‘Shia crescent’ hostile to Sunnis, increasing local Sunnis’ suspicion of Shias.

Conflicting narratives make it hard to know exactly when each camp began to politicize sub-state identities in al-Qusayr, a process that already existed before the war. However, Hezbollah’s intervention in al-Qusayr was a decisive factor that clearly exacerbated sectarian violence in the district. Indeed, Hezbollah first justified its intervention in Syria with a sectarian discourse¹⁸ about preventing Sunni ‘*takfir*’ opposition groups from eradicating religious minorities in both Lebanon and Syria.¹⁹ Hezbollah leader Hassan Nasrallah explained the intervention as the solution to protect the Lebanese living in al-Qusayr.²⁰ Because the majority of them are Shias, Hezbollah’s official line was perceived by many al-Qusayr inhabitants, mostly Sunnis, as sectarian: they considered that by depicting the whole opposition as Sunni radicals, Hezbollah was seeking to fight all armed opposition groups legitimately. Hezbollah was accused of targeting the Sunni community in its totality and not only its radicalized armed elements.

The frustration stemming from this perception of Hezbollah’s policy as well as the group’s decisive support for pro-government forces who retook al-Qusayr in the spring of 2013 further contributed to legitimise sectarian Sunni armed opposition groups in the area,

12) ‘Neighbours Said to Be at Violent Odds in Syrian Crackdown’, The New York Times (28 Mar. 2012), available at: <https://www.nytimes.com/2012/03/29/world/middleeast/refugees-say-neighbor-shoots-neighbor-in-syrian-crackdown.html> (accessed 4 Jul. 2019).

13) Blanford, Nicholas (2013): ‘The Battle for Qusayr: How the Syrian Regime and Hizb Allah Tipped the Balance’, Combating Terrorism Center, Syria Special Issue, 6/(8), available at: <https://ctc.usma.edu/the-battle-for-qusayr-how-the-syrian-regime-and-hizb-allah-tipped-the-balance/> (accessed 4 Jul. 2019).

14) ‘Rableh: 280 Christians held hostage’, Agenzia Fides (25 Sep. 2012), available at: http://www.fides.org/en/news/32291-ASIA_SYRIA_Rableh_280_Christians_held_hostage. (accessed 4 Jul. 2019). The street where many Christians lived in al-Qusayr city was attacked by Islamist rebels in March 2012, causing significant numbers of them to flee. Interviews in the Bekaa Valley, Lebanon, Sep.-Nov. 2018.

15) Phillips, Christopher (2015): ‘Sectarianism and conflict in Syria’, Third Word Quarterly 36/2, pp. 357-376.

16) Ibid. p. 369.

17) During interviews conducted in the Bekaa Valley, Lebanon, in Sep.-Nov. 2018, Christian inhabitants from al-Qusayr reported that Syrian authorities had provided Christians with weapons since 2012.

18) Daher, Joseph (2017): ‘Hezbollah, the Lebanese Sectarian State, and Sectarianism’, Middle East Institute, available at: <https://www.mei.edu/publications/hezbollah-lebanese-sectarian-state-and-sectarianism> (accessed 3 Jul. 2019).

19) Interviews with Hezbollah fighters conducted by the author in Oct. 2013 and Nov. 2015. See also ‘Le Hezbollah maître du jeu libanais’ [Hezbollah decides the rules in Lebanon], Le Monde Diplomatique (Apr. 2016), <https://www.monde-diplomatique.fr/2016/04/KOSTRZ/55214> (accessed 3 Jul. 2019).

20) Translation of Hassan Nasrallah’s speech on 11 Oct. 2012, available at: <https://thesaker.is/speech-of-hezbollah-secretary-general-sayyed-hassan-nasrallah-on-october-11-2012/> (accessed 3 Jul. 2019).

including Jabhat al-Nusra and the Omar al-Farouq Brigade.²¹ These groups targeted Shias and Alawites in the district and the neighbouring Lebanese region of Hermel, a Hezbollah stronghold, further inflaming sectarianism at the local level. Many testimonies report that these fighters conducted arbitrary attacks and property looting on a sectarian basis when they controlled parts of the district. However, as it is the Syrian regime and Hezbollah who won the offensive in 2013 and have controlled the area since then, this study focuses on their actions related to HLP violations in al-Qusayr.

HLP VIOLATIONS TARGETING THE SUNNIS OF AL-QUSAYR

An unequal return policy

After pro-government forces retook control of al-Qusayr in June 2013, local supporters of the opposition fled to other parts of Syria (such as Qalamoun, Yabrud, Nabeq and Idlib) and to Lebanon.²² Since then, the district has largely remained empty: most of the estimated 77,000 displaced have not returned to their homes yet. Interviews conducted by the author revealed that Syrian authorities are imposing conditions that vary greatly according to the individuals' sectarian affiliations: Religious minorities were allowed to return right after pro-government forces seized the district in May and June 2013, while Sunni families saw their access highly restricted and their definitive return prohibited.²³

Christians, Shias and Alawites – a significant part of which left the area in 2012 when the district was controlled by armed opposition groups – had been allowed to go back to their homes in July 2013. 'I did not have to request a security authorisation from the authorities to come back to my house. No Christians have to do so. If some of them have not come back, it is because their houses have been destroyed during the war, or because they moved to Damascus or emigrated to western countries,' recalled a young Christian man who fled al-Qusayr city in March 2012, mirroring the accounts of other Christians.²⁴ Although it is hard to know their exact number, about 350 Christian families had returned to live in al-Qusayr city at the time of writing.²⁵ Most of the inhabitants of the villages of Rableh and Eastern Daminah, where most of the Christians present in the countryside lived before the war, have returned to their homes.²⁶ Among those, many continue to cross the Syrian-Lebanese border each morning to work in Qaa village or Hermel and come back to al-Qusayr at night. Although this commuting existed prior to 2011, it has increased since 2013, as work opportunities in al-Qusayr remain scarce.²⁷ Similarly, Shias have returned to their villages in the al-Qusayr countryside.²⁸ The SAA and Hezbollah tolerate this cross-border mobility, partly because some villagers had fought alongside pro-government forces during the conflict.

21) Human Rights Watch (2013): 'Syria: Brigade Fighting in Homs Implicated in Atrocities. Video appears to show a commander mutilating a corpse', available at: <https://www.hrw.org/news/2013/05/13/syria-brigade-fighting-homs-implicated-atrocities> (accessed 3 Jul. 2019).

22) The UNHCR reports that 53,043 Syrian refugees registered in Lebanon are from al-Qusayr. Interview with the UNHCR Beirut office, October 2018.

23) Interviews conducted with civilians who have returned to live in al-Qusayr, refugees in Lebanon forbidden to return to al-Qusayr, and Lebanese and Syrians living in Lebanon but allowed to visit the area of al-Qusayr, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

24) Interviews with Christians and Shias from al-Qusayr who came back to live in the district or regularly come back there, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

25) Interview with a member of a Christian NGO, Beirut, Sep.-Nov. 2018. Another member of a Christian NGO said that the number of families does not exceed 150.

26) Field interview with an inhabitant of Rableh town, conducted in the Bekaa Valley, Lebanon, Sep.-Nov. 2018.

27) Interviews with Lebanese and Syrian Christians either from al-Qusayr or who regularly go to the district, conducted in the Bekaa Valley, Lebanon, Sep.-Nov. 2018.

28) Interviews with Shia Lebanese and Syrians either from al-Qusayr or who regularly go to the district, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

Sunni families from al-Qusayr face a very different situation. Many Sunnis fled the district when pro-government forces seized it in 2013. They sought refuge in Lebanon as well as in other places in Syria such as Qalamoun and other parts of Homs governorate like Hissiyah city, or distant areas of al-Qusayr district, such as Shinshar city. Those who stayed - mostly the elderly and very young - are scattered across the area, for instance in Nizariyeh, Qadesh, Ein Tannour, Fadliyah, Hussaynieh and al-Qusayr city.²⁹ 'My brother has made the choice to remain in Nizariyeh. However, he is not allowed to go out of the village,' said a refugee.³⁰ During the first year of the war, a few Sunni villages also reached collective agreements that allowed them to stay in the district.³¹ They were not expelled after 2013 but their movements are reportedly restricted.

For internally displaced persons (IDPs) and refugees who are Sunni, returning to al-Qusayr is very difficult. 'In practice, it is very hard for them to go back,' says a Lebanese volunteer working with refugees in the Bekaa Valley. 'Parents of martyrs who died fighting with the SAA can sometimes get authorisation to visit al-Qusayr, but always on a temporary basis.' It is easier for Sunni women to visit, but only for brief periods.³² After being cleared at the border, they have to leave their IDs at the checkpoint closest to their homes and pick them up when they leave.³³ Access to property, fields and houses has often been denied³⁴ and in the vast majority of cases, definitive return is prohibited. 'Seven days after I arrived in al-Qusayr, the military intelligence branch³⁵ came to tell me to leave immediately,' said a Sunni woman who had visited the area illegally, a process used by Syrians who do not have legal status in Lebanon.³⁶ However, most men do not even try to go home for fear of being arrested at the border, and charged with belonging to a terrorist group – or being forcibly conscripted into the SAA.

In 2018, the Lebanese General Security started to coordinate with the Syrian security agencies regarding the return of Syrian refugees in Lebanon.³⁷ Seventeen offices have been opened throughout the country to register those willing to return.³⁸ Although the Syrian authorities have allowed refugees to go back to other areas, no one has been allowed to return to al-Qusayr district.³⁹

Attempts to return for good have failed. 'In October 2018, our former neighbours tried to go back to their home in Burhaniyeh village. When they arrived at the Syrian border, the authorities sent them to Shinshar,' explains a refugee from Burhaniyeh living in Lebanon. Families who attempted to return to the village of Abu Huri that same month also were unsuccessful. 'My cousin tried to go back with his family but they were sent to Hissiyah. Once there, he was sent to the SAA.' Other families were sent to Homs city.

29) Interviews with Lebanese and Syrians either from al-Qusayr or who regularly go to the district, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

30) Interview with a Syrian refugee from Nizariyeh, conducted in the Bekaa Valley, Lebanon, Sep. Nov. 2018.

31) In May 2012, families of Masriyah village, for example, reached a deal with the Syrian authorities, enabling them to stay in Al-Qusayr district in return for agreeing not to take part in the uprising. Interview with one intermediary who facilitated the deal between the families and the Syrian authorities, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

32) Interviews reveal that accessing the area is easier for Sunni women, particularly those married to Shia. Before the uprising, mixed marriages were common.

33) Interview with three women from different families who returned to visit their siblings and properties in cities and villages in al-Qusayr district, conducted in the Bekaa Valley, Lebanon, Sept. Nov. 2018.

34) This process has been identified thanks to interviews with Sunni individuals who were able to visit their properties in al-Qusayr, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

35) The Military Intelligence Directorate is one of the four security agencies existing in Syria since 1970.

36) SAA soldiers sometimes allow individuals to cross the fairly porous Syrian-Lebanese border at checkpoints without any formalities. By doing so, Syrians who stay in Lebanon illegally do not have to cross the official border crossing where Lebanese authorities check their status.

37) These formal operations are not the only way to return. Some Syrians go home by themselves, without involving Lebanese General Security.

38) Interview with General Security, Beirut, Lebanon, Nov. 2018

39) Ibid.

IDPs face the same obstacles. In 2018, IDPs from al-Qusayr, who had settled in Hissiyah and who had been authorised to return by the governor of Homs, were prevented from doing so at the last minute.⁴⁰ The reason they could not go back home is unknown. Less recently, in 2014, an IDP from al-Qusayr city faced the same experience: despite having a document from the Homs governorate that allowed him to return to live in al-Qusayr city,⁴¹ soldiers at the last checkpoint before the entrance to the city prevented him from entering al-Qusayr city. 'The soldier urged me to get an authorisation from the Military Intelligence branch in al-Qusayr. I asked for it but they eventually refused, saying my wife and I are forbidden to return.' Some rare exceptions exist: about 40 IDP families from Arjun were allowed to return to their village in 2017,⁴² as were a dozen families from Tal Nabi Mandu. In March 2019, social and pro-government media reported the return of 126 families to Buweidah al-Sharqieh village.⁴³

Illegal occupation of land and houses

At the same time, the illegal occupation of land and houses has been observed throughout the district. Houses where inhabitants who fled since the beginning of the war used to live have been taken over by different types of new occupants. First, by people originally from al-Qusayr, who were allowed to return but whose own houses had been destroyed during the conflict.⁴⁴ 'One of our former Christian neighbours is occupying the part of our house which was not destroyed during the war,' explains a refugee in Lebanon who was informed of the situation by another Christian neighbour living in al-Qusayr city with whom he kept contact. Secondly, several respondents indicated that newcomers who have settled in al-Qusayr since 2013, once the government regained control, have occupied their houses. 'I was allowed to visit my house and found a family from Aleppo inside,' describes a Syrian woman from al-Qusayr countryside.⁴⁵ 'They told me they were allowed to move to the district to follow the husband, an SAA soldier assigned to al-Qusayr.'

Many respondents from different religious communities and political backgrounds claimed that Shia families from the Hassakeh governorate, Mazraa (Homs governorate) and Busra al-Sham (Daraa governorate) have also settled in al-Qusayr district.⁴⁶ Others also talked of hundreds of families who came from Foua and Kefraya in the wake of the four-town agreement⁴⁷ – which remains difficult to verify. In this context, some opportunistic behaviour appeared: people in al-Qusayr have started to rent houses of al-Qusayris who left to newcomers, making them believe they are the owners.

40) Interview with a Lebanese journalist from Hermel, Beirut, Lebanon, Sept.-Nov. 2018.

41) The document was shared with the author.

42) Interview with the person responsible for the negotiations, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

43) 'After seven years of absence, the return of 126 families to Buweidah al-Sharqieh in the southern part of Homs governorate' (in Arabic), Ortas News TV (YouTube) (20 Mar. 2019), available at: <https://www.youtube.com/watch?v=LeuhxYrMX2Y> (accessed 4 Jul. 2019); 'City of al-Qusayr, local development' Facebook page (in Arabic), 25 March 2019, available at: https://www.facebook.com/permalink.php?story_fbid=2214564908871776&id=1594434770884796 (accessed 4 Jul. 2019)

44) Interviews with Sunni inhabitants from al-Qusayr who visited their properties and Syrians who returned to live in al-Qusayr, Bekaa Valley, Lebanon, Sep.-Nov. 2018. Because most refugees are still in contact with siblings or neighbours who remained in or have returned to al-Qusayr, they often know the identity or origin of the individuals occupying their properties.

45) Interview in the Bekaa Valley, Lebanon, Sep.-Nov. 2018. For reasons of security, the village is not named. The respondent showed pictures of their occupied house.

46) Interview with Lebanese stakeholders with close connections and access to al-Qusayr, Beirut, Lebanon, Sep. - Nov. 2018.

47) The 'four town agreement' was signed in March 2017 and agreed on lifting the siege and totally evacuating four besieged cities: the two Shia towns of Foua and Kefraya in Idlib governorate, which were besieged by Hayyat Tahrir al-Sham (HTS) and Ahrar al-Sham rebel groups, and the two Sunni towns of Madaya and Zabadani, besieged by the SAA and Hezbollah. See Amnesty International (2017): "'We Leave or We Die', Forced Displacement under Syria's 'Reconciliation' Agreements", available at: <https://www.amnesty.org/download/Documents/MDE2473092017ENGLISH.pdf> (accessed 17 Jul. 2019).

One refugee in northern Lebanon said: 'A sibling was able to visit our house. Inside he found a family who was originally from Kefraya. They said that some neighbours rented them the house. They were shocked to find out that we are the actual owners.'⁴⁸

A similar situation exists for rural land: fields or orchards belonging to families who fled al-Qusayr have also often been cultivated by former neighbours or newcomers present in the district. Some refugees have allowed former neighbours with whom they have maintained good relations to work their fields while they are away. However, farmers who have remained in al-Qusayr mostly use other peoples' fields without their consent.⁴⁹ 'I contacted the farmer from Rableh who has been cultivating my field. He said he has the right to do so because I am a terrorist', said a refugee from Nizariyeh.

In addition to allowing these illegal occupations, pro-government forces deliberately destroyed some houses after pro-government forces took control of al-Qusayr district in 2013. This destruction was not arbitrary: they targeted the houses of individuals who belonged to or were close to armed groups.⁵⁰

Stemming from the sectarian selection of returnees, a 'sectarianization' of the illegal property and land occupation can thus be observed. Because Sunnis - who represented the vast majority of al-Qusayr's inhabitants prior to 2013 - are banned from returning to al-Qusayr, the ones occupying empty properties and cultivating these lands are naturally the ones allowed to return or settle, which belong to religious minorities. For instance, farmers from the Christian town of Rableh have been cultivating fields in Nahriyeh, Nizariyeh and Jussieh, while farmers from the Shia villages west of Nahr al-Asi (such as Hosh Said Ali and Zeita) cultivate the fields of the surrounding Sunni villages (like Sammaqiya).

Is Hezbollah's influence a decisive factor in sectarian-motivated HLP violations?

The negotiation process for the refugees' return to al-Qusayr involves various channels working in parallel. Besides discussions between the Syrian regime, Hezbollah and the Lebanese General Security, other initiatives exist. Members of the Lebanese Free Patriotic Movement (FPM), a party that has been allied with Hezbollah since 2006, have set up a dozen local committees around Lebanon in order to attempt to ease the process.⁵¹ Representatives of some refugee families have contacted the Lebanese General Security to encourage them to negotiate a potential return with the Syrian authorities. Some tribal leaders close to the regime have also contacted leaders of refugee communities in Lebanon to encourage them to return.

However, all these channels note Hezbollah's unequivocal refusal for any Sunnis to return to the district.⁵² 'It is a red line for the party,' explains a Lebanese member from the FPM who has strong connections with Hezbollah.

48) Interview in Akkar, Lebanon, Mar. 2019. The village is not named for security reasons.

49) Interviews conducted with refugees from al-Qusayr who know the identity of the farmers cultivating their fields. Some have even spoken with the occupiers, and many testified that the occupiers justified the illegal use of land by saying they consider the owners to be 'terrorists' who rose up against Assad. Bekaa Valley, Lebanon, Sep.-Nov. 2018.

50) Interviews with inhabitants from al-Qusayr, Bekaa Valley, Lebanon Sep.- Nov. 2018.

51) Interview with a FPM member in the Bekaa Valley who was serving as an intermediary between Hezbollah and refugees from al-Qusayr, Lebanon, Sep.-Nov. 2018.

52) Interviews conducted with three intermediaries involved in negotiating the return of Sunnis to al-Qusayr, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

‘Some negotiations were for instance held with the Majdala clan, whose members mostly took refuge in Wadi Khaled and who want to return to al-Qusayr. The clan proposed that only families would go back and former rebel fighters would stay in Lebanon, but Hezbollah refused.’ This Hezbollah red line was confirmed by all respondents involved in negotiations, as well as stakeholders of the Shia communities of Hermel.⁵³

Hezbollah’s refusal is largely explained by al-Qusayr’s strategic position. It is located at the crossroads between the coastal and northern areas of Syria as well as Homs and Damascus. Al-Qusayr is a flat corridor in the Anti-Lebanon Mountains that define the border between northern Lebanon and Syria. During the conflict, Wadi Khaled in the west and Ersal to the south served as support bases for the opposition. Since 2012, when the armed opposition groups controlled large parts of al-Qusayr, the district served as a crucial supply line for armed opposition groups, who could operate cross-border movements of weapons, fighters and logistics. Their presence was also an obstacle for Hezbollah’s own supply lines between Hermel – one of Hezbollah’s strongholds in Lebanon - and Syria. Reasserting and strengthening its control over al-Qusayr is thus essential for the Shia armed group. Hezbollah has reportedly increased its presence in al-Qusayr since July 2013, expanding its troops and infrastructure across the district, where military equipment to be used elsewhere in Syria is maintained.⁵⁴

During the night of 23-24 May 2018, Dabaa air base was targeted by an air strike that was attributed to the Israeli Defense Forces (IDF).⁵⁵ Located six kilometres north of al-Qusayr and about 18 kilometres from the Lebanese border, the air base is believed to harbour some Hezbollah troops and warehouses. Hezbollah has extended its military presence around the airbase during the conflict, which requires strengthening control of the area.⁵⁶ Satellite imagery proves that some houses have been razed in Dabaa villages, while several respondents reported Hezbollah and Syrian authorities have proceeded with refurbishment work around the base.⁵⁷

The barring of Sunnis returning is thus perceived as an element of Hezbollah’s military strategy. ‘They will not be allowed to come back because [Hezbollah] won’t risk having any former rebel fighters in the area; they want al-Qusayr to be a safe buffer zone that protects their Lebanese stronghold in Hermel,’ says a respondent close to Hezbollah in the Bekaa Valley. Given that participants in the uprising and members of armed opposition groups were mostly Sunnis, refusing the return of Sunni families is a way to ensure that no threat will destabilize Hezbollah’s presence and activities in al-Qusayr and Hermel. The goal is also to ensure the safety of civilians of Hermel and its surroundings, which had been attacked by radical groups targeting Hezbollah.⁵⁸

53) Interviews conducted in the Bekaa Valley and Beirut, Lebanon, Sep.-Nov. 2018.

54) Interviews conducted with respondents who have access to al-Qusayr and contact with Hezbollah members, Bekaa Valley, Sep.-Nov. 2018.

55) ‘Hezbollah base hit in missile attack on Syrian stronghold’, Middle East Eye (28 May 2018), available at: <https://www.middleeasteye.net/news/hezbollah-base-hit-missile-attack-syrian-stronghold> (accessed 17 Jul. 2019).

56) Interview with several local stakeholders who have close connections with Hezbollah and al-Qusayr, Bekaa Valley, Lebanon, Sep. Nov. 2018

57) Ibid.

58) Rockets were launched on Hermel, randomly targeting civilians. See: ‘Three Injured as Rockets Fall on Hermel, One on Army Post’, Naharnet (17 Dec. 2013), available at <http://www.naharnet.com/stories/en/110293> (accessed 1 Aug. 2019).

Some Shia families from al-Qusayr and Hermel are also pressuring Hezbollah to maintain the ban on Sunnis: ‘Too much blood has flowed,’ summarised an intermediary close to the Syrian regime who encouraged refugees to return to Syria but not to al-Qusayr.

The death toll of Hezbollah fighters in the 2013 al-Qusayr offensive was particularly high.⁵⁹ Even before that date, many Shias from al-Qusayr and Hermel had died fighting armed opposition groups there. The urge for revenge among Hezbollah-affiliated Shia families from al-Qusayr and Hermel is an important factor in Hezbollah’s reluctance to see Sunnis returning to al-Qusayr. One good example is Saqarja village, which was inhabited by Sunni Bedouins of the Majdala clan. In 2011, its inhabitants rose up against the regime and armed opposition groups took control of the village. For one year, before Hezbollah intervened in 2012, bloody fights occurred between them and the men from the surrounding Shia villages of Hawiq and Zeita.⁶⁰ Some Lebanese Shia men from Hermel went to help their cousins fight the opposition in Saqarja. Before pro-government forces intervened in 2013, armed opposition groups expelled Lebanese Shia families from the surrounding villages. This helps explain why negotiators were unable to agree on the return of IDPs from Saqarja who had sought refuge in Hissiyah and Lebanon.⁶¹

Indeed, Sunnis have been mostly allowed to return to communities far from the Lebanese border (map 1), where Hezbollah has a weaker presence. The strong influence of Hezbollah in al-Qusayr seems to explain why the ban on returning takes on a sectarian dimension in the district. Whereas the Syrian authorities select the returnees on a political basis – whether or not they have opposed the Syrian regime – Hezbollah seems to impose a total ban on Sunnis, whatever their political stand has been since the uprising started. Since 2013, such a ban was made possible thanks to the balance of power between the Syrian authorities and Hezbollah, which was tilted towards the latter. This could explain why some al-Qusayris who had been granted permission by the Homs governorate to return were eventually refused entry at district checkpoints. Hezbollah has been the key actor controlling the area. Also, in June 2018, Russia deployed some soldiers along the Lebanese border, who subsequently clashed with Hezbollah. A few days later, the Russian soldiers withdrew. Since then, they have not made any move to control the Syrian-Lebanese border.⁶²

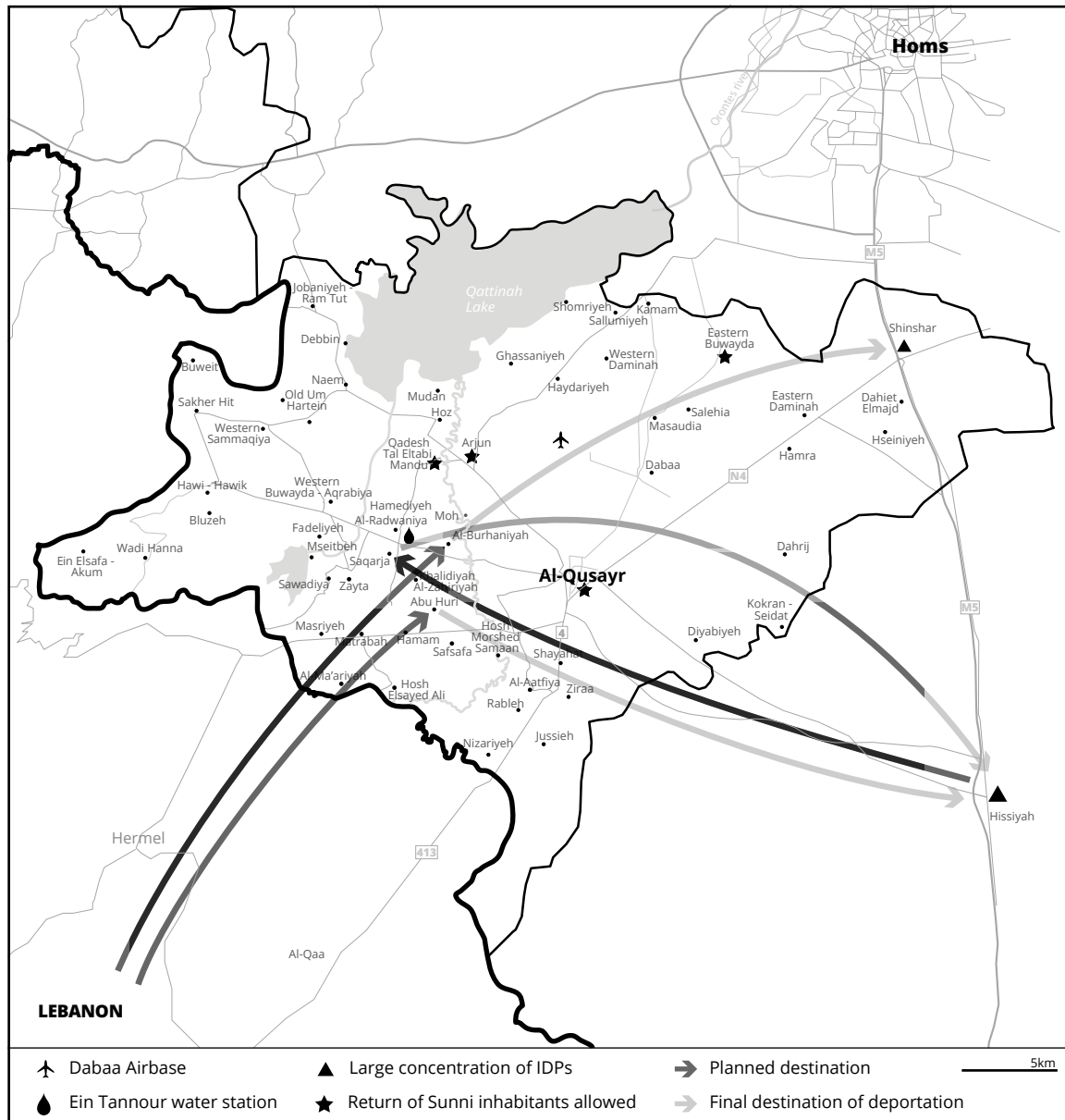
59) ‘Hezbollah’s Role in Syria War Shakes the Lebanese’, The New York Times (20 May 2013), available at: <https://www.nytimes.com/2013/05/21/world/middleeast/syria-developments.html> (accessed 17 Jul. 2019).

60) Interview with Shia Lebanese inhabitants of Hermel, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

61) Members of the Majdala clan who took refuge in Lebanon asked for women and children to go back to Saqarja while former fighters would stay in Lebanon, but the proposal was refused by Hezbollah. Interview conducted in Beirut with Lebanese stakeholders having close connections to Hezbollah and al-Qusayr, Sep.-Nov. 2018.

62) Interview with Shia stakeholders in Bekaa Valley, Lebanon, Sep.-Nov. 2018. See also: ‘Syria: Deployment of Russian Forces in Qusayr Causes Friction with Hezbollah’, Asharq al-Awsat (7 Jun. 2018), available at: <https://aawsat.com/english/home/article/1292966/syria-deployment-russian-forces-qusayr-causes-friction-hezbollah> (accessed 17 Jul. 2019).

MAP 1: RETURN BAN AND PERMISSION IN AL-QUSAYR DISTRICT



However, this balance of power might shift at some point. On 6 June 2019, a few dozen families came back to Ziraa village, on the south of al-Qusayr city.⁶³ On 7 July 2019, about one thousand IDPs, among them Sunnis, were allowed to go back to al-Qusayr city.⁶⁴ Homs governor Talal Barazi was present to host the returnees and declared that ‘all the localities of Homs governorate are open to the return of its displaced.’⁶⁵ The families being part of this first batch were, nonetheless, carefully selected. Those allowed to come back were mainly families of state employees who never took up weapons against the regime.

63) 'Beginning of the return of families to al-Ziraa village in al-Qusayr after years of absence', Ortas News (YouTube) (6 Jun. 2019), available at: <https://www.youtube.com/watch?v=7S3spz1EQ68>

64) 'Syrians return to their home city by Lebanese border in state-organized trip', Reuters (7 Jul. 2019), <https://www.reuters.com/article/us-syria-security-qu-sayr/syrians-return-to-their-home-city-by-lebanese-border-in-state-organized-trip-idUSKCN1U20LP>

65) 'First batch of displaced return to Syrian al-Qusayr' (in Arabic), Al-Mayadeen (8 Jul. 2019), available at: <https://bit.ly/2YmNuN2> (accessed 1 Aug. 2019)

They were displaced in Hissiyah, Shinshar or Homs, and some of them used to commute every day to work in al-Qusayr administration offices. ‘Until this summer, Hezbollah prohibited them to return, and it is still strongly opposed to this idea. However, the Syrian authorities in Damascus decided to allow their return anyway’, says a stakeholder involved in the negotiations for the return of the displaced.⁶⁶ According to him, Iranian influence has started to decrease because of the growing Russian influence, which enables Damascus to have more leverage in its decision-making. ‘The Syrian authorities support the return of Sunnis in al-Qusayr as long as they have not been part of the opposition and taken up weapons against them’. It is too early to know if this operation represents a real shift in the Syrian regime’s return policy and more returns to al-Qusayr, or if this was only an exceptional, heavily publicised operation, made to reassure the international community, which is wary of the return conditions imposed on the Syrian displaced.

THE USE OF LEGAL TOOLS FOR REASSERTING CONTROL OVER AL-QUSAYR: TOWARDS A DURABLE POPULATION RESHUFFLING?

HLP violations are often observed in wartime. However, although also common, their legal formalisation is less studied. The institutionalisation of housing and land dispossession has been theorised as a means for strengthening a state, especially in the context of the Palestinian population displacement during the 1948 war with Israel.⁶⁷ The case of al-Qusayr presents an interesting example of attempts to make HLP violations durable through legislative means. Influenced by Hezbollah’s objectives and stakes in the area, the Syrian regime is normalising HLP violations in its effort to reassert control over al-Qusayr. Authorities have started to use a legal framework to dispossess residents and therefore deprive those who are considered threats to the regime’s stability of their livelihoods. The variety of Syrian legislative tools illustrates one aspect of the ‘proliferation of the rules of the game’ mobilised by the Syrian regime to reassert its control over the territory and survive.⁶⁸ It shows how the regime ‘deploy[s] state regulatory authority to give a legalistic appearance to the arbitrary exercise of political power’.⁶⁹

Using land reform to reshape al-Qusayr’s population

One specific strategy to be questioned is the use of land reform. Al-Qusayr is a rural area, where land in the southern part of the district was mostly owned by big families since the first cadastre was created in 1926 under the French Mandate. In 1958, the United Arab Republic (UAR) issued the first land reform law, which forced big landowners to cede lands larger than a specific size.⁷⁰ The Baath party, which came to power with a coup in 1963, then amended the land reform to pursue its implementation. This seized ‘land reform land’ was divided into small parcels that were distributed to landless farmers.

66) 7 Interview with person involved in return negotiations by phone, Italy, 25 Jul. 2019.

67) Forman, Jeremy and Kedar, Alexandre (2004): ‘From Arab Land to “Israel Lands”: The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948’, *Environment and Planning D: Society and Space*, 22, pp. 809-830.

68) Heydemann, Steven and Leenders, Reinoud (eds.) (2013): *Middle East Authoritarianisms. Governance, Contestation, and Regime Resilience in Syria and Iran*, Stanford University Press, Stanford. p.10.

69) Heydemann and Leenders (2013), p. 10.

70) Law 161 of 1958 on Land Reform (in Arabic), Syrian Parliament website, available at: <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=10641&ref=tree&> (accessed 17 Jul. 2019).

In al-Qusayr, the land reform started to be implemented in 1966. The Baath party provided Bedouins from the Badia with land in al-Qusayr district. They were sedentarized in many villages of the district, such as Nahriyeh and Saqarja. Besides serving to increase social justice within the population and reinforcing the loyalty of its beneficiaries, the policy was designed to weaken the large landowning elites whose influence on the political and economic scene had been decisive until then.⁷¹

In al-Qusayr district, the reform was mostly enforced in the south of the district. The state nationalised most of the land west of the Orontes River as well as seven villages to the east.⁷² 80 percent of land owned by the Hamadeh and Sweidan families were expropriated.⁷³ However, farmers did not all become all owners: the state mostly kept the ownership and farmers had to pay an annual rent to cultivate the land.⁷⁴ In addition to this land reform, in 1970 Hafez al-Assad strengthened the farmers' power by tacitly allowing them to cultivate the parts of land still owned by the former big landowners, without paying them any rent.⁷⁵

Many inhabitants who fled in 2012-2013 actually do not have any ownership documents for the fields they cultivated and on which they built houses in al-Qusayr during the past 50 years. Land reform parcels can be reattributed if the farmer does not cultivate it for several years or if he does not pay his rent.⁷⁶ Some al-Qusayr families said that they had found ways to pay their rent and electricity bills in order to have evidence that they continue to occupy their lands despite being refugees in Lebanon.⁷⁷ Others lack the financial means to do that, cannot go to Syria, or are not aware that it could help save them from being expelled.

The example of a farmer from Abu Huri is symptomatic: 'The regime attributed a land reform parcel to my father in 1966. In 2002, the regime offered us access to property: We agreed to pay annual rent for twelve years to obtain the land. We should have become owners in 2014, but we fled our village in April 2013 and stopped paying the rent and our electricity bills. Now we don't know what will happen to our land.'⁷⁸ In such cases, the Syrian regime can legally reallocate 'land reform' fields to families who have remained loyal or neutral since 2011 – to the detriment of the families who fled al-Qusayr and who are suspected of being associated with the opposition. Unconfirmed rumours are circulating about 'land reform' parcels being reassigned to regime-loyal inhabitants. This process could help the Syrian regime to reassert control over the district.

71) Bianquis, Anne-Marie (1989): *La réforme agraire dans l'oasis de Damas*. Presses de l'Ifpo, Damascus, available at: <https://books.openedition.org/ifpo/5109?lang=fr> (accessed 17 Jul. 2019).

72) To the east of the Orontes, Nizariyeh, Ziraa, al-Aatafiyah, al-Souadiyah, Jussieh al-Amar and Jussieh al-Kharma. This land was confiscated because of its greater water availability. Interview conducted with a member of a large landowning family from al-Qusayr that had been dispossessed in 1966, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

73) Hamadé, Kanj and Blanc, Pierre and Jaubert, Ronald and Saadé-Sbeih, Myriam (2015): 'De part et d'autre de la frontière libano-syrienne: les mutations de l'agriculture du Haut Oronte' [From both sides of the Syro-Lebanese border: agriculture mutations in High Orontus], *Confluences Méditerranée*, 92 : 19-32, available at https://www.cairn.info/revue-confluences-mediterranee-2015-1-page-19.htm?try_download=1# (accessed 28 June 2019).

74) A minority accessed ownership in 1966 and some farmers could access ownership two decades after they started to rent their parcels. Interview conducted with beneficiaries from the land reform, Bekaa Valley, Lebanon, Sep. 2018-Jul. 2019.

75) Interview conducted with a Syrian lawyer from Homs Governorate specialised in civil and real estate issues related to agriculture. Lebanon, Sep.-Nov. 2018.

76) Interviews with land reform beneficiaries and Syrian lawyer from Homs Governorate specialised in civil and real estate issues related to agriculture. Lebanon, Sep.-Nov. 2018.

77) Interviews conducted with Syrian refugees from al-Qusayr, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

78) After Bashar al-Assad became president in 2000, the government implemented policies to privatise plots by helping small farmers access property and former large landowners regain lands they had lost since 1970. Interview with a Syrian lawyer from Homs governorate specialised in civil and real estate issues related to agriculture, Lebanon, Sep.-Nov. 2018.

Another factor to consider is the former large landowners' strong determination to get back the land they lost in 1966 and 1970. Some of them viewed the 2011 uprising as an opportunity to negotiate with the Syrian authorities for the retrocession of their confiscated lands.⁷⁹ It is a possibility that the Syrian authorities would re-attribute them a part of this land, at least the parts seized in 1970.

This attempt is being made in the wake of a process the Syrian government initiated in 2004, which implemented an 'agrarian counter-reform' supposed to boost the agriculture sector's productivity. Law 56 of 2004 stopped the automatic renewal of tenant contracts and led to the expulsion of hundreds of them.⁸⁰ It also introduced major changes which favoured former land owners: it made possible the expulsion of tenants unable to present their leases, and land owners whose land was illegally occupied were allowed to sue for compensation or retrocession in civil courts. Previously, they had to use courts created at the time of land reform implementation, which were seen to be biased toward tenant farmers.⁸¹ After Law 56 was issued, many illegal tenant farmers and landowners decided to settle informally out of court enabling the original owners to regain about 50% of their confiscated lands.⁸² A dozen cases were also officially won by large landowners who could take back all the lands that tenant farmers had illegally occupied since 1970.⁸³ However, not all the decisions have been implemented until today.⁸⁴ Enforcing Law 56 would allow the Syrian regime to get rid of tenant farmers who participated in the uprising and to strengthen local actors who had remained loyal or who had not joined armed opposition groups. Indeed, several former large landowners remained loyal or neutral to the regime during the conflict. 'Even if we have not been necessarily supportive, we did not support any armed opposition groups and thus the regime does not see us as a threat compare to other inhabitants', thinks one of them.

It is difficult to obtain data about the extent of land reform fields still owned by the Syrian state and the land that has been illegally occupied since 1970. Part of the land reform area was attributed, with deeds, to the tenants in the 2000s. A former employee of al-Qusayr city council who fled during the war stated that even before the conflict, the municipality did not know these figures properly.

Using environmental and security considerations to select land tenants and owners

The Syrian authorities have additional legal mechanisms at their disposal, which could impact the return to al-Qusayr. First, the Syrian government started to implement already existing environmental protection regulations in order to prevent some inhabitants from

79) Interview with members of large landowning families who reported negotiating with the Syrian regime to take back their land. Beirut and the Bekaa Valley, Lebanon, Sep.-Nov. 2018.

80) Ababsa, Myriam (2014): 'Crise agraire, crise foncière et sécheresse en Syrie (2000-2011)' in Longuenesse, Elisabeth and Roussel, Cyril (eds.) *Développer en Syrie: Retour sur une expérience historique*, Presses de l'Ifpo, Beirut. Available at: <http://books.openedition.org/ifpo/6549> (accessed 25 Jul. 2019).

81) Article 145 of Law 56 of 2004 on agricultural relationships, Syrian Parliament website, available at: <http://www.parliament.gov.sy/arabic/index.php?no-de=5572&cat=16090> (accessed 25 Jul. 2019).

82) The law stipulates that farmers of land reform plots who become owners are entitled to keep 40 percent of the disputed parcel. However, farmers and owners who chose to resolve a case out of court usually divided the disputed land into two equal parts. Interview conducted with a Syrian lawyer from Homs Governorate specialised in civil and real estate issues related to agriculture, Lebanon, Sep.-Nov. 2018.

83) These cases were won based on article 106 of Law 56 of 2004.

84) Interview with a former large landowner who in 2009 won a case allowing him to access the 30 hectares he owned but were illegally occupied since 1970. However, the family neither got back the land nor any financial compensation. Beirut, Lebanon, Nov. 2018.

coming back. For instance, some housing has been totally razed close to Ein Tannour spring, located close to Saqarja village.

*FIGURE 1: AERIAL PICTURES OF EIN TANNOUR SPRING TAKEN ON 05/03/2012
(SOURCE: SYRIAN ARCHIVE)*



*FIGURE : 2 AERIAL PICTURES OF EIN TANNOUR SPRING TAKEN ON 15/08/2014
(SOURCE: SYRIAN ARCHIVE)*



A pumping station is located near the spring, which provides Homs city with water, giving a strategic importance to the area.⁸⁵ During the conflict, the station fell under control of armed opposition groups, while pro-government forces were located about 1 km to the west of the station. They could not heavily bomb the armed opposition groups located around the station as this would have jeopardised the water provision for Homs. Deals were made between armed opposition groups and the Syrian authorities to allow some technicians to come and maintain the station.⁸⁶ Armed opposition groups also used to bargain the delivery of food and oil supply against their assurances to not cut the water supply to Homs. The authorities have, therefore, decided to raze the houses located close to the station in order to better control the area in the future. 'This decision only respects the Syrian law which forbids any housing 500 metres around any water source', explains a political leader in Al-Qusayr. 'This law was not respected before the conflict and the government decided to enforce it now in order to decrease any potential threats in the future.' It is unknown if the inhabitants of destroyed houses will be relocated and compensated. There has also been talk about a project aiming to enlarge the protected area, which could include Saqarja village, located near the station.⁸⁷ It is likely that such a decision will serve political ends and aim to prevent the return of the area's inhabitants. Such a use of environment laws for political purposes has already been noted in Syria. In January 2018, the government created a reserve around Ein Fijeh spring near Damascus, which will protect the direct environment of the spring but also entails plans to erase some residential areas and forbid any building of new housing.⁸⁸ Like al-Qusayr, Ein Fijeh stayed under the control of armed opposition groups for many years before it was seized by pro-government forces in January 2017.

The fact that al-Qusayr is located on the border with Lebanon also makes it easier for the Syrian authorities to control who is permitted to buy land and open businesses. Since 2008, individuals willing to buy or sell properties within 25 kilometres of a border area have to get security clearances.⁸⁹ It is reported that many owners, mostly Christians from al-Qusayr who moved to Damascus or emigrated to the west, have been selling their lands. Those are bought by Syrians or Lebanese who founded companies with Syrian partners, and can thus buy unlimited tracts.⁹⁰ The requirement of a security clearance to buy property and settle in al-Qusayr gives the authorities the possibility to filter potential investors, selecting only individuals not perceived as regime-critical.

However, these legal restrictions appear to be coupled with extrajudicial rules that Hezbollah is implementing locally. A Sunni individual who inherited land in al-Qusayr was refused the right to register the land under his name. 'As an alternative, my mother, who is Shia, went to the head of Hezbollah in al-Qusayr to request authorisation to register the land under her name. He refused because she is married to a Sunni man.' When the

85) ICRC Audiovisual archives, 18 Dec. 2017, <https://avarchives.icrc.org/Picture/137945> (accessed 1 Aug. 2019).

86) 'Al-Nusra fighters left Ein Tannour station and won't come back' (in Arabic), Al-Ahed news (1 May 2013), available at: <https://archive.alahednews.com.lb/details.php?id=75287> (accessed 1 Aug. 2019).

87) Interview conducted with a political leader in al-Qusayr district, Bekaa Valley, Lebanon, Sep.-Nov. 2018.

88) See article 5, 6 and 7 of Law 1 of 2018. The law creates one direct and one indirect reserve around Fijeh spring. It forbids the building of any residential areas within the direct reserve and the area along the two tunnels transporting water from the source to Damascus; the master plans of al-Fijeh and Dayr Muqaran will be amended to eliminate any residential area within the direct reserve. For the indirect reserve, only the standing residences can be restored and kept as long as they adapt their sanitation network. In case they do not do so within six months, residences will be destroyed at the owner's expense. 'Law 1 of 2018 establishing a reserve around Ein Fijeh source', Syrian Arab Republic Prime Minister's website, <https://bit.ly/2O5FSyl> (accessed 18 Jul. 2019).

89) Yazigi, Jihad (2017): 'Destruct to Reconstruct: How the Syrian Regime Capitalises on Property Destruction and Land Legislation', Friedrich Ebert Stiftung, available at: <http://library.fes.de/pdf-files/iez/13562.pdf> (accessed 18 Jul. 2019). Legislative Decree 49 of 2008 available in Arabic at: <https://bit.ly/2E39d5R> (accessed 18 Jul. 2019).

90) Interview with a Lebanese investor buying land in al-Qusayr, conducted in Beirut, Sep.-Nov. 2018.

enforcement of laws and decrees related to HLP are analysed, the local balance of power between the Syrian authorities and influential actors must be taken into account. It seems that in al-Qusayr, Hezbollah's extrajudicial powers are not regulated by Syrian law.

FROM URBAN PLANNING TO ECONOMIC DEVELOPMENT: RECONSTRUCTION AT THE SERVICE OF REASSERTING CONTROL ?

A new plan for the city?

Since 2013, life has been slow to restart in al-Qusayr city, which suffered major destruction. Some public schools and administrative offices have reopened in the eastern neighbourhood. Being the only one that remained under the control of pro-government forces before 2013, it had been subjected to less fighting, fewer airstrikes, and thus less physical destruction. On 10 October 2018, the 'Al-Qusayr city – Local Development' Facebook page, which posts all updates on the city council's local development activities, released the city's new master plan.⁹¹ Although the online document has hard-to-distinguish details, it clearly shows modifications to streets, infrastructure and housing.

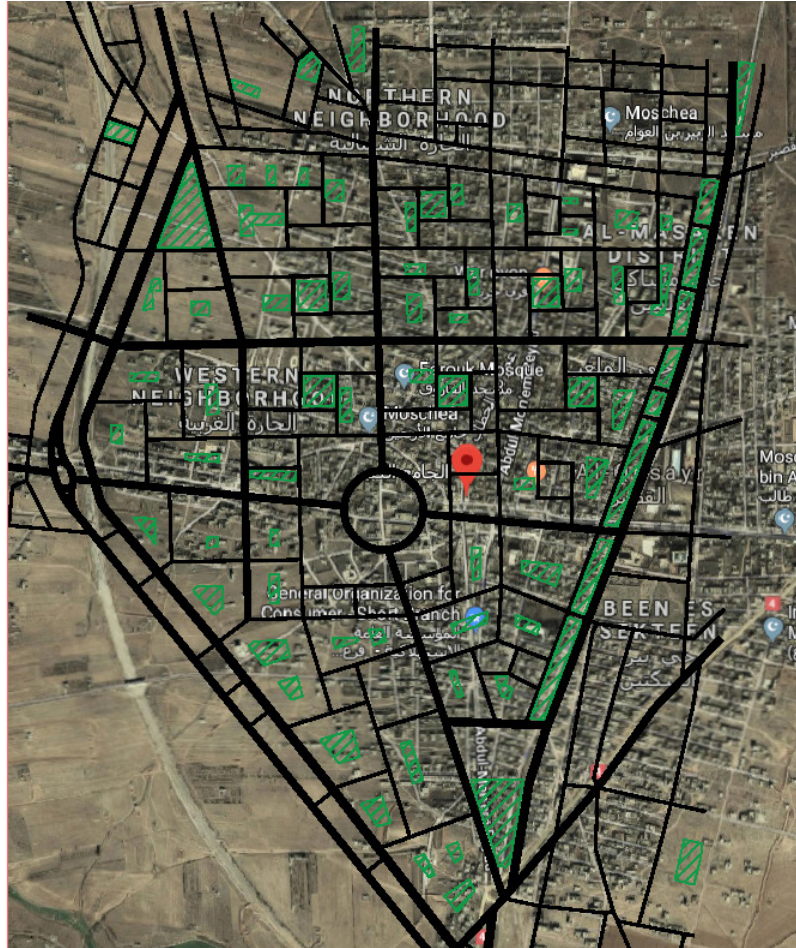
Despite the city council stating that owners' property rights would be respected, major changes in urban planning could be observed in the master plan. The part of the master plan that has been posted online only shows the city centre, its economic heart before the war and the opposition stronghold in 2011. Some significant changes are evident: while this part of the city used to be crossed by one main north-south axis and a second running east-west, the new plan shows a new road that cuts the north into six smaller parts, each of which has housing blocks and small parks. Included in the master plan are 55 gardens, about 45 of them new. The city's north and west will be encircled by new streets.

All the new parks and roads are planned on privately owned property. On the east side, a strip of vegetation about 20 metres long is planned where houses currently exist. Implementing the master plan will thus require their destruction. The future of the Big Mosque, where the al-Qusayr anti-government demonstrations started, is not clear. Nor does the plan show the 10 other mosques in the area.⁹²

91) 'Quseir city – Local Development' Facebook post, 10 October 2018, <https://bit.ly/2N2hYjG> (accessed 18 Jul. 2019).

92) All the observations in this paragraph were made by a former civil engineer of al-Qusayr city, who used to work on its master plans. Whatsapp and Skype interviews, Europe, Sep. 2018 and Jan. 2019. His observations were based on the plan shared with another informant. Although those images are clearer than the photo published on the 'Al-Qusayr City Council Local Development' Facebook page, their definition was still good enough to notice all the details. The engineer also noticed that the plan and its legend have less details than usual for such projects.

FIGURE 3: CHANGES BROUGHT BY THE NEW MASTER PLAN (SUPERIMPOSITION OF THE NEW MASTER PLAN ROADS AND THE SATELLITE IMAGE OF QUSAYR CITY ON GOOGLE MAPS).



This new plan, which more narrowly frames the area and introduces new road axes, could be an attempt by the authorities to better prevent any future contestation. The planned changes also convey the regime’s wish to banish the city dwellers who rose up against the regime by erasing all visible references to them and the uprising.⁹³

On its Facebook page, the city council gave owners until 9 November 2018 – one month – to register objections to the changes. However, for many refugees who read that post and examined the new master plan, contesting it was difficult or impossible. The majority of al-Qusayr inhabitants who fled have a very hard time going to the city with property deeds to prove their ownership, since most are prohibited from returning. Furthermore, many inhabitants did not take their documents with them when they fled and would face difficulties proving their claims to ownership. For people whose names are flagged by the various intelligence services in Syria, renewing such documents is almost impossible.

93) Tratnjek, Bénédicte (2012): ‘La destruction du “vivre-ensemble” à Sarajevo: penser la guerre par le prisme de l’urbicide’, Lettre de l’Irsem, available at: <https://halshs.archives-ouvertes.fr/halshs-00705113/document> (accessed on 13 Aug. 2019).

The new master plan raises serious concerns. It is likely that its publication is the first step towards the implementation of Law No. 10 of 2018.⁹⁴ Issued in April 2018, it allows the government to expropriate owners in ‘development zones’ delimited by the government within the scope of the reconstruction process.⁹⁵ The development zones are designated by presidential decree on recommendations from the Ministry of Local Administration in reference to the master plan designed by the Local Administrative Units.⁹⁶ Once a development zone has been designated, people with properties in the targeted area have one year to fill in an application to prove their ownership.⁹⁷ In July 2019, the former opposition stronghold Qaboun, in the Damascus suburbs, has been transformed into a development zone under Law 10 of 2018.⁹⁸

These regulations would enable the City Council and the Ministry of Local Administration to legally deprive refugees and IDPs from al-Qusayr – who are still not permitted to return – of their property. The legal framework for urban reconstruction projects is likely to be used to prevent the return of inhabitants opposed to the regime and who fled al-Qusayr during the war. However, at the time of writing, no construction had begun in the city, apparently because of a lack of funding.⁹⁹

Rebooting the local economy by marginalising some inhabitants?

Another government project in the al-Qusayr countryside deserves attention: the ‘Rableh development complex’, which is intended to revive the district’s economy. The complex will include a food-processing factory, a warehouse for fruit and vegetables destined for domestic and international markets, as well as a subsidised petrol station.¹⁰⁰ Construction began in 2018 but is not yet completed. The project is supported by the Ministry of Agriculture and strongly encouraged by the municipality of Rableh, a Christian village whose name is attached to the project.¹⁰¹ Its location is highly significant: The ‘Rableh development complex’ is being built on land that belongs to Jussieh, a neighbouring Sunni village that has been destroyed during the war and has remained empty since 2013.

The family who owns part of the land on which the project is being built sought refuge in Lebanon.¹⁰² Originally from Nizariyeh, a village administratively attached to Jussieh, the family was granted a land reform parcel in the 1960s for which it obtained a property title in the late 1990s. A member of the family went to the executive office of Homs governorate in 2016 to contest the construction of the complex on their land.¹⁰³ ‘The project was then

94) Article 1 of Law No. 10 of 2018, available at: <https://bit.ly/2qIRGci> (accessed 25 July 2019).

95) Please see Hanna and Harastani’s chapter in this volume for further detail.

96) Article 1 of Law No. 10 of 2018, available at: <https://bit.ly/2qIRGci> (accessed 25 July 2019).

97) Law 42 of 2018, issued on 11 November 2018 amended Law 10 of 2018 to extend the period for proving ownership from one month to one year. Available at: <https://bit.ly/2QP4fO8> (accessed 25 July 2019).

98) ‘Law 10 to be Implemented in Qaboun Suburb of Damascus’, Syria Report, 10 Jul. 2019, <https://bit.ly/2LzdqDB>, (accessed 18 Jul. 2019).

99) Interview with a European volunteer of a Christian NGO who was able to visit al-Qusayr in fall 2018 and reported that city officials and the local Christian community were actively looking for funds to rebuild the city; conducted in Europe, March 2019.

100) ‘Three development zones in Homs countryside: Economic gains, labour jobs and better services for the community’ (in Arabic), Baath (11 Sep. 2018), available at: <https://bit.ly/2DIBYJm> (accessed 19 Jul. 2019).

101) Interviews in Beirut and the Bekaa Valley, Lebanon, Sep.-Nov. 2018. See also the ‘Visit of the development zone site with the president of Rableh town council, the trade minister and the vice-governor of Homs governorate’, ‘Rableh town council’ Facebook page, 19 Aug. 2018 post. Available at: https://www.facebook.com/permalink.php?story_fbid=1003896813121930&id=194616120716674 (accessed 19 Jul. 2019).

102) Interview conducted with family members, Bekaa Valley, Lebanon, November 2018.

103) Interview conducted with one of the owners of the land, Bekaa Valley, Lebanon, Sep. Nov. 2018. Because one son was killed on SAA duty, he can return to Syria without being threatened.

suspended for six days but restarted very soon and I never received any compensation for my land', he reported.

The high vulnerability of the refugees, most of which live in extreme poverty and sometimes have limited knowledge of Syrian laws, makes it easier for the authorities to act with impunity. Some family members told the author that they did not know if the regime had used legal means to seize their land, or if they still owned it. In fact, in 2016, the state had invoked the 'Acquisition Law', Legislative Decree 20 of 1983, to seize 5.6 hectares to build the complex.¹⁰⁴ That piece of legislation allows the state to expropriate private land for projects of public interest.¹⁰⁵ Part of it was the family's land, the rest is land reform land that was confiscated from the Sweidan family in the 1960s.¹⁰⁶ It is not clear if this other part of the land reform parcel totally belonged to the state or if it was privatised in the 1990s and 2000s.

The Acquisition Law was used to expropriate land in lucrative and strategic areas well before the conflict started. However, this project seems linked to the political and military situation in Rableh, Jussieh and Nizariyeh during the war. Fighting occurred between rebel groups controlling Jussieh and Nizariyeh on the one hand and pro-regime militias in Rableh, on the other, before pro-government forces seized the district in 2013. Since then, some farmers from Rableh have cultivated land in Jussieh and Nizariyeh.

The regime can use the new complex to marginalise individuals associated with the civil uprising and opposition armed groups by preventing their return and depriving them of their livelihoods. Also, the project will provide jobs to local people who remained faithful or neutral to the Syrian regime during the conflict, and thus help strengthen its legitimacy. Indeed, many inhabitants from Rableh view the project being built at the outskirts of the city very positively because they expect it will create jobs. Furthermore, a farmers market would be a strategic bonus for Rableh, which is located on the road from Lebanon to al-Qusayr and Homs, and would benefit from cross-border trade between these Syrian cities and Qaa and Baalbak on the Lebanese side. In 2015, Homs governorate announced a SYP 47 million maintenance project for the Rableh-al-Amiri road.¹⁰⁷

Some respondents emphasised that Rableh's economic weight has grown significantly since before the war, when the district's economic hub was al-Qusayr city. The Syrian authorities seem to support and strengthen the ongoing trend that sees Rableh becoming a new local economic centre that will boost the local economy. In doing so, it also helps increase the economic clout of a 'loyal' community located in a strategic area, thereby helping the regime reassert its control over al-Qusayr. The satellite images below show the project construction.

104) Interview with a political leader for al-Qusayr district, Bekaa Valley, Lebanon, February 2019.

105) See articles 2, 3 and 4 of Decree 20 of 1983, Acquisition Law, Syrian Parliament website. Available at: <http://www.parliament.gov.sy/arabic/index.php?node=5588&cat=6485> (accessed 26 Jul. 2019).

106) Interview with a political leader in al-Qusayr district, Bekaa Valley, Lebanon, February 2019.

107) 'More than 47 million SYP...The executive [council] implements the maintenance of the Rableh – al-Amiri road' (in Arabic), Sana, 23 June 2015, <https://sanasyria.org/?p=233326> (accessed 12 Aug. 2019).

**FIGURE 4-6: GOOGLE EARTH IMAGES OF THE “RABLEH DEVELOPMENT COMPLEX”
(SOURCE: SYRIAN ARCHIVE)**

FIGURE 4: (25 DECEMBER 2017)



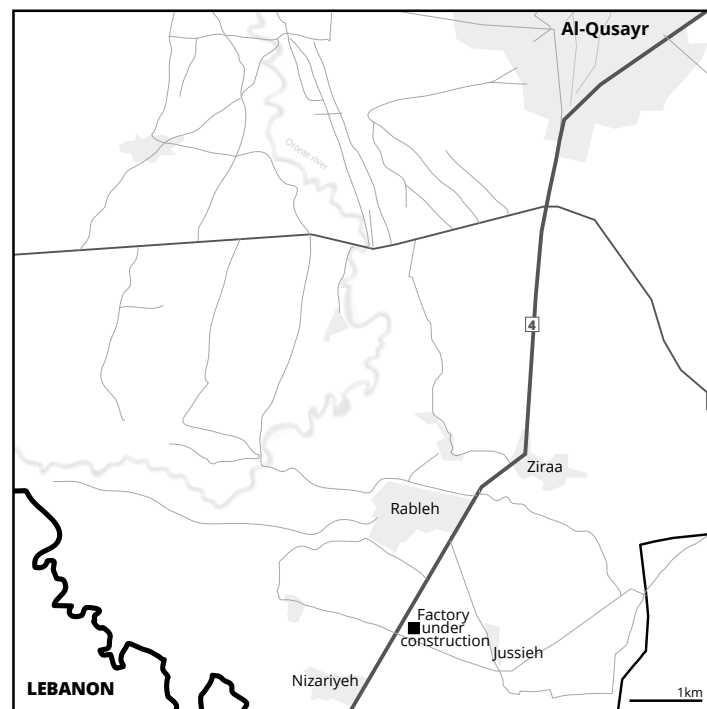
FIGURE 5: (23 FEBRUARY 2018)



FIGURE 6: (29 OCTOBER 2018)



MAP 2: LOCATION OF THE RABLEH DEVELOPMENT PROJECT



CONCLUSIONS

HLP violations in al-Qusayr have an obvious sectarian dimension: they discriminate against Sunnis. Evidence suggests that Hezbollah and the regime are seeking to change the district's demographic make-up by ensuring that no civilian opponents or former opposition fighters return or resettle. Since Sunnis constituted the bulk of anti-regime movements, the policy de facto reinforces the sectarian polarisation of the district. Hezbollah's influence over this strategic area seems decisive as the sectarian dimension observed in the violations of HLP rights has not been observed in other parts of Syria in the same way. The Syrian authorities have allowed Sunnis from al-Qusayr who are not considered as affiliated with civilian or armed opposition groups to return to the eastern part of the district (Shinshar), or to other areas of Homs governorate and Syria (such as Hissiyah) that are farther from the Lebanese border and from the North Bekaa Hezbollah stronghold of Hermel. Recently the authorities allowed the return of Sunni families to al-Qusayr city and claimed that the return of al-Qusayris is open across the whole Homs governorate. However, it is very hard to know how the situation in al-Qusayr will evolve in the near future. First, the evolution of the sectarian dimension of HLP violations will depend on how the balance of power between the Syrian authorities and Hezbollah - whose interests do not always coincide - will evolve.¹⁰⁸

Likewise, it will depend on the influence of international actors involved in the area. In June 2018, Russia attempted to contain Hezbollah's influence in al-Qusayr by deploying troops along the Lebanese border, but quickly withdrew.¹⁰⁹ Although Hezbollah is likely to remain the most influential actor in al-Qusayr district and currently enjoys extrajudicial authority regarding HLP, the increasing Russian influence in Syria could change the balance of power in the future. Since the beginning of the conflict, Russia has strengthened its relationship with Israel,¹¹⁰ which looks very unfavourably on Hezbollah's growing influence in Syria and at the Lebanese border. Without lobbying for the total removal of Hezbollah from al-Qusayr, Moscow could therefore push for a containment of the Shia armed group's influence along the Lebanese border.

Furthermore, the HLP violations outlined in this paper are in the process of being formalised and legally enforced. Syrian laws do not explicitly discriminate against Sunnis - or any other religious or ethnic groups. The force of the Syrian regime is to enforce a legislation which, depending on the political and military context, will de facto target the citizens considered as hostile to the regime. In al-Qusayr's case, their enforcement made Sunnis the first ones to be discriminated. The perception of being intentionally targeted by discriminatory policies, in return, nurtures a sense of victimhood among the Sunni community of al-Qusayr and exacerbates the sectarian polarisation of Syrian society.

It is likely that the urban planning and development projects integrated into the reconstruction process are designed to deprive communities associated with the opposition - or perceived as such - of their property and livelihoods, and thus any reason to return.

108) Hage Ali, Mohanad (2019): 'Power Points Defining the Syria-Hezbollah Relationship', Carnegie Middle East Center, available at: https://carnegieendowment.org/files/Hage_Ali_Hezbollah_final1.pdf (accessed 77 Aug. 2019).

109) Mroue, Bassem, 'Rare tensions between Assad's backers as Syria's war unwinds', Associated Press (9 Jun. 2018), available at: <https://apnews.com/bebd6b8568ac44b0b568b3ceca4c6c24> (accessed 12 Aug. 2019).

110) 'Russia-Israel Relationship Transformed by Syria Conflict', SWP Comment, German Institute for International and Security Affairs, no. 27, September 2018, https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C37_avk_kle.pdf (accessed on 12 Aug. 2019).

Conversely, it is likely they will benefit citizens who have remained loyal to the regime since 2011, as this case study of al-Qusayr has shown. Such a policy will increase tensions between communities in the near future and will be detrimental to any attempt to rebuild a cohesive society.

Despite the advertisement of the city's new master plan, construction in al-Qusayr has not started and respondents highlighted the Syrian authorities' lack of budget. Donor states considering financial support should be aware of the inherent sectarian and political discrimination in the plans proposed for the reconstruction of al-Qusayr district. This paper shows that HLP violations, urban planning policies and development projects appear to specifically discriminate against the Sunnis of al-Qusayr as well as all individuals associated with the civilian and armed opposition. Supporting local projects can mean participating – even indirectly – in a population reshuffle designed by the Syrian regime. Donors should also be conscious that the regime is likely to manipulate economic and development partnerships with private investors in al-Qusayr to reassert its power and legitimacy.

The UNDP recently published a request for quotation for a prefab construction for the al-Qusayr city department of cadastral affairs.¹¹¹ It is questionable whether helping the Syrian government re-open a cadastral office where HLP violations have been documented is suited to contribute to efficient and fair post-conflict reconciliation in Syria. The UNDP also provided equipment, stationery and IT equipment to al-Qusayr municipality.¹¹² The latest Syrian local elections of September 2018 showed that the regime has regained full control of local administrations, which do not benefit from any autonomy.¹¹³ Thus, supporting projects through the al-Qusayr municipality directly supports the Syrian regime. One last important element is to settle a fair system of compensation for individuals whose houses have been destroyed or razed, and who are not allowed to return to their village or city of origin. If seriously enforced, such a system will be crucial to avoid creating further tension amongst the various groups and with the authorities.

111) Request for Quotations (RFQ), Bids, UNDP, 13 January 2019, available at: http://procurement-notices.undp.org/view_file.cfm?doc_id=164597 (accessed 19 Jul. 2019).

112) 'Invitation to BID, Supplying Furniture, Stationery and IT Equipment to be distributed to several Municipalities in different Syrian Cities and Governorate', UNDP, 3 Mar. 2019, available at: http://procurement-notices.undp.org/view_file.cfm?doc_id=169683 (accessed 19 Jul. 2019).

113) Agnès Favier and Kostrz, Marie (2019): 'Local Elections: Is Syria Moving to Reassert Central Control?', EUI/RSCAS Middle East Directions, No. 3, available at: http://cadmus.eui.eu/bitstream/handle/1814/61004/MED_RR_2019_03.pdf?sequence=4&isAllowed=y (accessed 19 July 2019).

‘If we leave we will never live in this house again.’ Perspectives from Eastern Aleppo on housing, land and property governance and rights violations during the Syrian war

By Ina Rehema Jahn and Amr Shannan¹

INTRODUCTION

The Syrian war, now in its ninth year, has internally displaced 6.2 million Syrians while 5.3 million are registered as refugees: Nearly half of Syria’s pre-war population were forced to leave their homes.² By July 2017, 27 percent of the country’s housing stock had been destroyed or partially damaged.³ Of around 1.2 million housing units, at least half are estimated to be seriously damaged or beyond repair.⁴ The destruction is largely concentrated in Syria’s widespread informal settlements, where ownership and user rights were mostly ‘sustained through social solidarity and informal actors’.⁵ This enormous destruction comes on top of historical layers of housing, land and property (HLP) grievances, which were among the main drivers of the war.⁶ Forced into leaving their land and homes, and hence in a particularly disadvantaged position for defending their land and property rights, Syria’s displaced are most affected by these HLP rights violations.

1 The views and opinions expressed in this article are those of the authors and do not reflect the official policy or position of IOM.

2) OCHA (2018): ‘Humanitarian Needs Overview Syria (2019)’; available at: <https://hno-syria.org/#key-figures>.

3) World Bank (2017): ‘The Toll of War: The Economic and Social Consequences of the Conflict in Syria’, p. 17, available at <http://www.worldbank.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria> (accessed 21 Jun. 2019).

4) Ibid.

5) European Union (2017): ‘Urban Housing and the Question of Property Rights in Syria’, p. 36, available at <https://drive.google.com/file/d/1bra99u-cA6EIPQVj6p-wVlvXdxjThWh4B/view> (accessed 12 Nov. 2018).

6) European Union (2017). See also the introduction to this volume and: Beals, Emma (2018a): ‘Housing, Land and Property (HLP) and refugee returns in Syria’, Policy Position Paper for the European Institute of Peace, p. 9-12; Sömi, George (2018): ‘Syria under Pinheiro: Reformulating Syrian Domestic Law for Decentralized Reconstruction’, Brooklyn Journal of International Law 43(2): 725-733. Available at: <https://brooklynworks.brooklaw.edu/bjil/vol43/iss2/16> p. 725-733 (accessed 12 May 2019).

In Aleppo, Syria's second biggest city, 70 to 80 per cent of the war-related property destruction has affected the opposition-held and informally built eastern part of the city, where an estimated 33,500 houses have been razed to the ground through the course of the conflict.⁷ Today, according to the UN, around 60 per cent of the Old City, and 40 per cent of the entire eastern half of the city is destroyed. The destruction has been so widespread and systematic that it is said to have made urban life impossible. Indeed, 'the urban ruination on display from cities such as Aleppo...is on a scale not witnessed since the vast urban destruction of World War Two'.⁸

Nevertheless, HLP transactions in Eastern Aleppo and other formerly opposition-held areas have continued throughout the war, yet many are not formally recorded in the provincial land and real estate registries. This has led to the emergence of a plethora of new mechanisms for registering property and issuing HLP documentation in opposition-held areas. So far, little is known about these systems and how residents have interacted and engaged with them: Which systems were in place? How did residents access, interact with and trust them? How, seeing their current displacement, do they perceive the likelihood of return, reclaiming their property rights, and, more broadly, their 'right to the city'?⁹ These insights are critical because many of the constituencies who lived in once opposition-held areas – a majority of them in informal housing – will likely be further deprived of their HLP rights by the government's reconstruction plans.¹⁰ It is also urgent to take cognizance of the parallel HLP systems which emerged during the course of the conflict when devising mechanisms for HLP redress which must be an integral part of any meaningful peace process. It is thus important to understand how the many actors in the war, including opposition groups, have attempted to address and govern HLP issues in areas under their control, taking cues from reconstruction dynamics in areas retaken by the Syrian government as a look to the future.

Taking Eastern Aleppo as a case study, this article thus seeks to explore the competing property administration systems which emerged in Eastern Aleppo while it was under opposition control from 2012 to 2016, and to analyse the facts on the ground regarding HLP that the government established after retaking control in December 2016. The article asks what this reveals about the government's strategic approach to the reconstruction of former opposition-held and besieged areas. It argues that HLP will be the key dynamic in determining Syria's future, which could destabilise the country for decades to come if left unaddressed. Resolving HLP rights violations will be an extremely difficult and complex issue, not least due to the government's strategic interests to prevent 'disloyal' populations from returning and reclaiming their property rights, and the increasing extent to which 'war profiteers' have come to dominate the housing and real estate sector. This in turn puts a question mark on how, in Eastern Aleppo as well as across Syria, a return of many of those displaced will really be possible.

7) UNOSAT (2016): 'Damage Density in the City of Aleppo', p. 1, available at https://unosat-maps.web.cern.ch/unosat-maps/SY/CE20130604SYR/UNOSAT_A3_Aleppo_Damage_Density_20160918_v2opt.pdf (accessed 17 Sep. 2018).

8) Sharp, Deen (2016): 'Urbicide and the Arrangement of Violence in Syria' in Sharp, Deen and Panetta, Claire: *Beyond the Square: Urbanism and the Arab Uprisings*, UR/Terreform, New York, pp. 118–141.

9) Hallaj, Omar Abdulaziz (2017a): 'Who Will Own the City? Urban Housing, Land and Property Issues in Syria' in *Syrian Echoes*, available at: <https://syrianechoes.com/2017/07/31/who-will-own-the-city-urban-housing-land-and-property-issues-in-syria/> (accessed 19 Nov. 2018).

10) 'Wazir alaskan: alsakan alashwa'ay fi Suriya yoshakel 50% faqat' [Housing Minister: Informal housing in Syria only constitutes 50%], *Enab Baladi* (13 May 2018), available at: <https://www.enabbaladi.net/archives/228204> (accessed 9 Oct 2018).

METHODOLOGY

Due to security concerns and lack of direct access, it was impossible to conduct primary research inside Syria. This article thus draws on semi-structured interviews conducted between October 2018 and April 2019 with ten displaced residents of Eastern Aleppo who now live in Gaziantep, 60 km across the border in Southeast Turkey. To complement findings, interviews were also conducted with ten Syrian lawyers, judges and activists who worked for or interacted with the court systems set up in opposition-held Eastern Aleppo. Interviews were held in Arabic and English and organised around three strands of inquiry: 1) personal experience of property rights violations before and during the war; 2) perceptions of the procedures, efficiency and legitimacy of the new property administration systems that emerged in Eastern Aleppo between 2012 and 2016; and 3) perspectives on the possibilities of return to Eastern Aleppo and its possible reconstruction scenarios. Although the sample is small and composed of respondents opposed to the government, their views provide insight into *local* and *situated* perspectives from Eastern Aleppo and it is exactly from this that they draw their importance. To protect the respondents' identity and safety, all personal details have been anonymised.

INFORMAL HOUSING AND THE SIEGE OF EASTERN ALEPPO

Syria's economy has long been organised around its two key urban centres, Damascus and Aleppo. In 2011, around 8 million inhabitants resided in these metropolitan areas, more than a third of the Syrian population.¹¹ Approximately 40 per cent of the population of Damascus and 50 per cent of Aleppo lived in informal settlements.¹² These spontaneous settlements resulted from the rapidly urbanising population's growing need for housing and insufficient supply in the formal housing sector, and were marked by the prevalence of semi-legal documentation. This included different types of papers, such as court orders, seller-buyer contracts, agricultural land certificates and 'at least 20 other types of tenure documents',¹³ leading to the emergence of an informal real-estate market alongside the formal one.¹⁴ As such, 'millions of Syrians have lived in unregistered homes all their lives, in a legal grey zone born out of traditional informality, chaotic urbanisation, and dysfunctional governance'.¹⁵ These areas are what the government terms *manateq al-mukhalafat*, 'areas of collective transgression'; more widely known as *ashwaiyat*, or 'informals'.¹⁶

When the Assad government began to liberalise access to finance and open the national economy in 2004, many of the remaining economic safety nets for the poor were dismantled. Property prices rose significantly and new laws were passed facilitating the eviction of tenants. At the same time, the regulatory capacity to manage cities remained very low: Between 1990 and 2010, three housing units were built in the informal housing sector for each housing unit built in the formal sector.¹⁷ Compounded by pervasive mismanagement

11) Vignal, Leila (2014): 'Destruction-in-Progress: Revolution, Repression and War Planning in Syria (2011 Onwards)', Built Environment 40(3): 333.

12) Goulden, Robert (2011): 'Housing, Inequality, and Economic Change in Syria', British Journal of Middle Eastern Studies, 38(2): 187-202.

13) Please see the chapter by Hanna and Harastani in this volume. Also see: European Union (2017), p. 52.

14) See Hallaj (2017a).

15) Housing & Land Rights Network (2018), 'Syria: Old Slums, New Urbanist Battleground' available at <http://www.hlrn.org/arabic/activitydetails.php?id=pmllYw==#XUrWs-gzbb0> (accessed 9 Dec. 2018).

16) 'Dispossession or Development: The tug of war over Syria's ruined slum dwellings', IRIN News (now The New Humanitarian) (4 July 2018), available at: <https://www.irinnews.org/analysis/2018/07/04/dispossession-or-development-tug-war-over-syria-s-ruined-slum-dwellings> (accessed 12 Dec. 2018).

17) Hallaj, Omar Abdulaziz (2017b): 'Scenarios for Post-War Reconstruction in Aleppo, Syria', IUSD Lab Lectures (2 June 2017), available at: https://www.youtube.com/watch?v=HLU6LwbH_pE, min. 18 (accessed 16 Nov. 2018).

of the housing market, Syria experienced a housing crisis that in 2007 was described as a 'time bomb which could threaten the security and stability of the country', contributing to resentments against the state.¹⁸ In 2011, the revolution took hold in this informally urbanised Syria – spreading from the informal neighbourhoods to the inner city areas.

Informality has particularly strong roots and traditions in Aleppo. For much of the city's history, elite interests have been firmly focused on the western part of the city, which was dominated by middle class neighbourhoods and experienced consistent investment. At the same time, Eastern Aleppo grew steadily as a result of rural-urban migration to supplement industries in the western parts of the city.¹⁹ Throughout, the city's east was mainly left to develop on its own with minimal public service provision. For the last ten years, Aleppo city has spatially grown by 3.3 per cent annually, mostly in unplanned areas in the east.²⁰ In 2009, it was estimated that spontaneous settlements account for 45 per cent of Aleppo's residential housing and that these settlements were growing at 4 per cent, or around 8,000 households, per year.²¹ In 2011, at the beginning of the war, Eastern Aleppo consisted of most of the historic Old City and a large semi-circle of 52 densely populated, mostly informally built neighbourhoods. When the war reached Aleppo in 2012, the conflict dynamics played out along the city's social divisions and class lines, with the east controlled by armed opposition groups and the west remaining under the control of the Syrian government.

While opposition groups held Eastern Aleppo, the Syrian government and allies subjected it to daily barrel bombing, which intensified from 2014 to late 2016; the resulting displacement, disappearances and deaths reduced the original 1.5 million residents to just 40,000.²² On 7 July 2016, the Syrian government began a full siege of Eastern Aleppo, trapping the remaining residents. On 13 December 2016, the parties agreed to the evacuation of all remaining residents and fighters to the north of Aleppo governorate. The UN's Independent International Commission of Inquiry on the Syrian Arab Republic has judged this agreement as amounting to the war crime of forced displacement.²³ The forced evacuation formalised what has been described as the 'cleansing of an urban population unprecedented in the history of the modern Middle East'.²⁴

The magnitude of this displacement and the accompanying transformation of Aleppo city's spatial features results from a specific type of warfare: the systematic and large-scale destruction of the urban fabric and besieging of entire neighbourhoods and cities beyond immediate military imperatives.²⁵ During the conflict, restive areas are encircled, relentlessly shelled and bombarded, and the population forcibly displaced through so-

18) Goulden (2011), p. 201.

19) Hallaj, Omar Abdulaziz (2018): 'Cadasters, Property and the Creation of Modernity in the Levant', City Debates 2014, available at: https://www.youtube.com/watch?v=G_GLP24XLGo, min. 14 (accessed 10 Nov. 2018)

20) Ibid.

21) Gesellschaft für Technische Zusammenarbeit (GTZ) (2009): 'Informal Settlements in Aleppo: Rapid Profiles of all Informal Settlements in Aleppo', p. 8.

22) Amnesty International (2017): "'We leave or we die': Forced displacement under Syria's "reconciliation" agreements', p. 35, available at: <https://www.amnesty.org/download/Documents/MDE2473092017ENGLISH.pdf> (accessed 26 Aug. 2019).

23) Office of the High Commissioner for Human Rights (OHCHR) (2017): Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, prepared for the thirty-fourth session of the Human Rights Council 27 Feb – 24 Mar 2017, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/64 (accessed 2 Feb. 2019).

24) Khaddour, Kheder (2017): 'Consumed by War: The End of Aleppo and Northern Syria's Political Order', Friedrich Ebert Stiftung, p. 17, available at <http://library.fes.de/pdf-files/iez/13783.pdf> (accessed 12 Feb. 2019).

25) Vignal, Leila (2018): 'Perspectives on the return of Syrian refugees', Forced Migration Review 57, available at <https://www.fmreview.org/syria2018/vignal> (accessed 8 Jan. 2019).

The destruction of housing stock in Eastern Aleppo is so extensive that it has been described as ‘absolute...there is nothing recognizable left’.²⁸ In the course of the conflict, an estimated 33,500 houses in Eastern Aleppo were razed to the ground, and many thousands more heavily damaged.²⁹ Even prior to the war, many residents did not possess formal title deeds (*tabou*) that were registered with the General Directorate for Cadastral Affairs. Instead, residents had court decisions or informal seller-buyer contracts. While often tolerated by the state, such documentation did not fully secure property rights. As a displaced resident of Eastern Aleppo’s Salah Al Din neighbourhood explained, ‘Even before the war, a court decision did not really protect you – the local authorities could easily evict you if they wanted’³⁰, for example, in areas earmarked for urban ‘redevelopment’ or public infrastructure.³¹ 77 per cent of Aleppo’s damaged housing – most of it in the East – only has land records, with no official record of the building on the land.³² It has been estimated that 30,000 property records from Eastern Aleppo were destroyed during the conflict.³³

TRANSFORMATIONS OF HOUSING, LAND AND PROPERTY GOVERNANCE IN EASTERN ALEPPO, 2012-2016

At the beginning of the uprising, the Syrian government formally withdrew services and resources from all functions related to civil documentation and land registries in areas it did not control.³⁴ Legislative Decree 11/2016 suspended property registration in registries of conflict-impacted areas. The state thus denied all populations living under the armed opposition access to key institutions that provided civil documentation and guaranteed land and property rights.³⁵ Some people, however, managed to retain access to government institutions either by appointing a lawyer with a power of attorney or accessing registries through relatives living in government-held areas. For those who could not do so, ‘quasi-governmental institutions emerged and [they] kept...records as part of their claims to govern areas abandoned by the central government’.³⁶ During 2013, rebels in Eastern Aleppo set up more than 60 local councils at the neighbourhood level (*majalis al-ahya*) to provide public services, the first time eastern neighbourhoods acted independently of the west.³⁷ In addition, courts were established to take care of legal matters in the opposition-controlled areas. The nature of these court systems differed significantly according to the armed group in control.³⁸ These newly formed entities adjudicated property administration and resolved property disputes³⁹ but did not answer to any formalised opposition body,

28) Attar, Lina Sergie (2017): ‘Grieving for Aleppo, One Year After Its Fall’, The Atlantic, available at: <https://www.theatlantic.com/international/archive/2017/12/syria-aleppo-assad/549437/> (accessed 12 Nov. 2018).

29) Beals (2018a), p. 13.

30) Interview with a media activist from Eastern Aleppo’s Salah al-Din neighbourhood, Gaziantep, 8 October 2018.

31) Municipalities often provided payments or in-kind housing for evacuees from informal areas before Law 1/2003 was issued. After that, evacuations were no longer considered for compensation, which further disenfranchised already poor segments of the population.

32) Beals, Emma (2018b): ‘Assad’s Reconstruction Agenda Isn’t Waiting for Peace. Neither Should Ours’, The Century Foundation, available at: <https://tcf.org/content/report/assads-reconstruction-agenda-isnt-waiting-peace-neither/?session=1> (accessed 25 Apr. 2019).

33) Ibid.

34) Unruh, Jon D. (2016): ‘Weaponization of the Land and Property Rights system in the Syrian civil war: facilitating restitution?’, *Journal of Intervention and Statebuilding*, 10(4), pp. 453-471.

35) European Union (2017), p. 42 – 44.

36) European Union (2017), p. 36.

37) Khaddour (2017), p. 10.

38) Schwab, Regina (2018): ‘Insurgent courts in civil wars: the three pathways of (trans)formation in today’s Syria (2012–2017)’, *Small Wars & Insurgencies*, 29(4), p. 812.

39) Syrian Justice and Accountability Centre (2018), ‘Return is a Dream: Options for Post-Conflict Property Restitution in Syria’, p. 9.

such as the Syrian Interim Government (SIG) based in Gaziantep.⁴⁰ Neither did they evolve upward into provincial or national bodies.⁴¹

In Eastern Aleppo, the two most significant legal structures to emerge under opposition control – effectively, two rival legal systems – were the Unified Judicial Council (*majlis alqada' almuwahad*), that was partly supported by the Free Syrian Army and located in the neighbourhood of Zibidiye, and the 'Sharia Committee' composed of the four most powerful Islamist factions (Jabhat al-Nusra, Ahrar al-Sham, Suqour al-Sham and Liwa al-Tawheed) that was based at the former eye clinic in Qadi Askar. The Sharia Committee also had branches in the Masaken Hanano and al-Firdous neighbourhoods; others opened in Binnish, Bab al-Hawa, and Sarmada in Idlib province.⁴² While the Unified Judicial Council initially followed Syrian law it soon adopted the Unified Arab Code, a set of legal codes based on Sharia and endorsed by the Arab League between 1988 and 1996 which, before the Syrian uprising, had never been applied anywhere.⁴³ For its part, the Sharia Committee applied a more traditionalist interpretation of Sharia law infused with customary law, 'with only some consultation with lawyers'.⁴⁴ All the actors in the new legal system agreed to adopt Islamic law as the basis of this framework, to help legitimise its rulings in the eyes of the population.⁴⁵ Whether or not a decision was enforced, however, depended entirely on the armed group backing the court – which often changed.⁴⁶

The Unified Judicial Council was set up by opposition lawyers in October 2012 to 'regulate the relations between civilians and military actors and to protect public as well as private property'.⁴⁷ It had four branches – for civil, criminal, and personal status law, as well as military affairs.⁴⁸ The Unified Judicial Council only made decisions about property disputes based on formally registered government documents. As one of the Council's founding members explained, 'There were old property disputes, for instance, some people in Eastern Aleppo had a court decision for a property transaction from the government before the revolution, and they would bring it to the Unified Judicial Court to implement it'.⁴⁹ Selling and buying property was initially rare. But in 2013, as conditions began to deteriorate, the Unified Judicial Council 'opened a notary office in September, housed in the same building where residents could obtain a power of attorney to facilitate the sale of properties'.⁵⁰ The notary office enabled residents of Eastern Aleppo to hire lawyers to assist in all legal matters, including the sale and purchase of properties. The Unified Judicial Council usually issued its own documentation, with its own stamp, which was closely modelled on the templates used by government courts.

40) Interview with a judge and former deputy head of the Ministry of Justice of the Syrian Interim Government, Beirut, 12 Apr. 2019.

41) Hallaj, Omar Abdulaziz (2017c): 'Geographies of Absence: Radicalization and the Shaping of the New Syrian Territoriality', *New England Journal of Public Policy* 29(1), p. 22, available at: <https://scholarworks.umb.edu/nejpp/vol29/iss1/10> (accessed 20 Sept. 2019).

42) Amnesty International (2017), p. 43.

43) Interview with a founding member of Unified Judicial Council of Aleppo, Gaziantep, 12 Jan. 2019.

44) 'A Tale of Two Courts', *The New York Times* (11 Apr. 2013), available at: <https://latitude.blogs.nytimes.com/2013/04/11/a-tale-of-two-courts/> (accessed 3 Oct. 2018).

45) Baczkó, Adam and Dorronsoro, Gilles, and Quesnay, Arthur (2014): 'Building a Syrian State in a Time of Civil War', Carnegie Endowment for International Peace paper, available at: <https://carnegieendowment.org/2013/04/16/building-syrian-state-in-time-of-civil-war-pub-51517> (accessed 9 Oct. 2018)

46) Interview with media activist from Eastern Aleppo, Gaziantep, 29 Oct. 2018.

47) Schwab (2018).

48) 'Altajriba alqada'ya fi Halab' (The judicial experience in Aleppo) Syria Noor Media (17 Sep. 2014), <https://syrianoor.net/article/913> (accessed 1 Oct. 2018).

49) Interview with a founding member of the Unified Judicial Council of Aleppo, Gaziantep, 13 Nov. 2018.

50) Ibid.

This distinguished the Unified Judicial Council from the Sharia Committee, which mainly issued decisions and contracts based on witness testimony, including for property disputes such as competing inheritance claims which were said to be very common because so many people were killed, disappeared or detained.⁵¹ A decision required a witness to be present for each concerned party; sheikhs then investigated, issued judgments and supervised their implementation.⁵² In contrast to the Unified Judicial Council, sheikhs sometimes reversed previous formal court rulings. The Committee, also called the Quartet Court (*al mahkamah al rubaa'e*), exclusively gained its power and influence from the military strength of its local supporting factions. Most staff members were not trained legal professionals. According to a lawyer formerly based in Eastern Aleppo, 'Judges in the Sharia court were not legal professionals and had at most an Islamic (Sharia) degree'.⁵³

The leadership of the Sharia Committee was rotated among the four factions each month, and was accompanied by a significant turnover in staff.⁵⁴ As a former member of a Local Council in Eastern Aleppo explained, 'As the management shifted between four armed groups, it was hard to know which interpretation of the law was [being] applied'.⁵⁵

A sheikh who delivered decisions at the al-Firdous neighbourhood branch recalled working on 100 to 110 property transactions and disputes, most of them related to selling/buying or inheritance disputes between 2013 and 2016.⁵⁶ Given the general absence of formal property title deeds in Eastern Aleppo prior to the war, most decisions were based on paralegal evidence and the judge's personal opinion.⁵⁷ The Sharia Committee also engaged in an ownership mapping and verification exercise in the al-Firdous and Sukkari neighbourhoods by zoning the area using Google Maps and verifying ownership house by house through collecting neighbour testimony. When a house was verified, a sharia court issued temporary documentation with the name of the owner, the full address and the size of the property.⁵⁸ If ownership was not contested within 24 months, the Sharia Committee issued its own ownership documents.

Overall, however, interviewees unanimously stated that the Sharia Committee did not have sufficient legal experience and the property documentation it issued was of very limited value. However, the Committee was deemed effective for addressing the secondary occupation of houses in areas under their control as well as general dispute resolution.⁵⁹ Sheikhs often resolved most land disputes after rapid reviews and delivered verdicts within a few days, usually after two or three sessions. This process would often take years in the formal courts before the conflict. An interviewee explained how a one-year rental contract was drawn up within just two days: 'I worked in a private hospital. Through the Sharia court, we contacted the owner to ask if he could rent the hospital to the Aleppo Medical Council. The owner was able to cross from the government side to al-Shaar the next day, and signed the Sharia court's rental contract'.⁶⁰

51) Interview with a member of Aleppo Medical Council, Gaziantep, 29 Nov. 2018.

52) Jusoor for Studies (2017): 'Sharia Leaders in Syria: Mentality and Role'. Available at <http://jusoor.co/details/Sharia-Leaders-in-Syria-Mentality-and-Role/338/en> (accessed 16 Dec. 2018).

53) Interview with an opposition lawyer from Jarablus, 23 Oct. 2018.

54) 'Altajruba alqada'ya fi Halab' [The judicial experience in Aleppo], Syria Noor Media (17 Sep. 2014).

55) Interview with former member of the local council in Mashhad neighbourhood of Eastern Aleppo, Skype, 11 Apr. 2019.

56) Interview with the former head of the al-Firdous branch of the Sharia Committee, Gaziantep, 18 Apr. 2019.

57) Ibid.

58) Ibid.

59) Interview with a doctor from Eastern Aleppo, Gaziantep, 23 Oct. 2018.

60) Ibid.

As fighting between the opposition groups increased, the Unified Judicial Council was subjected to growing hostility from Islamist factions. The two courts refused to recognise each other's decisions and judgments and were generally unable to coordinate because of their different legal interpretations.⁶¹ As a founding member of the Unified Judicial Council explained, 'The armed factions insisted that only sheikhs can deliver decisions and called our lawyers "secular", so in late 2013 we agreed to employ half trained lawyers and judges, and half Sharia sheikhs'.⁶² Despite these measures, by late 2013, open conflict had broken out between the Unified Judicial Council and the Sharia Committee. In mid-November 2013 the Islamist faction 'Fastaqim Kama Umirt Union', abetted by the al-Nusra Front,⁶³ forcibly took over the Unified Judicial Court and merged it with the Sharia Committee, confiscating many of the Council's documents and archives in the process.⁶⁴

As residents of Eastern Aleppo realised that the government was remaining in power, the influence of the rebel courts waned. Interviewees strongly expressed that, for legally binding decisions, their first choice – security situation and finances permitting – was to register property transactions in the formal state system. This was possible by giving a power of attorney to relatives residing in government-held areas or to a middleman who could safely go to the Directorate for Cadastral Affairs located in Western Aleppo.⁶⁵ 'If at all possible, people were trying to reach the government side – but this required money, so not everyone was able to do so.'⁶⁶ Until mid-2013, those not directly wanted by the government were also able to cross in Bustan al-Qaser district in the east to Western Aleppo to take care of paperwork in government-held areas. Others chose to go to the Land Registry in nearby Afrin district before it stopped serving non-locals in 2014.

To sell and buy properties, some residents also used fixers and middlemen said to be well connected to government authorities and *shabiha*⁶⁷ who often worked in networks.⁶⁸ For example, well-connected fixers were able to facilitate the registration of property transactions in the formal system.⁶⁹ As a doctor from Eastern Aleppo explained, 'If you had money you could always pay middlemen to register your property transaction with the Real Estate Registry or a court on the government side. A friend of mine, now in Turkey, just sold three houses in Eastern Aleppo and, through a middleman, paid a judge USD 6,000 to sell them on his behalf.'⁶⁷ Such reports of corruption in formal state institutions were confirmed by a retired employee of the General Directorate of Cadastral Affairs of Aleppo City, who claimed that many property deeds from Eastern Aleppo, especially from the al-Ansari, Zibidiye and Saif al-Dawla neighbourhoods, were moved to the office basement in 2014, which had suffered water damage. He understood that this idea stemmed from his superiors' ambitions rather than direct orders from Damascus. The stated aim was to render HLP documents of 'disloyal' citizens unusable.⁷⁰

61) Interview with a member of the Aleppo Medical Council, Gaziantep, 29 Oct. 2018.

62) Interview with founding member of the Unified Judicial Council of Aleppo, Gaziantep, 13 Nov. 2018.

63) 'Altajriba alqada'ya fi Halab' [The judicial experience in Aleppo] Syria Noor Media (17 Sep. 2014).

64) Interview with a founding member of Unified Judicial Council of Aleppo, Gaziantep, 12 Jan. 2019.

65) Interview with a doctor from Eastern Aleppo, Gaziantep, 23 Oct. 2018.

66) Interview with a member of Aleppo Medical Council, Gaziantep, 29 Nov. 2018.

67) *Shabiha* (meaning "ghosts") is a term for state-sponsored militias of the Syrian government. However, in the Aleppo Governorate the term *Shabiha* is used frequently to refer to pro-Assad Sunni tribes. In the city of Aleppo 'this prominently includes' the powerful al Barri tribe. powerful Sunni Arab al-Barri tribe.

68) Interview with a doctor from Eastern Aleppo, Gaziantep, 17 Oct. 2018.

69) Interview with a media activist from Eastern Aleppo's Salah al-Din neighbourhood, Gaziantep, 8 Oct. 2018.⁶⁷ Interview with a doctor from Eastern Aleppo, Gaziantep, 28 Oct. 2018.

70) Interview by Skype with a former employee of the Real Estate Registry of Aleppo City, 16 Apr. 2019.

After announcing in 2015 that 5 per cent of all records in Aleppo had been damaged,⁷¹ the government introduced Law 33/2017 to ‘reconstruct’ Aleppo’s cadastral records. The law’s murky procedures have raised fears that individuals will be further disenfranchised of their property rights, as presence in person is normally required to recover or reissue records.

When Eastern Aleppo again fell under the government’s control in December 2016, many civilians in the area destroyed HLP documents issued by opposition groups, which were widely seen as incriminating evidence that could lead to arrest or worse. Interviewees also had no illusions that documents issued by opposition groups would be recognised: ‘Once control shifted, the papers became useless overnight.’⁷² It was also suggested that, before leaving Eastern Aleppo, Islamist factions burned down their Sharia courts to destroy evidence.⁷³

Indeed, the Syrian government has repeatedly stated that it does not recognize civil or property documentation issued by any entity other than state institutions.⁷⁴ Thus, individuals who bought, sold or rented property in former opposition-held areas cannot register it in the formal system.⁷⁵ There is no external mechanism to regularise and adjudicate these concerns: Property disputes are already very common, and these factors suggest that disputes will likely increase.

TYPES OF WAR-INDUCED HLP RIGHTS VIOLATIONS IN EASTERN ALEPPO

All twenty respondents had lost access to their properties since their displacement. While throughout the siege, armed groups had established offices in civilian homes and regularly appropriated private and commercial properties abandoned by civilians who had either fled Eastern Aleppo, were perceived to be affiliated with the government, or who had passed away,⁷⁶ respondents univocally stated that the government’s relentless barrel bombing, shelling and confiscations caused the greatest HLP rights violations and grievances. Compounding difficulties, most interviewees reported that their property documentation had been destroyed, stolen, or lost during their escape. This is corroborated by a 2017 survey by the Norwegian Refugee Council, which found that just 25 per cent of displaced persons in northwest Syria had brought their property deeds with them.⁷⁷ This raises the issue of how those displaced individuals and families will be able to prove the rights they had over land and/or properties prior to their displacement. None of the 20 interviewees saw any hope of returning and reclaiming their property rights, including compensation. A former resident of Saif al-Dawla neighbourhood put it succinctly: ‘We all instinctively knew: If we leave, we will not live in this house again. We will not come back.’⁷⁸

71) Syrian Ministry of Land Administration (2015), ‘Adrar Alsijelat Alaqarya fi Halab 5%’ [5% of the land records in Aleppo are damaged], available at: <http://www.mola.gov.sy/mola/index.php/المصالح-العقارية/item/4815-5-حلب-أضرار-السجلات-العقارية> (accessed 1 Dec. 2018).

72) Interview with a former doctor in Eastern Aleppo, Gaziantep, 23 Oct. 2018.

73) Association of Islamic Scholars of Syria (2017): ‘Almahkameh alshara’ya fi Halab w rifaha’ [The sharia court in Aleppo and its surroundings], https://islamsyria.com/site/show_articles/10180 (accessed 7 Dec. 2018).

74) Beals (2018a), p. 21.

75) Ibid., p. 16.

76) Ibid., p. 14.

77) Norwegian Refugee Council (Jul. 2017), ‘Displacement, HLP and access to civil documentation in the north west of the Syrian Arab Republic’.

78) Interview with a doctor from Eastern Aleppo, Gaziantep, 12 Oct. 2018.

A key question is hence how and for whom Eastern Aleppo will be reconstructed, and who will live there in the future. Interview data and numerous reports clearly suggest that Syrian security services are confiscating and selling the land and property of displaced populations perceived to be loyal to the opposition,⁷⁹ an activity that is facilitated by the erosion of formal institutions and the rule of law, along with the widespread loss of or damage to property deeds in much of the country. Expropriation and looting of properties under the pretext of punishing opposition members is reportedly common in Eastern Aleppo and other areas formerly held by the opposition.⁸⁰ An interviewee from the Salah al-Din neighbourhood who fled to Turkey in 2012 recounted how he escaped on short notice with his family as the government was advancing: 'I left most of the family's valuables, including my entire life's work and all our property documentation in our house. I have not been back since. The government entered and stole everything inside my house. Later, local shabiha took over my house and stayed there from 2012 to 2014. After this, government officials seized the building and marked it as a terrorist house using red wax. This is the current situation.'⁸¹ Other interviewees also reported local authorities marking numbers on their houses for being considered supporters of the opposition, indicating that the owners have forfeited their right to the property and only the government is allowed to buy, sell or retrieve anything from it.⁸²

The Syrian government has also set up specific courts under the new anti-terrorism Law 19/2012 and legislative decree No. 63/2012, which authorise courts and the Ministry of Finance to confiscate assets relating to terrorism offences.⁸³ These courts routinely order confiscation of all moveable and immovable properties of those convicted of terrorist offences.⁸⁴ For those out of the country, sentencing takes place in absentia and cannot be appealed, and the court decision is not published: 'Since you are not there, you can't do anything.'⁸⁵ A member of the Free Syrian Lawyers Aggregation⁸⁶ from Aleppo and now based in Gaziantep had all his moveable and immovable property frozen under this legislation in 2016 due to suspicion of 'terrorist activity', and since resigned himself to the fact that he has irretrievably lost them.⁸⁷ The decision under legislative decree No. 63/2012 was issued by the Ministry of Finance and signed by its Minister, which are legally empowered to "take the necessary precautionary measures against movable and immovable property belonging to the accused."⁸⁸ Some 70,000 Syrians have reportedly faced asset freeze decisions by the Ministry of Finance in the past two years alone.⁸⁹

79) Unruh (2016).

80) 'Eastern Aleppo under al-Asaad', The New Humanitarian (12 Apr. 2017), available at: <https://www.thenewhumanitarian.org/analysis/2017/04/12/eastern-aleppo-under-al-assad> (accessed 16 Nov. 2018).

81) Interview with a media activist from Eastern Aleppo's Salah al-Din neighbourhood, Gaziantep, 8 Oct. 2018.

82) Interview with a journalist from Eastern Aleppo, Gaziantep, 14 Apr. 2019.

83) Article 12 of Law 19 gives the court the right to confiscate properties of people charged with terrorism.

84) Daher, Joseph, et al. (2018): 'Reconstructing Syria: Risks and Side Effects', Adopt a Revolution, p. 7, available at: https://www.adoptrevolution.org/wp-content/uploads/2019/01/Adopt_1812_Layout_EN_final_N.pdf (accessed 6 Jan. 2019).

85) Interview with a member of the Free Syrian Lawyers Association and former member of the Unified Judicial Council, Gaziantep, 12 Jan. 2019.

86) Opposition-affiliated lawyers from Aleppo have set up multiple, distinct bodies in Gaziantep, chiefly among them The Free Syrian Lawyers Association (تجمع المحامين السوريين الاحرار, tgm' almhamyyn alswryyn alahrar) and the Syrian Lawyers Aggregation (تجمع المحامين السوريين, tgm' almhamyyn alswryyn). The respondent heads the latter.

87) Interview by Skype with a member of the Free Syrian Lawyers Aggregation, 12 Apr. 2019.

88) Office of the High Commissioner for Human Rights (OHCHR) (2019): Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, prepared for the Fourtieth Session of the Human Rights Council 25 Feb. – 22 Mar. 2019, footnote 39, p.16, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_40_70.pdf (accessed 5 Apr. 2019)

89) *ibid*, p.16.

Generally, as a former judge from Eastern Aleppo explained, properties are currently being expropriated in three ways: 'outright confiscation by occupation of empty property without consent, the use of special courts to try so-called terrorists under new anti-terrorism legislation and strip them of their belongings, and a well-developed network of middlemen who help fake property documentation for unauthorised sales. The government has imprisoned some of those people but often turns a blind eye if they receive a percentage of the take.'⁹⁰ This suggests that property confiscation is taking place on a large scale both through the application of new laws and taking advantage of the absence of the rule of law in the city.

An interviewee suggested that abandoned property is mainly expropriated in the Saif al-Dawla, al-Shaar, Salah al-Din and Zabiha neighbourhoods in the west of Eastern Aleppo, which have more modern houses and have been reconnected to public services.⁹¹ Upmarket properties and factories are often used by government-affiliated militias for military, private or commercial purposes, while less valuable houses are confiscated and then sold or rented (without leases). Access to neighbourhoods and properties is granted only by permission of – and payment to – the militias controlling the area.⁹² Displaced residents have resorted to paying militias high sums of money to protect their property from looting and secondary occupation in their absence. One family interviewed claimed to have paid USD 1,000 to Aleppo's influential Barri family, closely connected to high-ranking military intelligence officials in Aleppo, to secure protection for their two houses in al-Shaar.⁹³ Different armed groups – some of them Iraqi and Iranian – control each neighbourhood and provide access and 'personal security' services for a fee.⁹⁴

Other interviewees detailed how they had rented their properties for symbolic amounts before leaving Eastern Aleppo so that the new tenants would protect them.⁹⁵ Others left property documents in the care of family members, or had drawn up leases for their property in the name of family members or relatives in Syria. Having tenants in one's property was described as the most effective way to protect it from confiscation: 'If your house was in an area affected most by conflict, you would be happy to allow others to live there without a lease and often for free. They would then work for you like guards.'⁹⁶

Several respondents also reported selling property under duress to finance their escape from Eastern Aleppo, often on exploitative terms.⁹⁷ Indeed, many 'sold their property during the past seven years either because they needed the money, were under duress to do so, or because their homes were damaged and they could not afford to repair them'.⁹⁸ Fuad, a displaced resident of Saif al-Dawla, explained how the need for money and the desperation to leave influenced his family's decision to sell their property below value: 'After I had to flee Aleppo, my father sold our house in Saif al-Dawla for USD 29,000, which was less than half its original value. My mother also owned a small apartment in Saif al-Dawla, for which she did not have a *tabou*, just a court order. The price she received was a

90) Interview with a founding member of the Unified Judicial Council of Aleppo, Gaziantep, 12 Jan. 2019.

91) Interview with a media activist from Eastern Aleppo, Gaziantep, 29 Nov. 2018.

92) Beals (2018a), p. 22.

93) Interview with displaced resident of Al-Sha'ar neighbourhood, Gaziantep, 24 Oct. 2018.

94) Ibid.

95) Interview with a doctor from Eastern Aleppo, Gaziantep, 17 Oct. 2018.

96) Interview with a displaced resident of Salah al-Din neighbourhood in Eastern Aleppo, Gaziantep, 4 Nov. 2018.

97) Syrian Justice and Accountability Centre (2018), p. 13.

98) European Union (2017), p. 54.

symbolic USD 6,000. It would have been more if she'd had a *tabou*.⁹⁹ As Syrian opposition media outlets report, family members of opposition supporters have been pushed to sell their properties outright. A woman identified as Umm Mahmoud is reported to have been forced into selling her house in the Hellok neighbourhood for half its original price after the government-loyalist militia Baqir Brigade threatened to arrest her under the pretext that her son was affiliated with the opposition.¹⁰⁰

These cases illustrate the weak bargaining position of residents of Eastern Aleppo that have often obliged them to accept exploitative terms for property transactions.¹⁰¹ A former lawyer for the Unified Judicial Council in Eastern Aleppo explained, 'As the government began advancing, people started to sell to finance their escape, sometimes for half the price. The situation was exploited. People started to sell because they knew they are not coming back, many were scared that their properties were going to be confiscated by government-linked Shabiha and Iranians...'¹⁰²

The government has introduced regulations that make it more difficult to sell or buy property, such as Letter No. 4554/W of 04/August/2015 on '*Security clearance requirement for purchase, sale and leasing of residential and commercial properties*'. Now buying and selling property requires an official security clearance, which is impossible to obtain for anyone wanted by the authorities, for example for evading compulsory military service. As many as three million names – 12.5 per cent of the pre-war population – may be on such lists.¹⁰³ The Bureau of National Security or the intelligence services determine whether or not someone wishing to make a property transaction receives clearance.¹⁰⁴

Likewise, issuing a power of attorney now requires the person to be present to authorise a third party to sell, rent or buy property on their behalf, and this has to be renewed every year. As a doctor from Eastern Aleppo now based in Gaziantep described, 'We are in the process of selling my house in Suleiman al-Halabi neighbourhood. Despite having a *tabou* this is very difficult because it now requires your presence in person, even to issue the power of attorney. A few months ago, my father went from Turkey back to Aleppo to solve this issue. But it has to be renewed every year, so I hope we can sell it soon'.¹⁰⁵ This case shows that even in the rare cases where people possess formal title deeds, HLP rights are extremely precarious and often cannot be realised.

99) Interview with a doctor from Eastern Aleppo, Gaziantep, 17 Oct. 2018.

100) 'Ba'd "qadm" madinat al Halab milishiyat taqdom 'aqarat Halab bi a's'ar bakhshah' [After taking over the city of Aleppo, militias take over real estate at low prices], available at: <https://arabi21.com/story/989503> (accessed 21 Dec. 2018).

101) Syrian Justice and Accountability Centre (2018), p. 13.

102) Interview with an opposition lawyer, Jarablus, 23 Oct. 2018.

103) Beals (2018a), p. 20.

104) A. Al Zien (2019): 'Legal Obstacles to Housing, Land and Property Rights in Syria', PAX Policy Brief, p. 6, available at: <https://www.paxforpeace.nl/publications/all-publications/legal-obstacles-to-housing-land-and-property-rights-in-syria> (accessed 14 Aug. 2019).

105) Interview with a doctor from Eastern Aleppo, Gaziantep, 23 Oct. 2018.

PERSPECTIVES ON RETURN AND THE FUTURE OF EASTERN ALEPPO AFTER 2016

All interviewees said they could not imagine returning in the present circumstances, with Bashar al-Assad likely to remain in power. Supporting the uprising and being affiliated with the opposition plays a major role in the (im)possibility of return: 'Having any link to the opposition will make it very hard to return and reclaim their property. These people cannot return if the same people stay in power.'¹⁰⁶ Importantly, several respondents said this is true even if one holds formal property documentation such as a title deed. A former lawyer who worked in Eastern Aleppo stated, 'I have a *tabou* for my house in Saif al-Dawla, but I cannot return to Eastern Aleppo because the government arrested me during the revolution and I am wanted'.¹⁰⁷ As such, even those who have the necessary formal documentation may find it very difficult to access their properties for fear of reprisals, arrests or forced military conscription.¹⁰⁸ For the few who have nonetheless returned to Eastern Aleppo, (only 153,012 as of June 2017),¹⁰⁹ protecting their property has been a common motivation: 'Some have returned despite the lack of services because they are afraid their houses and flats will be taken away from them'.¹¹⁰

Much of Eastern Aleppo is still uninhabitable and remains largely depopulated and destroyed. What little reconstruction has occurred has been carried out privately. Public reconstruction is limited to the restoration of a couple of historical monuments such as the Umayyad Mosque. While the Syrian government blames the slow recovery on Western sanctions,¹¹¹ the view on the ground is quite different. As Mohammad, a displaced resident of the Saif al-Dawla neighbourhood explained: 'For now, the government is not investing in the reconstruction of Eastern Aleppo. There is no service provision and life there is extremely hard, even two years after the evacuation. In most areas there is no electricity or running water. The government is not spending a penny on rehabilitation. There is no police force there, only *shabiha* and militia forces who are running everything in these areas'.¹¹² While the cost of rebuilding Aleppo has been estimated at USD 35-40 billion,¹¹³ the government has only allocated SYP 25 billion (USD 48.5 million) worth of reconstruction contracts as of July 2017.¹¹⁴

Instead, it appears that Eastern Aleppo's reconstruction is being intentionally ignored. Of the 15 'priority areas' for reconstruction in the city that the Syrian government has suggested to humanitarian actors, only seven are located in Eastern Aleppo although that the east has suffered by far the most destruction.¹¹⁵

106) Interview with a displaced resident of Salah al-Din neighbourhood in Eastern Aleppo, Gaziantep, 4 Nov. 2018.

107) Interview with a doctor from Eastern Aleppo, Gaziantep, 23 Oct. 2018.

108) Daher, Joseph (2018): 'Révolution and Counter-Revolution in Syria, origins and developments', doctoral thesis, University of Lausanne, p. 423, available at: https://serval.unil.ch/resource/serval:BIB_27632B4295FC.P001/REF (accessed 17 Nov. 2018).

109) Tobias Schneider, 'Aleppo's Warlords and Post-War Reconstruction', Middle East Institute (13 Jun. 2016), available at: <https://www.mei.edu/publications/aleppos-warlords-and-post-war-reconstruction> (accessed 10 Mar. 2019).

110) Interview with a displaced resident of Salah al-Din neighbourhood in Eastern Aleppo, Gaziantep, 4 Nov. 2018.

111) Angus McDowall, 'In east Aleppo, bodies still under rubble show limits of Syria's recovery', Reuters (25 April 2019), available at: <https://www.reuters.com/article/us-syria-security-aleppo-insight/in-east-aleppo-bodies-still-under-rubble-show-limits-of-syrias-recovery-idUSKCN1S115Y> (accessed 22 May 2019).

112) Interview with a former member of the Aleppo Medical Council, Gaziantep, 29 Oct. 2018.

113) Lund (2017).

114) Daher (2018), p. 421.

115) Lund (2017).

Current priority areas are neighbourhoods in the west and centre of the city,¹¹⁶ while the east is barely mentioned in the current rehabilitation plans.¹¹⁷ The UN and other actors have largely complied with government directives.¹¹⁸

The destruction and lack of shelter for returnees severely limits their return to Eastern Aleppo, with the loss or lack of documentation and pre-conflict informal housing arrangements being other major obstacles. As an interviewee from the Khaldia neighbourhood explained: 'My family's house was built without a building permit and we only had an unregistered seller contract. During the war, the owner died and his children were displaced so no one can testify to our ownership. Even if we can return to Syria, I don't think we will ever be able to return to our house'.¹¹⁹

The general collapse of the rule of law and take-over by government-linked armed groups is another key concern for all respondents that is also highlighted in several recent media reports. Fighting between government-affiliated groups, who now effectively control large areas of Eastern Aleppo, is ongoing. Most of these disputes are said to concern confiscation and sales of real estate,¹²⁰ especially in the neighbourhoods of Bab al-Nairab, Sahour, as-Shaar and Karam Homad.¹²¹ This is consistent with reports that 'some "war commanders" or warlords have accumulated enormous wealth during the war and as a result, have been increasingly integrated into the formal economy as they establish companies... or participate in investment projects, including real estate. By accumulating profit and power this way, they have come to exert a large degree of control over the lives of Syrians living in government-controlled areas'.¹²²

The extensive looting by pro-government militias in Eastern Aleppo has even prompted the government to acknowledge the threat to public order. In March 2018, with looting reaching an intolerable level even for local authorities, the head of the provincial security committee in Aleppo ordered a pro-Assad militia out of the city for 'acts of theft, plunder, stealing and attacks on public property, the freedoms of citizens and their private property'.¹²³ However, the militias are well connected, and profits from stolen property tend to benefit the militias and government officials alike. Furthermore, the government depends on these militias for dealing with its security challenges.¹²⁴

These developments are taking place in a rapidly shifting legal landscape with regards to HLP, such as Law 33/2017 on the reconstruction of property records, and Legislative Decree 66/2016 and Law 10/2018 on identifying informal and damaged areas as development zones.¹²⁵ There are three key aspects to the evolving legal landscape: The private sector is going to take on the majority of reconstruction; those displaced from informal housing areas are not considered rightful residents because of their role in the uprising; and reconstruction.

116) Daher, et al. (2018).

117) Beals (2018a).

118) Beals, Emma, 'UN allowing Assad government to take lead in rebuilding Aleppo', Fox News (16 Nov. 2017), available at: <https://www.foxnews.com/world/un-allowing-assad-government-to-take-lead-in-rebuilding-aleppo> (accessed 13. Nov. 2018).

119) Interview with a media activist from Eastern Aleppo, Gaziantep, 28 Oct. 2018.

120) Interview with a doctor from Eastern Aleppo, Gaziantep 17 Oct. 2018.

121) Interview with a displaced resident of Salah al-Din neighbourhood in Eastern Aleppo, Gaziantep, 4 Nov. 2018.

122) Daher, et al. (2018), p. 16.

123) Lund (2017).

124) Ibid.

125) Please see the chapter by Hanna and Harastani in this volume.

Activists in Syria have documented how whole neighbourhoods that were held by the armed opposition or supported the uprising have been ‘razed to the ground’, often under the pretext of urban planning regulations.¹²⁶

In this regard, Eastern Aleppo is no exception: Many areas in the east are being demolished at an extraordinary speed and for very specific ends. In April 2018, Syria’s Local Administration and Environment Minister Hussein Makhoul declared that the first three new real estate development zones under Law 10/2018 include the al-Haidariyah informal settlement in Eastern Aleppo, which has been heavily damaged during the war.¹²⁷ The entire neighbourhood is to be converted into a park without reconstruction of any housing, meaning that former residents will not be able to return.¹²⁸ In October 2018, Syrian news further reported that the informal neighbourhoods of Karam al-Tarab and Karem al-Qaser, in the east near Aleppo International Airport, Nayrab Military Airport and 80th Brigade, were partly demolished under the pretext that they were ‘falling apart’ and had to be removed.¹²⁹ Likewise, after a building in Salah al-Din neighbourhood collapsed on 2 February 2019 killing 11 people, the Aleppo municipality ordered the demolition of 10,000 ‘unsafe’ buildings and the evacuation of 4,000 families. More than 7,000 of the buildings are located in the Salah al-Din, al-Ansari, al-Shaar and Tal Aloz neighbourhoods of Eastern Aleppo.¹³⁰ In the absence of housing alternatives, it is feared that the authorities will expel more residents for reasons of ‘safety’ and demolish entire blocks of informal housing – and to prepare the ground for urban redevelopment projects.¹³¹ These new laws and decrees could be laying the ground for a more permanent re-engineering of Aleppo’s demographics by the government.¹³²

CONCLUSION

This chapter has shed light on the land and property administration systems that emerged in Eastern Aleppo while under opposition control (2012-2016), with residents cut off from access to formal registration mechanisms. Drawing on interviews with displaced residents now living in Turkey, it has also sketched out the ongoing HLP rights violations in Eastern Aleppo, with a view to imagining its future reconstruction and urban development.

Interviewees highlighted the emergence of new bodies for HLP administration in opposition-controlled Eastern Aleppo, which has resulted in a plethora of property transactions and decisions that are not formally recorded. The question of how to treat property transactions made under opposition bodies, as well as those not registered at all, requires urgent consideration. These institutions have created realities on the ground that cannot always be easily undone, even if that would be desirable. While the Unified Judicial Council based its work on previous, formal decisions, the Sharia Committee was also known for frequently overturning them. The likelihood that the HLP administration

126) Please see Vignal’s chapter in this volume and Vignal (2014), p. 335.

127) Daher, et al. (2018), p. 11.

128) Emma Beals on twitter, 10 Jun. 2019, available at: <https://twitter.com/ejbeals/status/1138032497625915394> (accessed 14 Aug. 2019).

129) ‘Alnizam yabda’ izalat ashwayat Hlb alsharqya- alati damaraha’ [The government has begun demolishing informal housing in eastern Aleppo, which it destroyed already], Al Maseer (29 Oct. 2018), available at: <https://maseer.net/archives/6854> (accessed 25 Apr. 2019).

130) ‘Hadm Halab: Alnizam yohajer ‘alaf alnajiin mn alharb’ [Demolition of Aleppo: The government displaces thousands of war survivors], Al Araby Al Jadeed, 6 Feb. 2019, available at: <https://bit.ly/2ID8yvv> (accessed 19 Mar. 2019).

131) ‘East Aleppo flat evictions: A new ploy for ethnic cleansing?’, The New Arab, 4 Feb. 2019, available at: <https://www.alaraby.co.uk/english/indepth/2019/2/6/aleppo-flat-evictions-a-new-ploy-for-ethnic-cleansing-> (accessed 4 Feb. 2019).

132) Schneider (2016).

system will be able to return to its pre-war form is extremely low, if not impossible¹³³.

Findings further suggest that many people experienced their displacement from Eastern Aleppo as a process of ongoing property dispossession that likely forecloses the possibility of returning to their homes. HLP rights violations beyond immediate military imperatives are such an integral part of the war in Syria that it is possible to say they have been ‘weaponised’ for military ends.¹³⁴ The massive HLP damage and destruction, coupled with the wartime acquisition of refugee and IDP properties, as well as punitive legislation such as Law 10/2018 and anti-terrorism legislation, will make it very difficult for many displaced residents of Eastern Aleppo to return. This concern is amplified by the fact that the Syrian government is intent on reconstruction divorced from a national process of political settlement or societal reconciliation.¹³⁵

The interviews thus point to the fact that safeguarding HLP rights in Syria falls outside of the purely legal and technical endeavour of establishing records and preserving cadastres. This confirms the findings by Hanna and Harastani published in this volume that HLP rights violations occur in a context of pervasive informality. Indeed, HLP issues are entangled with the very definition of citizenship and the social rifts that divide the country.¹³⁶ Thus, any insistence on categories of ‘formal’ and ‘informal’ ownership or user rights will create a dichotomy that could displace people further.¹³⁷ Therefore the issue of informality and efforts to support the whole spectrum of tenure types in Syria, particularly for the most vulnerable communities, has to take centre stage. Reconstruction, especially in cities, must include provisions for affordable land and housing for residents of pre-war informal settlements. In tandem, any property restitution or compensation efforts must also recognise non-cadastral evidence of property rights, such as utility bills or court records, as quasi-legal means for confirming user rights and ownership.

Many interviewees also highlighted the proliferation of a war economy focused on real estate and the lack of any meaningful reconstruction effort in Eastern Aleppo. These conditions create great obstacles to return and reclaiming properties even when owners possess formal property titles. They also bolster existing concerns that the reconstruction envisaged by the Syrian government and its allies aims to prevent the return of internally displaced people (IDPs) and refugees considered hostile to the government, while rewarding loyalists with lucrative construction contracts.¹³⁸ Any reconstruction plan for Aleppo will have to contend with these new vested interests in the housing and property market, and ensure not to reward and further entrench the war profiteers, especially in light of the central government’s inability and unwillingness to curb their power and reach.¹³⁹ International donors will be confronted with the fact that the new business elites who emerged from the war are their only counterparts in the private sector. Channelling reconstruction funding through these actors risks further consolidating the government’s HLP rights violations in Aleppo. Given the pre-war social and class divisions between the city’s east and west, the additional risks inherent in solidifying these lines must be understood.

133) Unruh (2016)

134) Unruh (2016).

135) Berti, Benedetta (2017): ‘Is Reconstruction Syria’s Next Battleground?’, *The Cairo Review of Global Affairs*, available at: <https://www.thecaireview.com/tahrir-forum/is-reconstruction-syrias-next-battleground/> (accessed 22 Feb. 2019).

136) European Union (2017), p. 54.

137) Hallaj (2017a).

138) Daher, et al. (2018), p. 9.

139) Schneider (2016).

Although genuine political change in Syria is inconceivable at this stage, a major entry point for the international community is the formulation of clear parameters and conditions to fund reconstruction, and of clear policy positions regarding HLP. This applies equally to humanitarian, early recovery and development interventions which can easily become complicit in further entrenching property rights violations, such as by requiring formal title deeds for shelter repairs or unquestionably adhering to government priorities for reconstruction. A HLP-sensitive engagement in Syria also urgently requires integrating HLP workstreams into the peace process, and including HLP and refugee return rights in the constitution. As a former lawyer for the Unified Judicial Council expressed, at this stage, ‘the problem is that property issues are not on the table at the negotiations in Geneva, Astana, Sochi. I feel it is not seen as the problem that it is’.¹⁴⁰ Any semblance of lasting peace in Syria requires systematically mapping the magnitude of HLP violations, with a focus on providing avenues for restitution or compensation, in particular for those from largely destroyed informal neighbourhoods such as Eastern Aleppo.

140 Interview with a founding member of the Unified Judicial Council of Aleppo, Gaziantep, 12 Jan. 2019.

How the Deprivation of Land Ownership Makes Minority Groups more Vulnerable: An Examination of the Case of Yazidis in Iraq

By Sangar Youssif Salih and Kayfi Maghdid Qadr

The Arabisation campaign (*ta'rib*), which took place roughly from 1968 to 2003 under Iraq's Baathist regime, gravely violated Yazidis' housing, land and property (HLP) rights. The regime used colonial settlers to culturally Arabise Northern Iraq, forcefully displacing hundreds of thousands of members of minority groups, including Kurds, Yazidis, Assyrians and Turkmen.¹ Ethnic minorities were dispossessed and forced to leave their ancestral lands where mostly Sunni Arabs from other parts of Iraq were encouraged to settle in their stead. By the late 1970s, almost 100,000 Yazidis in Sinjar district, one of their main settlement areas, had been forcibly relocated to collective townships built by the Iraqi government to the south and north of Mount Sinjar.²

Planners of the 2003 US-led invasion assumed that the fall of Saddam's regime would cause the immediate mass return of those displaced, with returnees getting back the houses, lands and properties they had lost decades earlier.³ In fact, there have been few such cases to date and no more are expected any time soon. This is mainly because HLP disputes quickly became a major source of post-invasion instability and conflict.⁴

Shortly after the overthrow of Saddam's regime and Iraq's political restructuring, the future of disputed territories including Sinjar became a bone of contention between the Kurdistan Regional Government (KRG) and the Government of Iraq (GoI).

1) Human Rights Watch (HRW) (2004): 'Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq', available at: <https://www.hrw.org/report/2004/08/02/claims-conflict/reversing-ethnic-cleansing-northern-iraq> (accessed 7 Jun. 2019).

2) UN-Habitat (2015): 'Emerging Land Tenure Issues among Displaced Yazidis from Sinjar, Iraq: How Chances of Return May Be Further Undermined by a Discrimination Policy Dating Back 40 Years', available at: http://www.hlrn.org/img/documents/YAZIDI%20HLP%20REPORT_EN.pdf (accessed 15 Nov. 2018).

3) Van der Auweraert, Peter (2007): 'Property Restitution in Iraq', Presentation at the Symposium on Post-Conflict Property Restitution Hosted by the United States Department of State (6-7 Sep. 2007), available at: <https://2001-2009.state.gov/documents/organization/98032.pdf> (accessed 14 Nov. 2018).

4) Ibid.

The previous regime had changed the demography of the disputed territories between 1968 and 2003 in the governorates of Diyala, Kirkuk, Ninevah (including Sinjar) and Salah al-Din. Before the emergence of the Islamic State in Iraq and Syria (ISIS) in 2014, the greatest potential threat to Iraq's stability was thought to be the Kurdish-Arab conflict over these territories – not extremist groups.⁵

Sinjar district is located in the northwest of Ninevah governorate between Tel Afar in the northeast, Ba'aj in the southeast and the border to Syria in the west.⁶ It is the site of various other types of conflict apart from HLP disputes. Separated from the Kurdish territories, Sinjar is surrounded by Sunni Arab settlements that supported the Sunni insurgency. Ongoing conflicts between state and non-state actors have negatively impacted the Yazidi population.⁷ The ISIS takeover in 2014 and tensions between the KRG and the GoI in the wake of the Kurdistan independence referendum in 2017 have severely impacted the Yazidi community.

Since the ISIS atrocities against Yazidis in Sinjar in August 2014, national and international media outlets have provided ample coverage of the Yazidis.⁸ However, while the jihadists' attempts to wipe out the Yazidis are well documented, not much is known about the violations of their HLP rights. This paper is an academic effort to answer questions related to HLP issues in Sinjar territory.

Since 2003, despite the mechanisms developed for restoring HLPs to victims of the Arabisation campaign, Yazidis have gained little. This chapter focuses on the reasons why Yazidis are still being deprived of their HLP rights, and explores Yazidi attitudes and perceptions, especially regarding why they have not fairly benefited from post-2003 HLP restitution efforts. The study also seeks to provide empirical insight into undesirable aspects of the HLP restitution efforts since 2003

After discussing the historical context of the Arabisation campaign and its implications for the Yazidi community in Sinjar, we assess post-2003 efforts to reverse Baath-era HLP violations. We then analyse Yazidis' thoughts about their continued lack of equal HLP rights, and suggest how their views can be included in effective and sustainable restitution procedures.

5) Kane, Sean (2011): 'Iraq's Disputed Territories: A View of the Political Horizon and Implications for US Policy', United States Institute of Peace, Peaceworks, available at: <https://www.usip.org/publications/2011/04/iraqs-disputed-territories> (accessed 4 Aug. 2019).

6) Agriculture is the main source of income for Sinjar Yazidis. The Ain al-Ghazal and Hayali villages in Sinjar district have oil fields that were closed because of the war. Mount Sinjar boasts natural gas and heavy minerals. Since al-Shamal district was attached to Sinjar in 1987, the district measures 1,420 km. Sinjar is the only disputed area that does not border the Kurdistan region. See, Ghanim, Faisal (2017): 'The Demographic Change Ownership in Shmal District', Peace and Freedom Organization in partnership with PAX (unpublished report).

7) After 2003, extremist groups and militias who emerged mostly in Mosul governorate began to threaten Yazidis. Minority Rights Groups International reported that between 2003 and late 2007, 335 Yazidis were killed. Minority Rights Group (2017): 'Yezidis', available at: <https://minorityrights.org/minorities/Yazidis/> (accessed 7 Feb. 2019).

8) See, for instance, 'Iraqi Yazidi lawmaker: "Hundreds of my people are being slaughtered"', CNN (6 Aug. 2014), available at: <https://edition.cnn.com/2014/08/06/world/meast/iraq-crisis-minority-persecution/index.html> (accessed 7 Jun. 2019).

METHODOLOGY

The analysis presented in this paper is based on 22 semi-structured interviews, a comprehensive review of relevant secondary literature and information drawn from official documents such as government policies, legal texts, and national and international reports. The purposive sample of interviewees was selected in consultation with Yazidi activists.⁹ Aside from one participant, research involved only Yazidis who are aware of the status of HLP in Sinjar district. Interviewees included ordinary people, activists, public officials, lawyers and community leaders living either in Sinjar district or Duhok governorate.

The reality of HLP in Sinjar is investigated from the Yazidis' perspective. Yazidi participation provided relevant insights into the status of HLP there as well as their views on HLP violations and the post-2003 restitution efforts. It was difficult for the researchers to reach local Sunni Arabs due to security considerations. Sunni Arab voices are hence absent although they are, of course, important actors with regard to HLP dynamics in Sinjar. The study found little about how and why Sunni Arabs in Sinjar territory got involved in HLP violations and to what extent they agree or disagree with the HLP restitution attempts after 2003. Further research is required to address these questions.

THE HISTORY OF HLP POLICIES AND VIOLATIONS IN SINJAR

The Arabisation campaign in Sinjar territories before 2003

In Iraq, Arabisation (*ta'arib*) dates back to 17 July 1968, when the Baath Party came to power on a platform of socialism and pan-Arab nationalism.¹⁰ Baathist laws and regulations to change the demographics in Iraq's non-Arab territories aimed to serve its slogan of 'One Arab nation, with an eternal message'.

The Iraqi Agrarian Reform Law (No. 117), enacted on 30 May 1970, limited the size of individual parcels and dispossessed many large landowners of the wealthiest agricultural region in the north.¹¹ Although the law was implemented throughout Iraq and the government nationalised agricultural lands in a number of regions, it negatively impacted the HLP rights of Yazidi landowners in Sinjar in particular, as most Yazidis there relied on agriculture for their livelihoods.¹² Law 117's implementation paved the way for a large number of violations against Yazidis' HLP rights.

During the 1970s, the Baathist regime used security as a pretext to force Yazidis to leave their lands for 'collective townships' far from their villages.¹³ The legal basis for this programme was the Revolutionary Command Council's Decree (RCCD) No. 795 of 1975, which authorised the confiscation of property belonging to supporters of the Kurdish national movement. The regime primarily wanted to discourage Yazidis from supporting

9) We are especially indebted to Mr Khidr Domely (a Yazidi activist), who energetically worked to provide us with documents related to the subject and facilitate contact with interviewees.

10) HRW (2004); Aldbagh, Khalil and Zrgham, Ghaith (2018): 'Papers of Allwa'a Khalil Jasim Aldbagh', Dar Djlal Publishing, Amman.

11) Iraqi Law No 117/1970 of the Iraqi parliament, available at: <http://extwprlegs1.fao.org/docs/pdf/irq38269.pdf> (accessed 7 Feb. 2019)

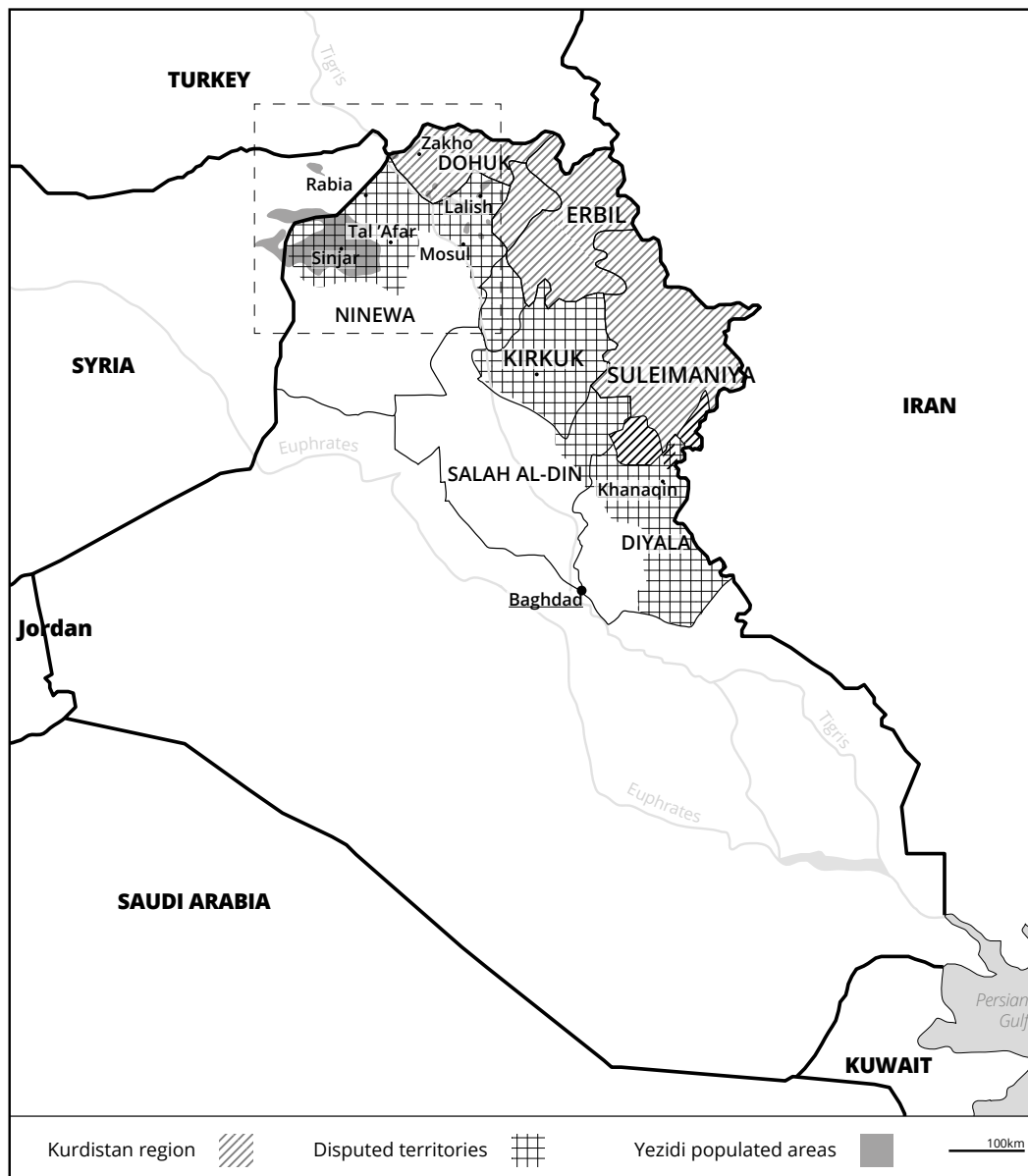
12) Ghanim, Faisal (2017): 'The Demographic Change Ownership in Shmal District', Peace and Freedom Organization in partnership with PAX (unpublished report); Fuccaro, Nelida (1999): 'Communalism and the State in Iraq: The Yazidi Kurds, c. 1869–1940', *Middle Eastern Studies*, 35(2): 1–26.

13) Collective townships are mostly called 'mujama'at' by locals.

the movement and built collective towns to help confine and control them.¹⁴ To facilitate urban control, the collective towns were shaped in squares.¹⁵

Shortly after the forced displacement of Yazidis from their ancestral home, the Baathist regime completed the Arabisation process. The Revolutionary Command Council's Decree No. 358 from 1978 allowed the invalidation of property deeds belonging to displaced Muslim Kurds and Yazidis, the nationalisation of their land under the control of the Iraqi Ministry of Finance, and the resettlement of the region by Arab families.¹⁶

MAP 1: THE DISPUTED TERRITORIES IN NORTHERN IRAQ

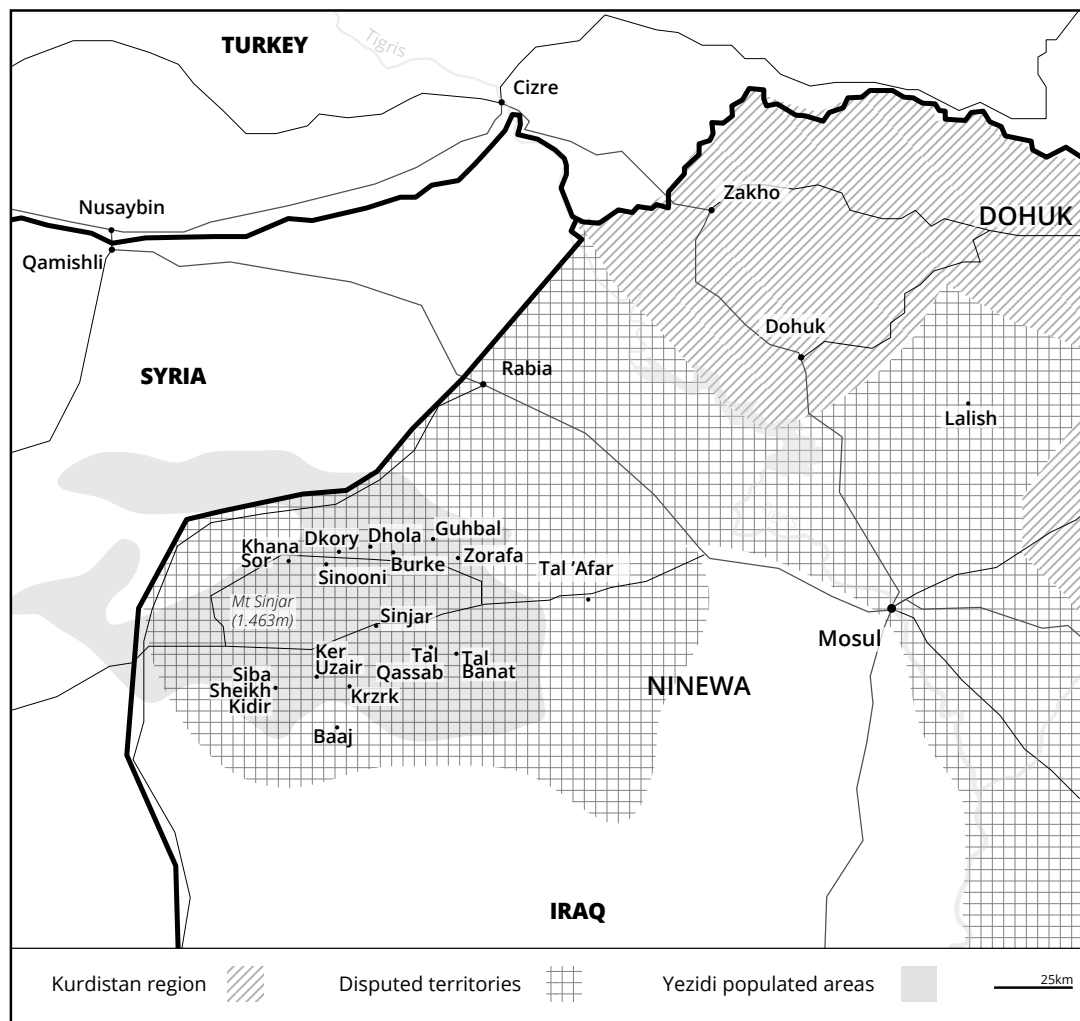


14) Savelsberg, E., Hajo, S. and Dulz, I. (2010): 'Effectively Urbanized. Yazidis in the Collective Towns of Sheikhan and Sinjar,' *Études rurales*, (186): 101-116.

15) Ghanim (2017).

16) Savelsberg et al. (2010).

MAP 2: SINJAR PROVINCE AND ITS SURROUNDINGS



The presence of many Sunni Arabs in the desert of al-Jazeera helped the regime to smoothly accomplish its work: 'The Iraqi government did not have to look far for eager recruits for its Arabization campaign: located southwest of Mosul was the large al-Jazeera desert, home to hundreds of thousands of loyalist nomadic Sunni Arab tribesmen. Enticed with free, irrigated land, and encouraged by their tribal shaikhs, the al-Jazeera tribesmen abandoned their hard lives in the desert and moved north en masse.'¹⁷ During the Arabisation campaign in Sinjar, more than 150 Yazidi villages were destroyed.¹⁸

Soon after the forced displacement of the Yazidi villagers, the Iraqi government simultaneously embarked on a massive campaign to resettle the formerly Yazidi areas with Arab tribes, namely, al-Hadidi, al-Shummar, and Al-Jhaish. Human Rights Watch (HRW) interviewed dozens of Arab families and Arab tribal leaders who ventured to the north under the Arabisation campaign and the majority of the interviewees clearly stated that they had come to the north by choice, after being offered lucrative irrigated land by the government.¹⁹

17) HRW (2004).

18) The villages destroyed then repopulated by the Ba'ath regime included Bier Adam, Trbakat al-Haskan, Jafrya, Kandala, Bahrafa, Qasirky, Southern Bara, Northern Bara, Hawi Khalti, Karki Samuka, Adika, Old Dhola, Tarif, Nassiria, Kolka, Sami Histar, Malik, Shorka, Kalkhan, Shnanik, Nuskha Oaj, Ba Khalif, Zirwa, Old Zuagha and Barana. See: Ghanim (2017).

19) HRW (2004).

Using information provided by Sunni Arab settlers, HRW reported that the Iraqi government did not give Arab settlers land titles when they settled in formerly Yazidi villages and farmed Yazidi lands during the Arabisation programme.²⁰ Settlers were given annual leases instead. In contrast to HRW, other sources claimed that the Iraqi government retitled Yazidi land using settler names. For instance, a report published by the KRG documented 7,435 *dunum*²¹ of land given to settlers in 'Ayn Ghazal, 440 in Arfi', 3,685 in Tal 'Akul, and 5,500 in Qiba al-Wahba.²² Arab tribes also occupied large areas of Yazidi farmland without having legal titles. The lands of Sheikh Khazri in the Guhbel area bordering Rabiha were seized by Al-Jhaish Arabs, for example.²³ Table 1 shows the size of lands that were confiscated from Yazidis and given to the Sunni Arabs, according to the Committee for Implementing Article 140, which was established by Iraqi Prime Minister Nuri al-Maliki in 2006.

FIGURE 1: THE SIZE OF CONFISCATED YAZIDI LANDS GIVEN TO SUNNI ARABS

Land size (dunums)	Yazidi tribes and villagers who owned the land	Arab tribes who confiscated the lands
400,000	Al-Qairan tribe	Al-Sadid Al-Araby
4,440	Wndan Tribe	Hawars Al-Sadid
6,000	Siba Khshani villager	Hawars Al-Sadid's Arabs
8,000	Fuqara tribe	Al-Sadid Al-Araby
8,000	Xarab Bazar villagers	Al-Khrsa
5,000	South Bara villagers	Fdagha Arabi

Source: The Committee for Implementing Article 140 'CIA140' (2010), 'A particular report about Sinjar'.

Many demographic changes took place in Sinjar city. At the beginning of the Arabisation campaign, the government announced that Arabs who wanted to build homes there were provided with free land and government loans. Many new Arab neighbourhoods such as Nasr, Yarmuk, Qadsia, Shuhada and Saray 1 and 2 were built. Only two Arab families and three Christian families had lived in Sinjar before 1970; since then, the number of Arabs in the city has sharply increased.²⁴

Furthermore, as part of the Arabisation process, Saddam's regime offered a large number of parcels of different sizes to Sunni Arabs in Sinjar district for housing,²⁵ including:

- 1,450 parcels of 200-250 m² (with titles) to Iraqi soldiers (Arabs) and volunteers (*Fedayeen Saddam*)
- 1,170 parcels (200-250 m²) to Arabs with post-graduate degrees
- 461 parcels (250-300m²) to families of Iraqi soldiers who were arrested or went missing during the wars. While the report does not specify which wars, the reference is probably to those with Iran (1980-1988) and Kuwait (1990-1991).

20) Ibid.

21) The dunum has been used to measure the size of land in the Middle East since the Ottoman era. Its actual size varies amongst countries: An Iraqi a dunum is equivalent to 2,500 m².

22) Kurdistan Regional Government (2006): 'Sinjar during Half a Century (1947-2002): A Documentary Research on Arabisation policy and Ethnic Cleansing in Sinjar', available at: <http://cabinet.gov.krd/a/d.aspx?a=8682&l=14> (accessed 7 Feb. 2019).

23) Ghanim (2017).

24) The Committee for Implementing Article 140 (2010): 'A particular report about Sinjar'. The author has a hard copy of the report, which is not available online.

25) Kurdistan Regional Government (2006).

- 650 parcels (250-300m²) to Saddam Hussein's friends.

The Ninevah governor's office also offered attractive parcels of land in the Yarmuk and Saray neighbourhoods of Sinjar city to masters and doctorate degree holders of Mosul University. Meanwhile, the Yazidi quarters of Barbarush, Kelehi, Burgi, Bersihi, Jewseq and Serayi were destroyed and their residents expelled.²⁶

Eventually, the Baathist regime successfully changed the ethnic makeup of Sinjar and increased the number of Sunni Arabs in the area. Along with the demographic changes, the regime only allowed Arabic to be used as a formal language in schools. The Iraqi government prohibited the use of the Kurdish language in Sinjar as it was an area subjected to heavy Arabisation policies. The Yazidis faced denial of their ethnic identity and the regime forcibly declared them Arabs.²⁷

Once the Yazidis were relocated in 11 collective towns with Arabic names, about 11,544 houses were built in 1976.²⁸ Since then, none of these houses has been given a title deed. Hence, the only way to prove ownership was the actual occupation of the land and electricity payment records. It is noteworthy that these houses were built on the agricultural lands that were confiscated during the Arabisation campaign from nearby Yazidi farmers and villagers without any compensation. Legally, these are now state lands administered by the Ministry of Finance and by the Ministry of Agriculture. Despite the fact that the residents were granted occupancy right, there is a possibility of dispossession of these lands by the state at any time.²⁹

FIGURE 2: THE NUMBER OF HOUSES BUILT IN 11 TOWNSHIPS IN 1976

The collective towns (in Arabic)	The collective towns (in the vernacular)	Number of houses
Yarmuk	Burke	1,120
Al-Tamim	Khana Sor	1,195
Al-Uruba	Zorava	510
Al-Andalus	Guhbal	771
Huttin	Dkory	1,531
Al-Qadisyia	Dhola	858
Al-Walid	Tal Banat	907
Al-Bar		1,300
Al-Adnaniya	Krzk	838
Al- Qahtaniya	Ker Uzair	1,334
Al-Jazirah	Siba Sheikh Kidir	1,180

Source: Savelsberg et al. (2010).

26) Committee for Implementing Article 140 (2010).

27) Maisel, Sebastian (2008): 'Social Change Amidst Terror and Discrimination: Yazidis in the New Iraq', Middle East Institute, available at: <https://www.mei.edu/publications/social-change-amidst-terror-and-discrimination-yezidis-new-iraq> (accessed 15 May 2019).

28) Savelsberg et al. (2010).

29) UN-Habitat (2015).

Responses to Baath-era HLP violations

Various mechanisms have been developed since 2003 to address the disputed territories and HLP violations. In January 2004, Coalition Provisional Authority (CPA) Administrator Paul Bremer signed Regulation No. 8 authorising the provisional government of Iraq, the Iraqi Governing Council, to establish the Iraq Property Claims Commission (IPCC) to review and resolve property disputes from the Baath era (1968-2003) and promulgate procedures for promptly resolving property claims in a fair and judicious manner.³⁰ In June that year, the CPA, represented by Bremer, signed Regulation No. 12 that amended Regulation No. 8, making the IPCC more effective. These regulations were intended to prevent the instability and violence that can result from HLP disputes.³¹ This can be considered as the starting point of joint efforts by Iraqis and international actors to officially address past HLP violations (including the 1970 land reform). The IPCC consists of a National Secretariat for all operational and management activities, as well as Regional Commissions (first instance) in each governorate of Iraq and in the Kurdistan Regional Government area, and an Appellate Division (second instance) in Baghdad. On 28 June 2004, Iraq's Interim Prime Minister Ayad Allawi and CPA Administrator Bremer appointed the first IPCC head.³²

In March 2006, a new law replaced the IPCC with the Commission for Resolution of Real Property Disputes (CRRPD). Like the IPCC, the CRRPD was charged with resolving land and property rights violations incurred by Saddam's regime. 'The CRRPD's temporal competence is strictly limited to land and property issues that arose during the Baath Party era. It allows victims whose property was confiscated or seized for "political, religious or ethnic reasons" or because of "ethnic, sectarian or nationalistic displacement policies" to make a claim—at their discretion—for either restitution of the property or compensation for the property.'³³

Article 140 of the Iraqi constitution (2005) calls for the 'normalisation' of disputed territories.³⁴ It implements Article 58 of the Transitional Administrative law (2004), which obliges the Iraqi government to restore to those residents 'who were deported, expelled, or who emigrated' their homes and property, or, where this is unfeasible, to provide 'just compensation'.³⁵ Meanwhile, 'the individuals newly introduced to specific regions and territories' under the previous regime would be compensated and returned to their areas of origin.³⁶ This would be followed by a census and then, by 31 December 2007, a referendum for citizens living in the disputed areas to decide whether they preferred to join the Kurdistan Region of Iraq (KRI) or remain under the central government of Iraq.

Saddam's regime had changed the demography of Kurdish areas, particularly Kirkuk. Kurds have controlled the Kurdistan Region since 1991 and insist that it also includes the disputed areas. In order to regain them legally, the Kurds worked closely with the US-led

30) Regulation No 8/ 2004 of the Coalition Provisional Authority (CPA), available at: <https://www.refworld.org/pdfid/5b3e22be4.pdf> (accessed 20 Jan. 2019).

31) Regulation No 12/ 2004 of the Coalition Provisional Authority (CPA), available at: https://govinfo.library.unt.edu/cpairaq/regulations/20040624_CPAREG_12_Iraq_Property_Claims_Commission_with_Annex_A_and_B.pdf (accessed 20 Jan. 2019).

32) Norwegian Refugee Council (2006): 'IRAQ: Sectarian violence, military operations spark new displacement, as humanitarian access deteriorates. A profile of the internal displacement situation'; available at: <https://www.refworld.org/pdfid/3ae6a62b4.pdf> (accessed 7 Feb. 2019).

33) Isser, Deborah and Van der Auweraert, Peter (2009): 'Land, Property, and the Challenge of Return for Iraq's Displaced', USIP Special Report 221, available at: <https://www.usip.org/publications/2009/04/land-property-and-challenge-return-iraqs-displaced> (accessed 4 Aug. 2019).

34) Iraq's Constitution of 2005, available at: https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

35) Coalition Provisional Authority, Law of Administration for the State of Iraq for the Transitional Period (8 Mar. 2004), available at: <http://www.au.af.mil/au/awc/awcgate/iraq/tal.htm> (accessed 4 Aug. 2019).

36) *Ibid.*

coalition and political parties in Iraq – particularly the Shiite parties – to write their concerns into the 2005 Iraqi constitution. The result was Article 140, on demographic changes and HLP violations under the former regime.

Decree No. 46 of Ministerial Resolution No. 1373 of 9 August 2006 created a constitutional ministerial executive committee to implement Article 140 – the Committee for Implementing Article 140. The committee took four decisions that mainly focused on the first ‘normalisation’ stage including the procedures³⁷ and established branches in governorates, counties and districts. It is noteworthy that Sinjar district had its own committee. This was considered an opportunity for Yazidis to make their claims and legally recover their HLPs confiscated during Saddam’s rule. However, for political and security reasons – conflicts between Iraqi political parties and regional interventions on one hand and fighting with extremist groups in the disputed areas on the other – successive Iraqi governments have delayed implementing Article 140. Property disputes remain unresolved. As discussed below, the normalisation process was less productive in Sinjar than in other disputed areas: Yazidis were not able to file claims the way Iraqis did in other disputed territories.

These legal solutions have been viewed as mechanisms to restore property and mitigate HLP violations arising from Baathist policies that discriminated against ethnic and religious groups. However, the extremist groups that emerged after 2003 caused new waves of forced displacement and HLP violations in the disputed territories. Yazidis were among the religious and ethnic groups who paid a heavy price.

Yazidis’ HLP status during and after ISIS

In August 2014, the so-called Islamic State of Iraq and Syria (ISIS) attacked the Yazidi religious minority living in the area of Mount Sinjar in Nineveh governorate, Iraq. Due to their religion, not only ISIS, but also other extremist groups have historically targeted Yazidis in Iraq. According to lists compiled by local authorities and human rights organizations, between 2,000 and 5,500 Yazidis were killed and more than 6,000 were kidnapped during the ISIS attack on Mount Sinjar in August 2014.³⁸

The emergence of ISIS triggered a new wave of displacement, along with HLP destruction and confiscation in Sinjar.³⁹ ISIS militants seized many Yazidi properties. It is believed that some 3,000 homes were destroyed or burnt down in the sub-district of Sinuni alone. The ISIS attack also caused further loss of documents related to Yazidi HLPs.⁴⁰ On 22 August 2014, in an attempt to prevent HLP confiscation and protect the assets of Yazidis, Christians and Sabians in the Nineveh areas controlled by ISIS, Iraq’s Ministry of Justice instructed land registry offices to stop all real estate transactions in the area.⁴¹

37) General Secretariat for the Council of Ministers (in Arabic), available at: <http://www.com140.com/pdf/k6756.pdf> (accessed 8 Feb. 2019).

38) Cetorelli, Valeria, et al. (2017): ‘Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: a retrospective household survey’, PLOS Medicine, 14 (5), available at: http://eprints.lse.ac.uk/76109/1/Cetorelli_Mortality%20and%20kidnapping_2017.pdf (accessed 10 May 2019).

39) Eszter Spät writes, ‘many of the houses were burnt or blown up by ISIS; even buildings left intact were ransacked by neighbouring Arab tribes, and sheep and agricultural equipment were stolen’. Spät, Eszter (2018): ‘Yazidi Identity Politics and Political Ambitions in the Wake of the ISIS Attack’, Journal of Balkan and Near Eastern Studies, 20 (5): 424.

40) UN-Habitat (2017): ‘UN-Habitat issues occupancy certificate to returnees in Sinuni/Sinjar, Ninewah Governorate’, available at: <https://unhabitat.org/un-habitat-issues-occupancy-certificates-to-returnees-in-sinunisinar-ninewah-governorate/> (accessed 7 Feb. 2019).

41) ‘Iraq Voids Real Estate Sales in ISIS Controlled Areas’, Aina News Agency (25 Aug. 2014), available at: <http://www.aina.org/news/20140825012457.htm> (accessed 10 May 2019).

After the area had been liberated, UN-Habitat designed a special programme to reconstruct the destroyed houses and facilitate the return of thousands of displaced Yazidis to their homes. In partnership with the Ninevah governorate and as part of its Urban Recovery Programme, UN-Habitat rehabilitated 562 damaged houses in eleven villages in the Sinuni sub-district, 108 of them in the town of Ashti. The UN-Habitat team consulted with the community to verify the returnees' occupancy claims and issued occupancy certificates endorsed by local authorities and community members. It is important to note that, although local authorities signed this title, it is not considered an official document. The Iraqi government has recently been working with UN-Habitat to encourage persons displaced from Sinjar territory to return home by allotting land to those already living in the area. Current occupants will receive registry titles in a programme to be implemented in the near future.⁴²

YAZIDI PERSPECTIVES ON HLP VIOLATIONS

In the second part of this study, we discuss Yazidi perspectives regarding HLP violations: how conflict and the politicisation of HLP rights have hindered restitution, how ISIS control impacted Yazidi HLP rights and the loss of property documents. It also assesses the efforts of UN-Habitat to address the latest HLP violations in Sinjar.

Conflict and politicising HLP rights

Although the legal framework of the disputed territories has been well developed since 2003, political conflicts between Kurds, Sunnis and Shiites have impeded all practical efforts to restore HLPs to Yazidis. Several interviewees stated that they hold the central government of Iraq responsible for solving property disputes in Sinjar, and most harshly criticised the government's partiality.

An old Yazidi man originally from Sinuni said: 'There is no difference between the former regime and this government. If Saddam Hussein supported Arabs to confiscate our lands, the Iraqi government does not help Yazidis get their lands back. There are still large areas of Yazidi land seized and controlled by Arabs. Lands in Guhbel and Siba Shekh Khadri have been controlled and used by new settlers although they originally belonged to Yazidis. As Yazidis we have realised that the government itself is not serious about returning the Arabs to their original places and giving Yazidi lands back to their original owners.'⁴³

Because the Yazidis lack representation, they have not been able to effectively engage in Iraqi politics. The governance system in Iraq has clearly failed to represent all the different communities. Some 85 percent of Yazidi political engagement is in Kurdish parties.⁴⁴ Yazidis – like most communities – hold a variety of conflicting political views: Some have allied with the Kurdistan Democratic Party (KDP) or the Patriotic Union of Kurdistan (PUK) and defend the politics of Iraqi Kurdistan, while others look to Baghdad.⁴⁵ Division amongst Yazidis

42) Interview with Mr. Sameer Adnan, a representative of the former prime minister, Duhok, 8 Oct. 2018.

43) Interview with a Yazidi tribal leader, Duhok, 8 Oct. 2018.

44) 'Yazidis see no hope in an ever-changing Iraq or Kurdistan lacking justice', RUDAW (11 May 2018), available at: <http://www.rudaw.net/english/middleeast/iraq/110520183> (accessed 10 May 2019).

45) Abouzeid, Rania (2018): 'When the weapons fall silent: Reconciliation in Sinjar after ISIS', European Council on Foreign Affairs, ECFR Policy Brief, available at: https://www.ecfr.eu/publications/summary/when_the_weapons_fall_silent_reconciliation_in_sinjar_after_isis (accessed 4 Aug. 2019).

means their concerns have not been given priority. Instead, the various political parties appear to have used HLPs for their political agendas. Article 140 of the constitution was not implemented – as foreseen – by 31 December 2007.⁴⁶ Arab settlers, in turn, cannot be expected to go back to their home areas before all the political parties agree to implement Article 140. However, its implementation could cause new conflicts.

Although the majority of interviewees see Article 140 as helpful for solving property disputes in Sinjar, they do not expect it to be implemented as long as the KRG and the Gol remain in conflict.⁴⁷ This could be a reason why some Yazidis propose other solutions, including one from a Yazidi tribal leader: ‘In this difficult time, I think that establishing tribal committees could be a good solution for restoring Yazidi lands... There should be a solution for this problem because the Yazidis have been struggling with land issues for decades.’⁴⁸

Preference for this solution may be related to the interviewee’s social position: He is a tribal leader. Tribal committees would put this person in a powerful position to shape the process. However, this also indicates that many Yazidis no longer trust the central government to restore their HLPs. Interviewees repeatedly said that the Iraqi government could easily have solved land tenure problems in the Sinjar territories because they believe that large areas are owned by the state and administered by either the Ministry of Finance or the Ministry of Agriculture. This again relates to the implementation of Article 140, which describes the nationalisation of agricultural lands during the Arabisation campaign as a HLP violation. A Yazidi lawyer who worked for both the IPCC and the CRRPD from 2004 to 2012 stated: ‘Most of the claims submitted by Yazidis in Sinjar territory were against the government because the claimants had had their agricultural lands invalidated by the former regime.’⁴⁹

It is obvious that conflicts over the disputed territories in general, and Sinjar in particular, are closely linked to political party agendas, which typically support government projects that chime with their goals. If, for example, Sunni political parties were to support legislation like Article 140 that is disadvantageous for Sunni Arabs, they would likely lose the support of their Sunni constituents. The same is true for Shiite politicians. The fact that majority-Shiite Iraqi governments disregard the article could be because ‘Iraqi governments have always feared the possibility of Kurdish separatism and the precedent it could set for Shiite Arabs to follow, threatening the future of the Iraqi state’.⁵⁰ After all, Shiites in Basra have been trying to gain autonomy like that of the Kurds.⁵¹ For their part, ordinary Sunnis have generally not supported implementation of Article 140 because although it stipulates compensation for Sunni Arabs who return to their places of origin, they consider that it disadvantages them,⁵² since they were the ones who benefited most from the HLP violations under the Ba’athist regime.

46) For more background on the politics regarding the non-implementation of Article 140, see: O’Driscoll, Dylan (2017): ‘Autonomy Impaired: Centralisation, Authoritarianism and the Failing Iraqi State’, *Ethnopolitics*, 16 (4): 315-332.

47) In a 2007 report “the Administrative Changes in Kirkuk and the Disputed Regions”, the KRG Ministry of Extra Regional Affairs did not recognise Yazidis as ethnically distinct from Kurds. Available at: <http://webcache.googleusercontent.com/search?q=cache:ARJyBtRFScJ:perleman.org/files/articles/130508111135.pdf+&cd=9&hl=en&ct=clnk&gl=iq> (accessed 15 Aug. 2019)

48) Interview with a Yazidi tribal leader, Duhok, 8 Oct. 2018.

49) Interview with a Yazidi lawyer, Duhok, Jan. 2019.

50) Kane (2011).

51) ‘Basra politicians call for independence from Baghdad’, *The National* (3 Apr. 2019), available at: <https://www.thenational.ae/world/mena/basra-politicians-call-for-independence-from-baghdad-1.844724> (accessed 15 May 2019).

52) International Crisis Group (2018): ‘Reviving UN Mediation on Iraq’s Disputed Internal Boundaries’, available at: <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/194-reviving-un-mediation-iraqs-disputed-internal-boundaries> (accessed 17 May 2019).

In addition to the political conflicts between the Kurds, Shiites and Sunnis, there have also been conflicts between the Kurdish political parties, which Yazidis believe have hindered fair HLP restitution. People interviewed for this study cited various cases that negatively affected HLP disputes. A Yazidi woman claimed: 'All the Kurdish members in the CRRPD were affiliated with the KDP and they only worked for the Yazidi claimants who were affiliated with the KDP.'⁵³

Political parties variously used HLP restitution mechanisms to serve their agendas.⁵⁴ A Yazidi activist originally from Sinjar harshly criticised the Kurdish political parties that administered Sinjar district after 2003: 'The government officials who administered the government institutions in Sinjar territories were not the real voice of the Yazidis. The KDP always supported those who were implementing its agenda. Due to the conflict between the political parties, these people mainly focused on political issues rather than supporting the Yazidis' needs. Therefore, they did not work much on the HLP rights of Yazidis.'⁵⁵

Research revealed that as for other minority issues, political parties have condemned each other by citing violations of Yazidis' HLPs. As the Centre for International Governance Innovation reports, minorities are the main victims of these politics: 'Competing political demands make the situation even worse for minorities because many of them live in the so-called "disputed territories." Minorities in Iraq are the victims not only of sectarianism and extremism but also of competing political agendas; their displacement is a consequence of both.'⁵⁶

This could be why some Yazidis think they need political support to highlight their HLP rights in the broader political discourse and ensure that they can enjoy HLP rights like other Iraqis.

Extremists, Sunni Arabs and HLP violations after 2003

The Yazidi community has always been concerned about links between Sunni Arabs, who make up most of the settlers, and extremist groups. Sunni Arabs dominated Saddam's regime but were politically disadvantaged under post-2003 'de-Baathification' policies⁵⁷ that excluded some of them. Others simply wanted no part of Iraqi politics. They opposed efforts at HLP restitution in the disputed territories because Article 140 would deprive them of the lands and properties the Baathist regime had handed them. Most severely affected were the Sunni Arabs in Mosul province, where most of the Sunni population were Baath Party members and high-ranking members of the Iraqi military. Many were looking for revenge or sought to restore their lost authority. Some Sunnis considered joining radical Islamist insurgent groups such as the Islamic State of Iraq (ISI), which later morphed into ISIS, as a good way to regain control of the lands and properties they had used and farmed during the Baath era. Sectarian conflict broke out between Yazidi landowners and Sunni settlers in Sinjar district, which will certainly affect future attempts to restore HLP. Although

53) Phone call interview with a Yazidi woman (government employee), Khanasor, 18 Feb. 2019.

54) Abouzeid (2018).

55) Interview with a Yazidi activist, Sinjar, 17 Jan, 2019.

56) Lamani, Mokhtar (2009): 'Minorities in Iraq: The Other Victims', Centre for International Governance Innovation (CIGI) Special Report, p. 11, available at: https://www.cigionline.org/sites/default/files/minorities_in_iraq_final.pdf (accessed on 10 May 2019).

57) For an overview of the dynamics of Sunni politics in post-2003 Iraq, see: Mansour, Renad (2016): 'The Sunni Predicament in Iraq', Carnegie Middle East Center, available at: https://carnegieendowment.org/files/CMEC_59_Mansour_Sunni_Final.pdf (accessed on 10 May 2019).

the Iraqi government has tried to use a new mechanism to guarantee HLP rights for Yazidis since Sinjar was liberated from ISIS, this study found that this mechanism creates its own type of HLP violation.

Interviewees substantiated reports that the local Sunni Arab population was deeply implicated in ISIS violence,⁵⁸ which means that HLP violations against Yazidis under ISIS are part of a longer history of dispossession that stretches back to the Baath Party's 'Arabisation' campaign of the 1970s. They claimed that some local Sunni Arabs (mostly settlers) had actively participated in ISIS attacks on Yazidis and destroyed their properties: 'Most of the ISIS members were the Sunni Arabs who already confiscated our lands during the Arabisation campaign.'⁵⁹

For this Yazidi man, Arabisation is not over: It is still harming Yazidis because Saddam's campaign paved the way for subsequent – and current – violations against Yazidis. He was echoed by another Yazidi man: 'Those Arabs who were settled during the Arabisation campaign are the same people who supported ISIS. The tribe members of Al-Mtewt were with ISIS when they attacked Kogo village in 2014. This tribe was brought to protect the oil field during the Arabisation process.'⁶⁰

A young Yazidi activist with detailed knowledge of violations committed against Yazidis during the ISIS era named the tribes who supported ISIS in 2014 and described the attacks: 'The Jghaifa and Khatunie tribes came from Ba'aj toward Siba she khdre and Tal Uzer to the edge of Sinjar. They seized these areas. Ba'aj was the starting point of the attack. From south of Sinjar there was the Abu-Mtewt tribe, which supported ISIS. They started from Kogo until they controlled Tel Qasab and Tal Banat. From the east side, Sunnis from Tel Afar, plus what we called Jhesh, the Jhesh tribe with Tela'afari Sunni... Then, in the border areas, ISIS was supported by the Jhesh tribe... These are the same tribes and the same people who had confiscated Yazidi lands before.'⁶¹

Sunni Arab involvement in violations against Yazidis has been well documented.⁶² Our findings echo earlier interviews in which Yazidis accused some of these Sunni Arab tribes of participating in ISIS attacks.⁶³ Although not all Sunnis supported ISIS – members of the Shammar tribe fought against the Islamists – Yazidis appear to have lost trust in their Sunni neighbours.⁶⁴ Regarding Yazidis' distrust of all Sunnis, one researcher writes: 'Though the Arab population of the Sinjar region is heterogeneous, with people belonging to different tribes, some living in the region for a long time, others only moved there from the south by the Saddam regime, they appear as a homogenous group in present Yazidi discourse, which describes all Arabs as ISIS allies.'⁶⁵ It is interesting to see how victims articulate this:

58) Abouzeid (2018); 'The destruction of the Yazidis', *Le Monde Diplomatique* (Jan 2017), available at: <https://mondediplo.com/2017/01/08Yazidis> (accessed 4 Aug. 2019); Spät (2018), p. 424.

59) Interview with a Yazidi farmer, Sinuni, 17 Jan, 2019.

60) Interview with a Yazidi activist, Sinuni, 17 Jan, 2019.

61) Interview with a Yazidi activist, Sinjar, 17 Jan, 2019.

62) See: Minority Rights Group International (2014): 'From Crisis to Catastrophe: the situation of minorities in Iraq', available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRQ/INT_CRC_NGO_IRQ_19113_E.pdf (accessed 10 May 2019); UN-Habitat (2015); Jahn, Ina Rehema (2015): 'A Preliminary Assessment of Housing, Land and Property Right Issues Caused by the Current Displacement Crisis in Iraq', International Organization for Migration (IOM), available at: https://www.iom.int/sites/default/files/our_work/DOE/LPR/A-Preliminary-Assessment-of-Housing-Land-and-Property-Right-Issues-Caused-by-the-Current-Displacement-Crisis-in-Iraq.pdf (accessed on 15 Nov. 2018).

63) Abouzeid (2018, p. 6) records Yazidi interviewees accusing 'mteywits, the Jahaysh, and the Khatoonys of fighting with or otherwise helping the extremists'; Cheterian (2017) writes: 'Several displaced Yazidis I interviewed confirmed that the initial attack was mainly by neighbouring Arab tribes — Jiheysh, Abu Mtemet, Khatuni and others.'

64) For details on the involvement of fighters from the Shammar tribe, see: 'In remote corner of Iraq, an unlikely alliance forms against Islamic State', Reuters (11 May 2016), available at: <https://www.reuters.com/article/us-mideast-crisis-iraq-sinjar-idUSKCN0Y20TC> (accessed 4 Aug. 2019).

65) Spät (2018), p. 436.

Nobel Peace Prize winner Nadia Murad, who survived ISIS violence in Sinjar, takes Sunni Arabs to task for not standing up to ISIS.⁶⁶

Even before the ISIS attack in 2014, the legal measures put in place to restore Yazidi HLPs were ineffective. For example, security conditions in Mosul prevented Yazidis filing their claims.⁶⁷ Yazidis had to travel to Mosul to submit claims or bring documents from Mosul to complete their files for the CRRPD in Sinjar. According to interviewees, even before 2014, extremist groups had targeted Yazidis in Mosul, which made them fear going there. A member of the Sinuni subdistrict council said: ‘While the CRRPD was working to restore HLPs to their original owners before 2014, many Yazidis did not submit their HLP claims because they had to go to Mosul to file their claims or bring the required documents for the CRRPD’s office in Sinjar.’⁶⁸

The loss and lack of property documents

Forced displacement has caused Yazidis to lose their civil and property documents, and has thus reduced their chances of benefiting from HLP restitution efforts. Interviewees repeatedly highlighted that Yazidis have generally lost their property documents as a result of discriminatory policies – the historical absence of title deeds caused by Arabisation – and waves of displacement. Yazidi farmers used to have a deed of *taswiya* called *tapu rash* (dating back to the Ottoman Empire).⁶⁹ Some people reported that this document no longer exists in Sinjar. According to one interviewee: ‘My grandfather had a *Tapu Rash* for our lands, but that was a long time ago. We do not have it now, no, we do not have it. Ours are agricultural lands. The Arabs of the Khatuni tribe confiscated these lands. We had problems with them for a while, and then tribal leaders solved the problem. These are our lands, we have ‘haqi tasaruf’ [the right to use the land] but I know that our lands are owned by the Ministry of Finance.’⁷⁰

Regarding *taswiya* deeds, a young Yazidi man originally from Sinjar reluctantly said: ‘I believe that this document does not exist in Sinjar. This might have been lost by owners or deliberately destroyed to deprive Yazidis from land ownership.’⁷¹

It is noteworthy that in Kirkuk, *taswiya* deeds still exist in the Property Registration Department.⁷² While Yazidis in Sinjar no longer have this document, people in other disputed areas like Kirkuk still do.

Interviewees frequently reported that even if Yazidis had had official HLP documents before they were displaced, when forced to flee, they left them behind or lost them en route. A Yazidi member of the provincial council of Mosul referring to 2014 said, ‘when ISIS

66) Murad, Nadia with Krajewski, Jenna (2017): *The Last Girl: My Story of Captivity, and My Fight against the Islamic State*, Tim Duggan Books, New York.

67) For further details on Islamist extremist violence against Yazidis travelling through Mosul, see: Cheterian (2017).

68) Phone call interview with a member of the Sinuni subdistrict council, Duhok, 21 Oct, 2018.

69) ‘*Taswiya* was an administrative procedure dating back to the Iraqi monarchy, which established a Settlement Department (Da’irat al-Taswiya). Its purpose was to examine individual plots of land across Iraq in order to verify legal ownership and to delineate their boundaries. As a result of the process, landowners who possessed property deeds – many dating back to the Ottoman Empire – had their legal ownership confirmed. The process was near completion when the monarchy was overthrown in 1958.’ Human Rights Watch (2004).

70) Phone call interview with a Yazidi farmer, Sinjar, 25 Jan. 2019.

71) Interview with a Yazidi activist, Sinjar, 17 Jan, 2019.

72) UN-Habitat (2015).

attacked Sinjar, those Yazidis who fled were able to only rescue themselves. They could not take anything.⁷³

Another person described how violence had caused many Yazidis to leave the country and they lost the documents for their lands en route: 'We have many Yazidis who moved to other countries because of the violence. If these people had documents for their land, I do not think they do any longer.'⁷⁴

The lawyer who worked on Yazidi claims in the IPCC and the CRRPD from 2004 to 2012 said: 'We had many problems with Yazidi claims because they did not have the documents that we requested. Most of them were coming to me and saying, "We lost our documents".'⁷⁵

Unless a suitable mechanism is developed, Yazidis who have lost their documents will face special challenges that will impede HLP restitution efforts and deprive them of their rights.

HLP rights restriction and exclusion

Yazidis have been deprived of exercising their internationally recognised HLP rights such as grants and loans, and the sales, purchase and transfer of land.⁷⁶ Yazidi land and property transactions had been restricted under Saddam – except when people changed houses in collective towns. Many respondents mentioned that in the absence of title deeds, electricity bills were used and are still being used as evidence of ownership for property transactions.

There are no real estate offices in Sinjar. Mutual trust between sellers and buyers is required for buying and selling houses or business premises. A Yazidi man who works for the municipality of Sinuni said: 'If you walk around the mujama'ats [collective townships], you will see that there are no real estate property offices. If someone wants to buy a house, he just needs two witnesses. People are relatives and they know each other, I do not see any problem with this.'

He elaborated: 'But the problem does emerge when someone wants to build – a poultry shed, for example. Even if that person owns the land, he has to go to Mosul or Sinjar city to find two witnesses who have title deeds to their properties. Witnesses have to be listed in the municipality directorate to be eligible to confirm that the person owns the land and that the land is not disputed. Some witnesses will not come if they are not paid. As you may know, few Yazidis have title deeds so it is difficult to find Yazidi witnesses.'⁷⁷

In practice, Yazidis appear to not have equal rights like other Iraqi citizens, who do have title deeds for their HLPs. This means Yazidis have not been able to take advantage of government loans. Some interviewees pointed out that without land deeds, Yazidi farmers cannot apply for agricultural loans, either. A Yazidi farmer living in Sinuni with farmland on the Iraqi-Syrian border, said: 'I have 500 dunums of land in the Tirbka area on the Syrian border. Even though I farmed the land in previous years (not this one), I have not been allowed to drill a water well on my land, because I do not have a registered title for my land.'

73) Interview with a Yazidi member of the provincial council of Mosul, Mosul, 16 Oct, 2018.

74) Interview with a Yazidi researcher, Sinuni, 17 Jan, 2019.

75) Interview with a Yazidi lawyer, Duhok, Jan. 2019.

76) Food and Agricultural Organization of the United Nations (2002): 'Land Tenure and Rural Development', available at: <http://www.fao.org/3/a-y4307e.pdf> (accessed 4 Aug. 2019).

77) Interview with a Yazidi man who works for the municipality of Sinuni, Sinuni, 17 Jan. 2019.

If there was a government agricultural loan, I would not be able to benefit from it, because I do not have an official deed.⁷⁸

Fears of undesirable results of recent HLP restitution efforts

Despite the fact that most of the HLP restitution mechanisms are well developed, there is doubt among Yazidis about a new form of HLP violation that might result from the implementation of these mechanisms. In the meanwhile, they were also afraid of the well-developed mechanisms if they are not fairly implemented.

A Yazidi researcher said UN-Habitat plans implemented since 2015 and in response to ISIS HLP violations are inappropriate for restoring Yazidis' HLPs: 'The UN-Habitat project would exacerbate the land issues once it is implemented. This project is not only for Yazidis: It is also for those who lived here before 2014. I know people who are not originally from Sinjar will get a tapu (registered title deed) if the government implements this project. That means that they legally become the owner of the land although they are not from here.'⁷⁹

While the UN-Habitat project targeted Yazidis, it also included beneficiaries of 'Arabisation': Non-Yazidis who are not originally from the area obtained official documents proving that they own property in Sinjar. This runs counter to the intentions of Article 140, which mandates the restoration of Yazidi HLP rights and the return of settlers to their original areas. The project was either mismanaged or it was difficult to provide the proper services in an emergency context.

Mismanagement of the restitution efforts to some extent harmed the HLP cases of Yazidis even before 2014. In relation to these previous failings, a Yazidi lawyer, who worked as a member of both the IPCC and the CRRPD from 2004 to 2012 stated: 'Unfortunately, some of the Yazidi claimants did not win their cases because some committee members did not understand the nature of the cases. I realised that they did not have enough information about the area: They did not understand that Yazidis had been forced to leave their lands and therefore made wrong decisions in cases where Yazidi claims were justified.'⁸⁰

CONCLUSION

The research findings clearly indicate that the methods that have been used to address HLP violations are well intentioned but ineffective: Article 140 has never been implemented. Interviewees consider that Iraqi and Kurdish political parties have failed to guarantee Yazidis' HLP rights and instead have turned the globally recognised right to HLP into a political game. The lack of HLP documents in Sinjar territory has severely affected Yazidis by denying them evidence to present to the statutory justice system, which also excluded them from government services such as loans. Yazidi interviewees perceived the restitution process as ineffective and tended to be sceptical of restitution efforts, including those of

78) Phone call interview with a Yazidi farmer, Sinjar, 18 Jan. 2019.

79) Interview with a Yazidi researcher, Sinuni, 17 Jan, 2019.

80) Interview with a Yazidi lawyer, Duhok, Jan. 2019.

international actors. In addition, the involvement of local Sunni Arabs in HLP violations before and after 2003 exacerbates conflict between Sunnis and Yazidis. HLP disputes could generate new conflicts: The lack of a resolution threatens peace in the region.

To solve HLP problems in Sinjar, returning to the pre-ISIS situation should be prioritised. All key actors should come together and reach consensus on HLP issues and the legal bases for HLP interventions in Sinjar. Local and international actors should explore alternative dispute-resolution mechanisms and strengthen the necessary decision-making, enforcement and appeals mechanisms. This includes training and delegating members of the community to provide evidence of land rights that can be corroborated by local leaders.

Peace-building initiatives at the community level could be a good first step to guarantee political stability and help prevent new conflicts. The GoI and the KRG can play vital roles in supporting national and international NGOs as they work to build peace and reconciliation in the area. International actors like the EU, the US and international organisations can help the Iraqi government provide basic services in Sinjar district so that Yazidis can go home. The Iraqi government should resume the normalisation process as the first stage of implementing Article 140 for the disputed areas, and prioritise Yazidi areas that suffered terribly under ISIS. Government members should work impartially to ensure that Yazidis benefit from restitution efforts regardless of their political affiliations. All restitution processes should be based on comprehensive assessments that prevent new HLP violations.

‘Nothing is ours anymore’¹ – HLP rights violations in Afrin, Syria

By Thomas McGee²

INTRODUCTION: AFRIN’S PLACE IN THE SYRIAN HLP CRISIS

In the last eight years of conflict in Syria, issues relating to housing, land and property (HLP) have occurred with striking prevalence across the country. For example, in a study by humanitarian actors, almost 50 per cent of internally displaced persons (IDPs) in southern Syria reported that their pre-displacement residences had been either destroyed or damaged beyond repair.³ The intensive use of airstrikes in the US-led campaign against the Islamic State has also significantly damaged infrastructure, especially in Raqqa.⁴

As the conflict in Syria has evolved, some territories have changed hands several times, creating multiple waves of displacement and return, and thus engendering complicated and intersecting HLP challenges.⁵ Beyond housing and property lost as collateral damage, the Syrian government has deliberately destroyed property to punish restive populations in opposition strongholds.⁶ It has also introduced a series of laws facilitating the transfer of housing from communities perceived as having supported the opposition. Moreover, it is seeking to capitalise on much of this destruction through a controversial reconstruction agenda.⁷

1) This title is drawn from media reporting on HLP violations as they evolved in Afrin during mid-2018: Chulov, Martin and Shaheen, Kareem, “‘Nothing is ours anymore’: Kurds forced out of Afrin after Turkish assault”, *The Guardian* (7 Jun. 2018), available at: <https://www.theguardian.com/world/2018/jun/07/too-many-strange-faces-kurds-fear-forced-demographic-shift-in-afrin> (accessed 6 Mar. 2019).

2) The author would like to acknowledge the valuable comments provided by the peer reviewers, as well as the constructive feedback on an earlier draft by Hivin Kako and several other experts from Syria/Afrin wishing to remain anonymous.

3) Norwegian Refugee Council (NRC) and the United Nations High Commissioner for Refugees (UNHCR) (2017): ‘Displacement, housing, land and property and access to civil documentation in the south of the Syrian Arab Republic’, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/final_nrc_displacement_hlp_and_civil_doc_s_syria_23_07_2017_en.pdf (accessed 14 Mar. 2019).

4) Amnesty International (22 Oct. 2018): ‘Syria: While Raqqa’s dead are buried in mass graves, US-led coalition buries its head in the sand’, available at: <https://www.amnesty.org/en/latest/news/2018/10/syria-while-raqqas-dead-are-buried-in-mass-graves-us-led-coalition-buries-its-head-in-the-sand> (accessed 22 Feb. 2019).

5) See Vignal’s chapter in this volume.

6) Human Rights Watch (HRW) (30 Jan. 2014): ‘Razed to the Ground: Syria’s Unlawful Neighborhood Demolitions in 2012-2013’, available at: <https://www.hrw.org/report/2014/01/30/razed-ground/syrias-unlawful-neighborhood-demolitions-2012-2013> (accessed 27 Jan. 2019).

7) See Hanna and Harastani’s chapter in this volume; Yazigi, Jihad (2017): ‘Destruct to Reconstruct: How the Syrian Regime Capitalises on Property Destruction and Land Legislation’, Friedrich Ebert Stiftung, available at: <http://library.fes.de/pdf-files/iez/13562.pdf> (accessed 10 Jan. 2019).

Against this backdrop, in January 2018 the Turkish-led ‘Operation Olive Branch’⁸ in northwest Syria opened up a new front in the Syria conflict. In Kurdish-majority Afrin, which was targeted by the offensive, violations of HLP rights have been widely reported. These include looting and confiscating houses and shops,⁹ as well as plundering the olive harvest.¹⁰ According to international media, the organised relocation to Afrin of families from elsewhere in the country has led locals to complain, ‘Lands are being confiscated, farms, wheat, furniture, nothing is ours anymore’.¹¹ The Afrin case study implicates a tangle of actors in HLP issues – from military entities (the Turkish Armed Forces and their armed Syrian partner factions) to other Turkish state institutions and the local councils and civil police forces set up to administer the area after the operation. In many cases, HLP issues underscore the tensions between the rights of the original (now often displaced) residents and those of civilians relocated to Afrin from other parts of Syria. IDPs in the latter category had often lost their own homes and land as a result of the ‘siege, starve, destroy and transfer’ strategy implemented by the Syrian government since 2014.¹²

While HLP issues across the country have sometimes coincided with demographic changes due to conflict-induced displacement, the role of Turkey – an external state actor with a history of forced displacement against its own Kurdish population – introduces a distinctly ethnic dimension to the analysis of developments in Afrin. In March 2018, at the end of Operation Olive Branch, a seasoned journalist of the Middle East commented, ‘The first thing to see is whether it is followed by ethnic cleansing and “Arabisation”’, noting that ‘the removal of opposing ethnic or sectarian communities has become a frequent feature of the Syrian civil war’.¹³ This chapter engages with that very question through focused analysis of HLP violations in the area, and considers the attribution of accountability accordingly.

METHODOLOGY

Building on documentation by local organisations and the author’s regular online monitoring (including opposition-linked and community-run social media platforms), most of the study’s primary data comes from 28 semi-structured interviews the author conducted with key informants (KIs) from Afrin: journalists and activists of differing political dispositions, business and olive-press owners, teachers, humanitarian workers and retired residents.¹⁴ Given the demographics of the local population, the majority of the interviewees (25) were of Kurdish ethnicity. To protect their identities, all names have been anonymised, sometimes with pseudonyms. Interviewees were generally able to talk about the situation of their own homes, land and property, and also relay narratives of relatives and other acquaintances from Afrin. Due to the controlling forces’ limitations on direct

8) In Turkish: Zeytin Dalı Harekâtı.

9) Amnesty International (1 Aug. 2018): ‘Syria: Turkish occupation of Afrin has led to widespread human rights violations – new findings’, available at: <https://www.amnesty.org.uk/press-releases/syria-turkish-occupation-afrin-has-led-widespread-human-rights-violations-new/> (accessed 3 Mar. 2019).

10) Badcock James, ‘Turkey accused of plundering olive oil from Syria to sell in the EU’, The Telegraph (14 Jan. 2019), available at: <https://www.telegraph.co.uk/news/2019/01/14/turkey-accused-plundering-olive-oil-syria-sell-eu/> (accessed 28 Feb. 2019).

11) Chulov and Kareem, ‘“Nothing is ours anymore”: Kurds forced out of Afrin after Turkish assault’, The Guardian (7 Jun. 2018), available at: <https://www.theguardian.com/world/2018/jun/07/too-many-strange-faces-kurds-fear-forced-demographic-shift-in-afrin> (accessed 6 Mar. 2019).

12) The Syria Institute and PAX (2017): ‘No Return to Homs: A case study on demographic engineering in Syria’, p. 28, available at: <https://www.paxforpeace.nl/publications/all-publications/no-return-to-homs> (accessed 15 Feb. 2019).

13) Cockburn Patrick, ‘After my recent trip to Syria, I knew Afrin’s fall was inevitable – now we must concern ourselves with the next phase of war’, The Independent (18 Mar. 2018), available at: <https://www.independent.co.uk/voices/afrin-turkey-ypg-kurdish-forces-erdogan-syria-russia-recent-trip-fall-inevitable-next-war-a8262236.html> (accessed 24 Mar. 2019).

14) The author expresses his gratitude to all the interviewees who contributed to the study.

access to the area by independent researchers, journalists and human rights organisations, most interviews were conducted remotely or with individuals outside Afrin at the time of the interview. Given these limitations, interview data were triangulated with independent reporting by recognized human rights groups. Media sources were also consulted in order to reflect the official positions of the Turkish government and Syrian opposition groups, as well as the social media platforms for the local councils and armed factions in Afrin.

HISTORY OF HLP VIOLATIONS AGAINST KURDS IN SYRIA

Syria's post-independence Arabisation policies repeatedly violated the HLP rights of the population of Kurdish-majority areas. In 1952, the government introduced a decree 'prohibit[ing] the building on, transfer or improvements on land located in the border areas', which was reported to disproportionately impact Kurdish-majority communities.¹⁵ This was part of a series of legal provisions restricting HLP transactions in 'border territories' under broadly defined 'securitisation' policies that continued until 2011. For example, Decree 49 of 2008 intensified existing prohibitions on the transfer of property and housing within 25 km of the international border without permission from the central government – which was almost never granted to Kurds.¹⁶

As the Syrian government grew increasingly nervous about the nationalist resistance of Iraqi Kurds spreading across the border in the 1960s, it started a comprehensive programme to disenfranchise Kurds in eastern Syria. In 1962, the government conducted a special census in the Kurdish heartland of Hassakeh governorate that resulted in some 120,000 Kurds losing their Syrian nationality almost overnight.¹⁷ Those made stateless were severely restricted from owning, buying, selling or transferring housing, property and land. Many stateless Kurds had to resort to precarious practices of registering their property and real estate in the names of Syrian citizens.¹⁸ A year later, the former head of intelligence in Hassakeh, Mohammad Talib Hilal, published his notorious study advocating a series of 12 repressive measures to manage the 'Kurdish issue', which he described as 'a malignant tumour in the body of the Arab nation.'¹⁹ Hilal proposed deporting Kurds and replacing them with Arab settlers, and creating a military cordon known as the 'Arab Belt' along the border with Turkey. Over the following decades, all his recommendations have to some extent been implemented by the Syrian government.²⁰

Although the government's anti-Kurdish policies before 2011 primarily focused on the northeast, the northwest district of Afrin was also subjected to the Arabisation of village names²¹ and resettlement policies. KIs report that during the political union with Egypt

15) Habitat International Coalition (2011): 'Systematic Housing and Land Rights Violations against Syrian Kurds', available at: <https://www.hlrn.org/img/documents/kurds%20status%20in%20Syria.pdf> (accessed 30 Oct. 2018).

16) YASA Kurdish Centre for Legal Studies & Consultancy (December 2010): 'Forum on Minority Issues at UN Human Rights Council, Geneva'. An English translation of the decree is available at: http://www.kurdwatch.org/pdf/kurdwatch_dekret49_en.pdf (accessed 15 Dec. 2018).

17) Kurdwatch (2010): 'Stateless Kurds in Syria: Illegal invaders or victims of a nationalistic policy?', available at: <https://www.kurdipedia.org/docviewer.aspx?lng=14&book=2013100810352692383> (accessed 9 Nov. 2018).

18) HRW (1996): 'Syria: The Silenced Kurds', available at: <https://www.hrw.org/report/1996/10/01/syria-silenced-kurds> (accessed 1 Aug. 2019).

19) Hilal, Mohammad Talib (1963): 'Study of al-Jazira [Hassakeh] Governorate from National, Social and Political Perspectives' (in Arabic). Republished by the Amude Center for Kurdish Culture (2003), p. 5, available at: <http://www.amude.net/erebi/mihemed-taleb-hilal-lekolin.pdf> (accessed 8 Aug. 2019)

20) While President Hafez al-Assad officially abandoned the 'Arab Belt' construction in 1976, Kurdish sources have generally argued that the Syrian government has attempted to complete the process via subsequent land reforms and legislation: Ababsa, Myriam (2009): 'Fifty Years of State Land Distribution in the Syrian Jazira: Agrarian reform, Agrarian Counter-reform, and the Arab belt Policy (1958–2008)', *Cairo Papers in Social Science*, Volume 32, No. 2, pp. 44–60.

21) One interviewee recalled how the village of Gewenda was officially renamed Al-Batra/Petra.

t in the United Arab Republic (1958-1961), the Syrian government resettled Arab families, mostly to Afrin city and the Jandarîs subdistrict. A schoolteacher from Afrin confirmed in an interview that after local land reforms, a number of Arab families from the 'Amîrat tribe in the countryside east of Aleppo were given land in his village, which until then had been inhabited by only three large families of Kurdish origin who intermarried over several generations. Families from the Bubana tribe were also brought to Afrin from around Menbij (eastern Aleppo) and authorised by the government to join the nomadic Arab herders who had long transited through the area on a seasonal basis.²² Other interviewees stated that Afrin (with its long border with Turkey) was badly affected by Decree 49, which made it extremely difficult for homeowners in border regions to obtain official housing deeds (*tabu akhdar*).²³

AFRIN AND OPERATION OLIVE BRANCH

The predominantly Kurdish area of Afrin covers some 365 villages across seven administrative subdistricts in Syria's northwestern Aleppo governorate. From 2012, the area has been administered by the dominant Kurdish political actor in Syria, the Democratic Union Party (Kurdish acronym: PYD²⁴) and its military counterpart, the People's Protection Units (YPG²⁵). Since the Syria conflict began in 2011, Afrin had largely been spared the severe destruction seen elsewhere in the country. The area's relative stability had transformed it into a haven for displaced civilians from other parts of Syria, with the United Nations reporting a population of around 125,000 IDPs.²⁶ That stability, however, was dramatically ruptured on 20 January 2018 when Turkish President Erdogan launched Operation Olive Branch, a military campaign on Afrin by the Turkish Armed Forces and their Syrian allies.

Turkey has long perceived the Syrian Kurds' autonomous governance project on the other side of its border as a national security threat. It considers the project to be closely affiliated with the Kurdistan Workers Party (PKK²⁷), which it proscribes as a terrorist group. Turkish state officials have regularly cited the need to counter what they term an emerging 'terror corridor' in Syria.²⁸ Indeed, the goal of isolating Afrin from other Syrian territories under Kurdish control had motivated Turkey's first direct military intervention in Syria, Operation Euphrates Shield (August 2016 – March 2017). That offensive split Afrin from Kurdish-controlled Kobani in the east, preventing the formation of a contiguous Kurdish-controlled territory in northern Syria.

Building on Operation Euphrates Shield, in mid-2017 Turkey consolidated assorted Syrian armed opposition factions under the auspices of the Turkey-based opposition body, the 'Syrian Interim Government' (SIG). The factions were trained and equipped by Turkey's state

22) For more details on the impact of land reforms and Arab settlement in Afrin, see: Afrîni, Rowshan, 'Arabs in Afrin region: From Cattle and Livestock Herders to Owners and Rulers of the Region' (in Arabic), Rojava News (2005), available at: <https://rojavaneews.com/arabic/index.php/ku/item/7918-rojavaneews> (accessed 20 Feb. 2019).

23) See the chapter by Hanna and Harastani in this publication for an explanation of why such documentation is important for securing HLP rights in Syria.

24) Partiya Yekîtiya Demokrat.

25) Yekîneyên Parastina Gel.

26) United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (18 Mar. 2018), 'Afrin District: Facts and Figures', available at: <https://reliefweb.int/report/syrian-arab-republic/syria-afirin-district-facts-and-figures-updated-18-march-2018-enar> (accessed 1 Aug. 2019).

27) Partiya Karkerên Kurdistanê.

28) 'Turkey, militants clash as Erdogan vows to destroy "terror corridor" in Syria', Middle East Eye (8 Oct. 2017), available at: <https://www.middleeasteye.net/fr/news/turkey-troops-syria-jihadists-clash-ahead-expected-incursion-99068758> (accessed 25 Apr. 2019).

intelligence agency (MiT²⁹) and its military Special Forces to become the 'National Army'.³⁰ According to Turkish media, the National Army is a structure 'composed of 36 different opposition groups under the umbrella of the Free Syrian Army (FSA) ... divided into three army corps',³¹ while a Syrian Kurdish researcher publishing for a US think-tank reports that it includes 'a combination [of 17 groups] of Salafist, jihadist and ultra-extremist militants'.³²

In January 2018, the sudden and provocative announcement of US plans to form a 30,000-person 'Border Protection Force' under the leadership of its Kurdish allies presented Turkish officials the opportunity to frame Operation Olive Branch as a specific response to cross-border security threats.³³ This trigger also resulted in a policy shift by Russia, which had previously used its troop presence west of the Euphrates river to buffer attacks on Afrin by Turkish forces and Syrian opposition groups.³⁴ Suddenly Russia withdrew its troops in what appears to have been an agreement with Turkey ahead of a new round of diplomatic talks on Syria.³⁵ This interpretation is underpinned by the simultaneous launch of the Russian-backed Syrian government offensive against opposition fighters in rural Damascus and the Turkish-backed Operation Olive Branch for Afrin.³⁶ High-level Turkish officials have framed the operation as 'based on Turkey's inherent right to self-defence under international law, stemming from Article 51 of the United Nations Charter'.³⁷ However, research by the BBC's media watchdog suggests that Turkey may have exaggerated the actual threat Afrin posed as a pretext to launch Operation Olive Branch.³⁸

With much of Afrin directly bordering Turkey, Operation Olive Branch began with ground incursions from five separate points. Turkish tanks and military hardware quickly massed as Turkish-trained Syrian armed factions from the newly-formed National Army advanced across the border. Meanwhile, the Turkish military used sustained airstrikes and artillery to push deeper into the area, causing significant physical destruction, particularly in the Jandaris and Rajjo subdistricts close to the border of western Afrin (see map). Despite fierce resistance and counter-offensives by the YPG and their allied Women's Protection Units (YPJ³⁹) that had controlled the area for almost six years, by March 2018 Operation Olive Branch forces had taken most of the border territory, as well as several subdistrict capitals, and turned their attention towards Afrin city itself.

29) Millî İstihbarat Teşkilatı.

30) 'Turkey-backed opposition to form new army in northern Syria', TRT World (30 May 2017), available at: <https://www.trtworld.com/mea/turkey-backed-rebels-to-form-new-army-in-northern-syria-367931> (accessed 14 Apr. 2019).

31) 'What is the new Syrian National Army?', TRT World (27 Jan. 2018), available at: <https://www.trtworld.com/middle-east/what-is-the-new-syrian-national-army--14648> (accessed 16 Jun. 2018).

32) Kajjo Sirwan, 'Who are the Jihadists Fighting alongside Turkey in Syria?', Gatestone Institute (20 Mar. 2018), available at: <https://www.gatestoneinstitute.org/12061/turkey-jihadists-syria> (accessed 17 Feb. 2019).

33) Barnard Anne, 'U.S.-Backed Force Could Cement a Kurdish Enclave in Syria', The New York Times (16 Jan. 2018), available at: <https://www.nytimes.com/2018/01/16/world/middleeast/syria-kurds-force.html> (accessed 12 Dec. 2018).

34) Candar Cengiz, 'Turkey continues its foreign policy blunders', Al-Monitor (2 May 2017), available at: <https://www.al-monitor.com/pulse/originals/2017/05/turkey-has-never-been-so-isolated.html> (accessed 7 Dec. 2018).

35) For analysis of the geostrategic background and Turkish domestic motivations around Operation Olive Branch, see: Schmidinger, Thomas (2018), *Afrin – Kampf um den Berg der Kurden: Geschichte und Gegenwart der Region Afrin*. Bahoe Books, Vienna.

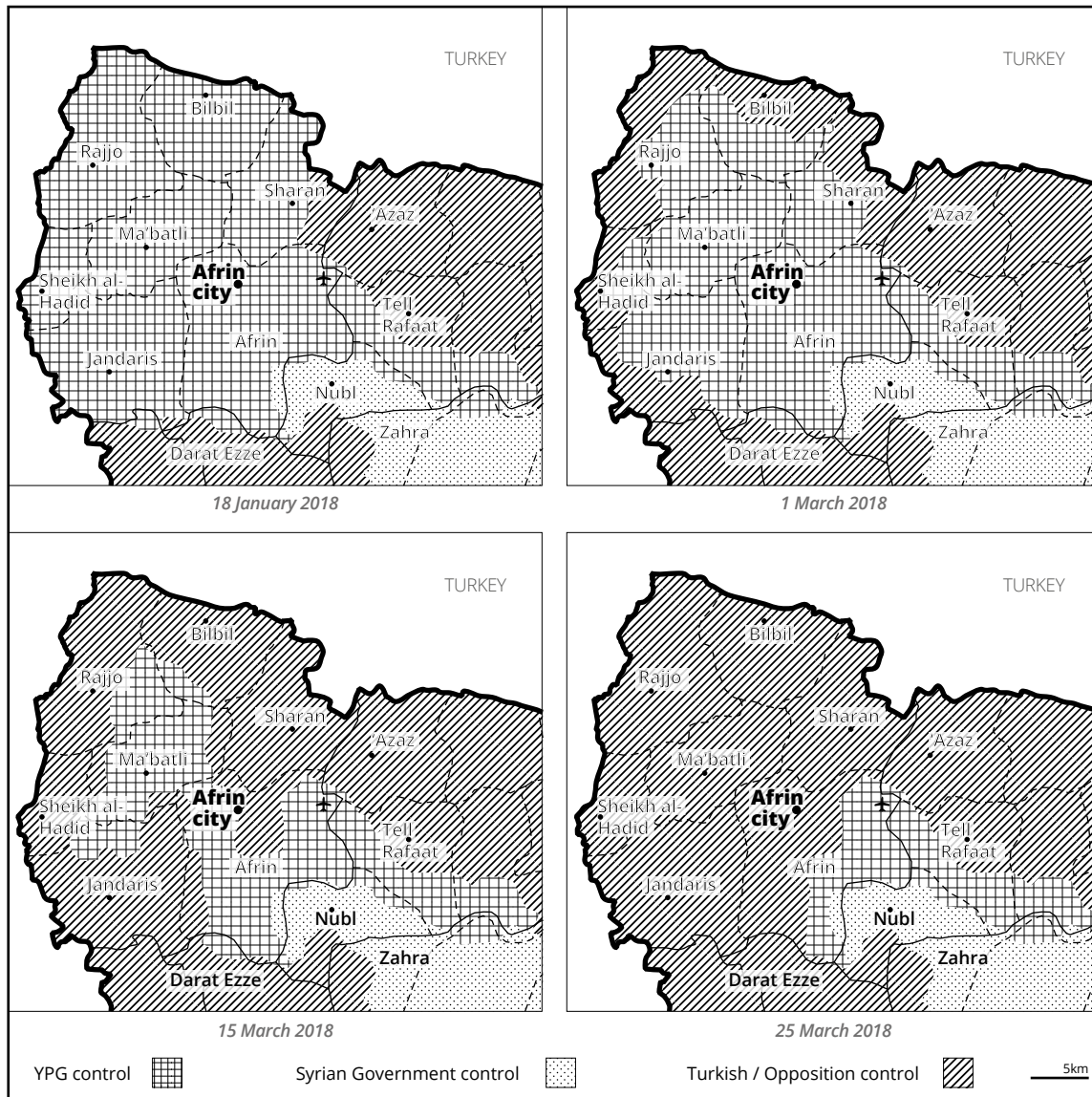
36) 'Syrian government makes Ghouta gains; Turkey steps up Afrin attack', Reuters (3 March 2018), available at: <https://www.reuters.com/article/us-mideast-crisis-syria/syrian-government-makes-ghouta-gains-turkey-steps-up-afrin-attack-idUSKCN1GF0L8> (accessed 13 Nov. 2018).

37) TRT World Research Centre (April 2018), 'Operation Olive Branch', p. 25, available at: <https://researchcentre.trtworld.com/images/files/reports/OperationOliveBranch.pdf> (accessed 11 Nov. 2018).

38) Koker Irem, 'Reality Check: How many attacks did Turkey face from Afrin?', BBC Turkish (20 March 2018), available at: <https://www.bbc.com/news/world-middle-east-43262839> (accessed 14 Apr. 2019).

39) Yekîneyên Parastina Jin.

AREAS OF CONTROL IN AFRIN THROUGHOUT OPERATION OLIVE BRANCH



At the start of the operation, local inhabitants were displaced from villages close to the Turkish border. As the offensive went on, secondary waves of displacement took place, leading to increasing numbers of people seeking sanctuary in the city of Afrin. In the first days, the UN reported that approximately 5,000 individuals had moved towards the city,⁴⁰ a number that multiplied at least tenfold by the end of February according to sources in the field.⁴¹ Around 8 March, as the YPG was preparing to make its last stand in Afrin, civilians began to flee the city, heading east towards Tel Rifaat, with some managing to cross into Syrian government-held territories. On 18 March, after 58 days of resistance, the YPG and Kurdish authorities in Afrin made a strategic withdrawal, evacuating civilians from Afrin city.

40) OCHA (23 January 2018): 'Recent Developments in Northwestern Syria (Idlib Governorate and Afrin District)', available at: <https://reliefweb.int/report/syrian-arab-republic/turkey-syria-recent-developments-northwestern-syria-idlib-governorate> (accessed 17 Oct. 2018).

41) Triangulated figures from author interviews conducted with 3 journalists, 2 activists and 4 other IDPs from Afrin, late Feb. 2018.

The same day, Erdogan marked the completion of Operation Olive Branch by announcing that the Turkish military and its Syrian partners had gained control over the entire area of Afrin.⁴²

During the final stages of the battle for Afrin city and its chaotic aftermath, more local families fled the region and took sanctuary in the areas of Nubl, Zahra and the Tell Rafaat east of Afrin (called 'Shahba' by Kurdish authorities – see map). In late May 2018, the UN estimated that some 134,000 IDPs from Afrin were still there, in poorly serviced camps.⁴³ Only those able to pay checkpoint fees to cross into Syrian government-controlled territory could enter Aleppo city; Human Rights Watch (HRW) recorded prices as high as USD 1,000 per person.⁴⁴ Some individuals connected to the Kurdish authorities who had been governing Afrin, or their associated security forces, feared kidnap and persecution on returning, and moved further east to Kobani and Hassakeh. Few male youths have returned because they are vulnerable to accusations of being 'Kurdish fighters'. Arab IDPs living in Afrin before Operation Olive Branch generally also fled for fear of being considered as PYD collaborators.

All interviewees reported that Turkish military airstrikes during Operation Olive Branch, and artillery by the Turkish army and their Syrian partners, were not limited to military targets. They indiscriminately inflicted significant damage on public service infrastructure, including hospitals and water stations,⁴⁵ and destroyed civilian homes.⁴⁶ The practice of cutting off water supplies to the area forced further locals to leave.⁴⁷ Turkish airstrikes also reportedly targeted a number of local heritage sites during the operation, feeding accusations that Turkey sought to eradicate traces of Kurdish culture and history in the area.⁴⁸ Leaving behind a trail of conflict-induced destruction, the cessation of military operations did not mark the end of HLP violations in Afrin, but instead signalled the start of a new chapter of property looting and housing occupation.

42) 'Turkey-backed Free Syrian Army forces declare victory over terrorists in Afrin', Daily Sabah (18 Mar. 2018), available at: <https://www.dailysabah.com/politics/2018/03/18/turkey-backed-free-syrian-army-forces-declare-victory-over-terrorists-in-afrin> (accessed 6 Mar. 2019).

43) OCHA (15 Jun. 2018): 'Syrian Arab Republic: Humanitarian situation update in Afrin District and for IDPs in surrounding communities', available at: <https://reliefweb.int/report/syrian-arab-republic/syrian-arab-republic-humanitarian-situation-update-afrin-district-and> (accessed 30 Jul. 2019). Local journalists and other KIs generally agreed that in mid-2019, the figure was still around 100,000 people.

44) HRW (8 Apr. 2018): 'Syria: Afrin Residents Blocked from Fleeing, Aid, Turkish Allied Groups Loot, Destroy People's Property', available at: <https://www.hrw.org/news/2018/04/08/syria-afrin-residents-blocked-fleeing-aid> (accessed 10 Mar. 2019).

45) Such claims are echoed by UN statements of concern and independent investigations: OHCHR (16 Mar. 2018): 'Press briefing notes on the situation in Afrin, Syria', available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22839&LangID=E> (accessed 20 Nov. 2018); Bellingcat (19 Mar. 2018), 'Did Turkey Bomb Afrin's General Hospital?', available at: <https://www.bellingcat.com/news/mena/2018/03/19/did-turkey-bomb-afrin-hospital> (accessed 16 Apr. 2019).

46) Fisk Robert, 'Inside Afrin, the true victims of Turkey's invasion of northern Syria are revealed – refugees, babies, women and children', The Independent (28 Jan. 2018), available at: <https://www.independent.co.uk/news/world/middle-east/afrin-turkey-invasion-syria-enclave-kurds-ypg-airstrike-war-civil-a8182266.html> (accessed 10 Mar. 2019).

47) 'Syria's Afrin cut off from water, thousands displaced', Reuters (14 Mar. 2018), available at: <https://www.reuters.com/article/us-mideast-crisis-syria-afrin-water-idUSKCN1GQ0ZR> (accessed 27 Apr. 2019).

48) A notable example is the ancient Hittite archaeological site at Ain Dara, which was destroyed by aerial bombardment during the first week of Operation Olive Branch: European Space Imaging (5 Feb. 2018): 'Satellite Images of Afrin Identify Massive Damage to Ancient Temple', available at: <https://www.euspaceimaging.com/satellite-images-of-afrin-identify-massive-damage-to-ancient-temple> (accessed 26 Jun. 2018).

VIOLATING HLP RIGHTS AFTER OPERATION OLIVE BRANCH: INITIAL CHAOS

*'Some of the factions behave better than others, and are not stealing from the civilians directly – but ultimately they have all subscribed to the same strategy and ideology [...] which is clearly against Kurds.'*⁴⁹

From the moment Operation Olive Branch forces took control of Afrin, HLP issues intensified in the chaos between various Turkish-backed Syrian factions (under the National Army). One interviewee characterised the situation as 'the law of the jungle', while a local journalist explained that 'the factions were roaming around the city chaotically.' The UN noted that 'arbitrary arrests and detentions became pervasive throughout Afrin district'.⁵⁰ Indeed, within the first hours of taking control of Afrin city on 18 March, Turkish-backed Syrian armed factions bulldozed the statue of mythical legend, Kawa the blacksmith, an important symbol of the Kurds' struggle for freedom from tyranny. Most KIs from Afrin could not conclusively identify the group responsible but the fact that no faction publicly rejected or distanced itself from this action set the tone for what locals perceive as an era of collective punishment against the original Kurdish inhabitants.⁵¹

***TURKISH-BACKED FORCES PULL DOWN KAWA STATUE IN AFRIN TOWN CENTRE:
REUTERS/KHALIL ASHAWI, 18 MARCH 2018***



49) Female interviewee in her late 30s residing in Erbil, who had interpreted for a local relief organisation in Afrin.

50) United Nations Human Rights Council (UNHRC) (31 Jan. 2019): 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/G1902320.pdf> (accessed 17 Apr. 2019).

51) This was a persistent theme in interviews conducted for this study, while reports shared with the author by the Rojava Information Center implicate Hamza and Sultan Murad Brigade in the destruction of the statue.

Over the next few days, international media agencies issued a flurry of reports about members of Turkish-allied Syrian factions looting the houses of displaced civilians.⁵² Interviewees for this study consistently reported such events. For example, Juwan, who fled Afrin on 15 March 2018 and has subsequently returned a number of times to assess the situation, stated: 'Our cars and olives and electricity generators have all been stolen, and strangers have put their hands on our homes and shops.' Citizen journalist Rebwar commented, 'They were stealing everything ... our relatives saw fighters walking away with people's chickens! Anything that wasn't clamped down was gone immediately, and soon they had unclamped generators and stolen those too.'

Schoolteacher Aziz narrated how looting had started in the villages even before Afrin city fell: three of his brother's tractors were stolen. A journalist from Afrin now living in Iraqi Kurdistan reported that, 'Cars, tractors and other vehicles are in danger of being stolen', adding that many locals have switched to using motorbikes instead of cars as they can be parked inside the house. All 28 Afrin locals interviewed believed that Syrian factions associated with the National Army had looted their family property. On 8 April 2018, HRW reported, 'Armed groups working with Turkish forces are looting and destroying civilian property in the city of Afrin and surrounding villages, exacerbating the plight of civilians'.⁵³

At first, Syrian factions from the National Army mostly looted and occupied the houses belonging to affiliates of the PYD and its associated governance/military structures. KI narratives conveyed the widespread perception that members of the factions often believe that it is halal (permitted) to seize the properties of 'PYD infidels'. Although many unaffiliated civilians fled to Shahba, interviewees stated that in April 2018 the armed factions began to announce that they would consider everyone who did not return to Afrin as connected to the party or Kurdish military.⁵⁴ Several interviewees believed that Turkish media, including platforms close to the government, reproduced news of looting to deter returns. Armed factions were able to use 'baseless accusations of affiliation to the PYD or YPG' as an excuse to strip civilians, particularly the wealthy, of ownership rights and confiscate their property.⁵⁵

Indeed, within a week after Operation Olive Branch ended, individual fighters from Syrian armed factions started to bring their relatives from opposition-controlled Idlib and northern Aleppo and settle them in empty houses in Afrin. One KI recalls, 'When most Kurdish families were fleeing to Shahba [Tell Rifaat], my elderly parents decided to go back to our village in the southwestern countryside of Afrin. My father called me each day, describing the lines of cars and buses bringing people into Afrin from Idlib'. While members of armed factions took advantage of the absence of original inhabitants who had fled, one interviewee reported that even those who remained were not spared from looting: 'Our village was one of the few where most people did not leave. The factions came there and stole things in the middle of the day. The television stopped working while my father was inside watching the news. When he went outside, he saw an armed man walking away with the satellite dish. These things are being sold in the markets of 'Azaz [an Arab town east of Afrin] and Hatay [in Turkey].'

52) 'Syria war: Afrin looted by Turkish-backed rebels', BBC (19 Mar. 2018), available at: <https://www.bbc.com/news/world-middle-east-43457214> (accessed 24 Apr. 2019).

53) HRW (8 Apr. 2018), op. cit.

54) According to one KI, this was done through loudspeaker broadcasts from the mosques.

55) Amnesty International (2 Aug. 2018): 'Syria: Turkey must stop serious violations by allied groups and its own forces in Afrin', available at: <https://www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin> (accessed 13 Mar. 2019).

In this context, interviewees reported that since late March 2018 families began to contemplate returning to Afrin, weighing the security risks against the prospects of reclaiming property and housing. The inhabitants of one village decided to return as a group in order to try and secure their houses together. Elsewhere, only a few families initially returned, sometimes sending a representative to assess the situation. They often brought back reports of houses occupied by armed factions and their families, and sometimes by Turkish forces.⁵⁶ A number of villages were entirely inaccessible to civilians because the Turkish military had appropriated them to use as bases,⁵⁷ while other sites were off-limits on grounds of unexploded ordnance (UXO) contamination.

Since Afrin was de facto carved up between different Olive Branch (National Army) factions, the situation regarding looting and confiscation in a particular location generally depends on the group, or set of individuals, in control. A student belonging to the Yezidi religious minority in one of Afrin's southern villages stated, 'The same faction may act differently in two places because individuals are given full liberty to do as they please'. There was broad consensus among interviewees from Afrin that HLP violations were routinely committed by almost all the armed factions in the area. Some groups, however, appear particularly notorious. In the words of one local elder, 'While all are bad, and it feels like [the National Army factions] are competing to see who can be the worst, some are clearly winning the competition'. The Hamza Division and Ahrar al-Sharqiya (both discussed later in greater detail) were often cited for egregious HLP rights violations.⁵⁸

Locals consider that the widespread, chaotic looting and house occupations by members of armed factions was condoned by Operation Olive Branch leaders. This view is supported by a leaked official document from a section of the National Army, the joint security division in Afrin's Rajjo subdistrict (reproduced by a Kurdish media outlet). The document sanctions the free movement of looted goods across checkpoints in the area on the understanding that they are 'spoils of war'.⁵⁹ Interviewees stressed how Turkish-backed factions sometimes coerced local individuals to provide information on the political and financial profiles of owners of particular houses targeted for confiscation. 'They knew who had wealthy relatives abroad and could pay large ransoms or reclamation fees', one interviewee explained. Striking evidence of positive profiling is evident in the narrative of a former humanitarian worker: 'My father, unlike me, was well known for his defence of the Sunni Islamic rebel groups, and had been criticised by other Kurds for this. I do not believe it was a coincidence that all the other houses in our area were completely looted, destroyed or occupied, and my father's house was not touched at all.'

While the majority of HLP violations in the days following the Operation Olive Branch capture of Afrin city were committed by the armed Syrian partner factions, Turkish state military was simultaneously deploying to strategic locations within the area. One activist stated that, 'It was clear by the speed with which they established military bases in key buildings in each of the Ashrafia and Mahmoudiya neighbourhoods, as well as Têlêf

56) See also: OHCHR (Jun. 2018), 'Between a Rock and a Hard Place – Civilians in North-western Syria', pp. 6-7, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/ohchr_-_syria_monthly_human_rights_digest_-_june_2018.pdf (accessed 21 Mar. 2019).

57) According to interviewees, these included: Têlêf and Miskê Fawqani villages in the Jandaris subdistrict, Darwish village in the Rajjo subdistrict, Bibarka in the Bilbil subdistrict, Jalbal and Kimar in the Afrin subdistrict, and Barava in the Sharan subdistrict.

58) These two Turkish-backed factions have clashed with each other on numerous occasions in Afrin. See: 'Al-Ahrar al-Sharqiya gathering clashes with al-Hamzat division in Northern Aleppo', SMART News (6 Jun. 2018), available at: <https://smartnews-agency.com/en/wires/279217/alahrar-alsharqiya-gathering-clashes-with-alhamzat-division-in-northern-aleppo> (accessed 1 Feb. 2019).

59) 'Afrin loot is legitimate spoils of war, leaked transit document shows', Rudaw (23 Aug. 2018), available at: <http://www.rudaw.net/english/middleeast/syria/230820181> (accessed 13 Apr. 2019).

[telecommunications point], that the Turkish military had identified locations to control ahead of reaching the city.’ At the same time, Turkish forces seized control of the key administrative buildings in the city centre. On 18 March, images showed Turkish troops had hoisted their state flag over the large Sarayi (old courthouse) building,⁶⁰ which has since become the main operational site for their special forces and military intelligence in Afrin. The Special Forces quickly set up headquarters in the new Faisal Qaddour high school in Afrin city, one of the largest buildings in the area. KIs reported that an MIT surveillance team was also located there. With these institutions occupying local public administration buildings in Afrin, it can be expected that the Turkish state is fully aware of the situation on the ground. According to one interviewee, ‘All violations take place under the eyes and supervision of the Turkish state’.

THE IDP DEBATE: ACCOMMODATING DAMASCUS’ DISPLACED AND DEMOGRAPHIC CHANGE

‘They are living in our homes like palaces while we are living in tents.’⁶¹

Most of the HLP violations committed in Afrin appear to involve armed factions installing IDPs in the houses of absent Kurdish owners. A Kurdish report, one of the few available sources of quantitative data on HLP issues in Afrin, states that some 85 per cent of those who fled the area reported some kind of violation to their homes, with 45 per cent stating that their houses had been occupied by IDPs from elsewhere in Syria.⁶² While it is difficult to determine if these figures are representative, the fact that all 28 KIs interviewed for this study reported HLP issues relating to IDPs settled in their homes or those of close relatives indicates a widespread phenomenon.

As families displaced from Afrin continued to hesitate about whether to return, a new threat to their HLP rights emerged: the organised, collective resettlement to Afrin of civilians and opposition fighters evacuated from rural Damascus. A week after Afrin city had fallen, thousands of fighters from the Faylaq al-Rahman and Ahrar Al-Sham armed factions and civilians from Eastern Ghouta in rural Damascus surrendered to the Syrian government. They were evacuated and transferred to opposition-controlled territories of Idlib and Aleppo in northern Syria. This reportedly came about through an agreement between the factions and the Syrian government, with Russian guarantees to relocate the families to Afrin.⁶³ On 20 April, Kurdish media reported 31 large buses carrying some 1,600 members of the armed faction Jaysh Al-Islam and their relatives from another area of rural Damascus through ‘Azaz, north of Aleppo, to Afrin city.⁶⁴ According to a documentation committee linked to Afrin’s former Kurdish administration, the next day the Turkish Army brought the

60) ‘Turkish army shares first video of Afrin town center since taking control’, Hürriyet Daily News (18 Jan. 2018), available at: <http://www.hurriyetdailynews.com/turkish-army-shares-first-video-of-afrin-town-center-since-taking-control-128912> (accessed 13 Mar. 2019).

61) Interviewee in Shahba IDP camp who fled Afrin on 15 Mar. 2018.

62) Rojava Center for Strategic Studies (Jan. 2019): ‘Ethnic Cleansing and Demographic Change in Afrin Region by the Turkish State and its mercenaries’, available at: <https://bit.ly/2ZDfvlF> (accessed 21 Jun. 2019). Other responses included destruction of homes (10%); conversion into military barracks (13%); and looting (17%).

63) ‘Are the militias of Ghouta heading to Afrin?’, BBC (26 Mar. 2018) (in Arabic), available at: <https://www.bbc.com/arabic/amp/middleeast-43541883> (accessed 22 Feb. 2019).

64) ‘Evacuated Syrian rebels relocated to Afrin’, Rudaw (20 Apr. 2018), available at: <http://www.rudaw.net/english/middleeast/syria/20042018> (accessed 15 Feb. 2019).

buses to Jandaris town, where it installed some 200 families.⁶⁵

Prior to their displacement, the civilians in these convoys had suffered significantly from the Syrian government's siege and bombardment tactics to retake control of rural Damascus from opposition forces.⁶⁶ While Turkish military patrols facilitated the entry of the convoys at checkpoints around Afrin, Turkish-backed Syrian factions managed the process of allocating houses to IDPs inside the area. Some of the IDPs were able to use personal connections with controlling factions to gain priority access to available housing.⁶⁷ According to interviewees, factions sometimes collected rent from displaced families for houses they did not own, leaving those without any financial means in a crowded IDP camp in southern Jandaris. Before long, factions like Faylak al-Rahman, who were relocated from rural Damascus, joined those from Operation Olive Branch in selling land to IDPs.⁶⁸

Armed factions also expelled residents and confiscated property in order to re-house IDPs – often for financial gain. Several interviewees cited tactics used to intimidate original inhabitants to abandon their homes or sell them at low prices. One KI explained, 'After the factions repeatedly came late at night to ask for my cousin's house, and then a car bomb went off right in front of the door, he feared for his family's safety and eventually sold up for cheap and left the area. This was presented as a legal transfer but in reality he had little choice'. A restaurant owner from Afrin who was kidnapped while taking his pregnant wife to hospital in 'Azaz, was offered 'protection' by the group (Ahrar al-Sharqiya) in exchange for 50 per cent of his profits. He, too, packed up and left for Damascus, abandoning his home and restaurant.⁶⁹ A Syrian research organisation found that residents had been 'recurrently subjected to raids and lootings' by armed factions and 'live under constant threats of eviction and/or expropriation of their houses and properties'.⁷⁰

While all the factions subscribe to the strategic objective and implicitly anti-Kurdish ideology of Operation Olive Branch, interviewees stressed that Ahrar al-Sharqiya and the Hamza Division were especially involved in seizing the homes of local residents. The former is mostly composed of fighters from Deir ez-Zor and the badia (steppe) region of eastern Syria.⁷¹ Interviewees suggested that knowing they will not be able to return to western Deir ez-Zor, which is under Syrian government control, causes Ahrar al-Sharqiya fighters to increase their ruthless and malicious actions to assert control over Afrin.⁷² At the same time, they resent the fact that authorities linked to the dominant Kurdish-led movement are governing Arab communities in Raqqa and the eastern countryside of Deir ez-Zor. Their animosity is evident in group members pledging to 'kill the Kurdish infidels'.⁷³

65) Self-Administration in North & East Syria, Foreign Relations Office (12 Jan. 2019), 'Turkish Crimes in Afrin', p. 8, available at: <https://www.kurdipedia.org/files/books/2019/228045.PDF?ver=131928403291665995> (accessed 15 Mar. 2019).

66) Hamou Ammar and Limoges Barrett, 'Seizing lands from Afrin's displaced Kurds, Turkish-backed militias offer houses to East Ghouta families', Syria Direct (1 May 2018), available at: <https://syriadirect.org/news/seizing-lands-from-afrin-s-displaced-kurds-turkish-backed-militias-offer-houses-to-east-ghouta-families> (accessed 18 Aug. 2018).

67) This narrative was consistently presented within author interviews.

68) 'SOHR: Militias selling stolen homes, property in Afrin', The Region (25 Sep. 2018), available at: <https://theregion.org/news/13131-sohr-militias-selling-stolen-homes-property-afrin> (accessed 19 Jan. 2019).

69) Told by a relative of the restaurant owner.

70) IMPACT (May 2019): 'Socioeconomic Impact of Displacement Waves in Northern Syria', available at: https://www.impact-csr.org/Socioeconomic_impact_of_Displacement_EN_web.pdf (accessed 12 May 2019).

71) Puxton Matteo, 'Syrie: Ahrar al-Sharqiya, ces anciens d'al-Nosra devenus supplétifs de la Turquie', France Soir (3 May 2018), available at: <http://www.francesoir.fr/en-coop-matteo-puxton/syrie-ahrar-al-sharqiya-ces-anciens-dal-nosra-qui-combattent-avec-larmee> (accessed 22 Apr. 2019).

72) Assem Wael, 'Ahrar Sharqiya' faction announces Afrin city belonging to Deir ez-Zor', Al-Quds Al-Arabi (26 Mar. 2018), available at: <https://bit.ly/2TfkUfD> (accessed 7 Aug. 2018).

73) Frantzman Seth, 'Kurds Fear Turkish-Backed Syrian Rebel Extremists Will Attack as U.S. Withdraws', The Jerusalem Post (27 Dec. 2018), available at: <https://www.jpost.com/Middle-East/Kurds-fear-Turkish-backed-Syrian-rebel-extremists-will-attack-as-US-withdraws-575596> (accessed 28 Dec. 2019).

In addition to much of Jandaris, Ahrar al-Sharqiya reportedly controls several neighbourhoods in Afrin city where some of most desirable residential properties are located, especially around Sharia' Villat ('Villa Street'). 'Aqarat al-Sharqiya', its real estate office, is said to be issuing contracts transferring ownership of homes and shops to newcomers to the area.⁷⁴ Meanwhile, there are multiple reports of the group clashing with other National Army factions, and even the supervisory military police, over property issues.⁷⁵ An activist working with an informal Afrin-Ghouta solidarity movement described how Ahrar al-Sharqiya evicted the IDP family from Ghouta for whom the activist had facilitated a rental agreement with a family from Afrin: 'They did not want to occupy somebody's house illegitimately, so we helped them get in touch with a family willing to rent their house at a fair price. But this was not tolerated by Ahrar [al-Sharqiya], who evicted the family and replaced them with another of their choosing.' In July 2018, after taking a strategic part of Rajjo city, the group's field commander Abu Uday occupied homes and instructed IDPs to relocate to the area, reportedly telling them that 'they have to settle in Rajjo and forget about [their] city of Deir ez-Zor.'⁷⁶

For its part, the Hamza Division is one of the National Army factions to have received especially intensive training from the Turkish Special Forces and is led by Turkmen commander Sayf Abu Bakr who 'enjoys the strong patronage of Turkey'.⁷⁷ Many of its members and leaders hail from Arab-majority areas of northern Aleppo (e.g. Tell Rafaat, Minnigh and Deir Jamal). The fact that Operation Olive Branch did not target these areas, which are still under YPG control, fuels their historic anti-Kurdish sentiment. Also, although condemned by the Kurdish leadership, YPG members parading the corpses of slain opposition fighters from these areas in Afrin's streets during April 2016 likely created desire for retaliation and revenge.⁷⁸ KIs from Afrin say that Hamza Division has ruthlessly occupied homes and property, rented stolen shops and issued permits to resettled Arabs who open businesses in the premises of absent Kurds. Online reports support claims that the group was involved in seizing homes, stealing olives and olive oil during the 2018 harvest, and even evicting IDPs to house its leaders' relatives.⁷⁹

Other Islamist groups close to Turkey have reportedly taken punitive measures against those they consider in violation of their faith: A prominent youth activist and humanitarian volunteer from Afrin recalls how members of the Turkmen Sultan Murad Brigade declared in front of him their belief that seizing the housing and property of Yezidis is halal (permitted) since they are non-believers.⁸⁰ A Yezidi who fled the mixed Yezidi-Muslim village of Kafr Zeid told the author he believes his family's property was targeted to 'punish' them for being

74) Reported by interviewees from Afrin city and triangulated by a local documentation group.

75) E.g. 'Complaints of Violations and Attacks by Military Faction in Afrin City, Aleppo', SMART News (11 Sep. 2018), available at: <https://bit.ly/2ZLz0bq> (accessed 14 Apr. 2019).

76) Power Sharing for a United Syria (25 Jul. 2018): 'Report about the Situation in Afrin', available at: <https://power-sharing-syria.org/2018/07/25/report-about-the-situation-in-afrin/?lang=en> (accessed 26 Apr. 2019).

77) Heras, Nicholas (2018): 'Turkey's Man in Syria – Sayf Abu Bakr, Militant Leadership Monitor: Personalities Behind the Insurgency, 9(2) pp. 11-16.

78) See: van Wilgenburg Wladimir, 'Kurdish leaders condemn display of rebel bodies in Afrin by SDF fighters', ARA News (29 Apr. 2016), available at: <http://aranews.net/files/2016/04/kurdish-leaders-condemn-display-rebel-bodies-afrin-sdf-fighters> (accessed 12 Apr. 2018).

79) 'Leader of Hamza demands IDPs give up their houses to accommodate his relatives' (in Arabic), SMART News (11 Nov. 2018), available at: <https://bit.ly/2YueE9T> (accessed 2 Mar. 2019); Syrian Observatory for Human Rights, 'In the olive season, Olive Branch factions continue to steal the harvest and impose taxes on farmers' (20 Oct. 2018), available at: <http://www.syriahr.com/?p=288039> (accessed 2 Mar. 2019); 'Hamza militia steals 70 tanks of olive oil in Qada village' (in Arabic), Afrin Post (25 Jan. 2019), available at: <https://bit.ly/2TcPkEd> (accessed 3 Mar. 2019).

80) Author interview via telephone on 10 February 2019.

Yezidi.⁸¹ Such HLP rights violations against people from Afrin, including by groups closely connected to the Turkish state, negatively impact social relations between locals and IDPs. While some IDP families have been reluctant to illegally occupy houses and readily left when their owners returned, others have fervently resisted giving up the houses they are occupying. Such dynamics became clear in Ma'abatli in July 2018 when IDPs organised protests staking their claims to remain. Slogans included: 'Those who want us out, bring us back home with guarantees of security' and 'Do not displace the displaced'.⁸² The failure to resolve such disputes and remedy other HLP violations contributes to the non-return and further disenfranchisement of original Kurdish inhabitants, raising questions about the agendas of both Syrian and Turkish actors engaged in Afrin.

HLP MANAGEMENT IN POST-OLIVE BRANCH AFRIN: LOCAL CIVILIAN STRUCTURES UNDERMINED

*'Our house was taken to be used as a centre for a faction. I have a lot of Arab friends in Syria from my studies in Damascus, so I started to contact them and make noise about the situation. I quickly got media attention and spoke about the issue in the EU Parliament. Suddenly, many activists and Syrian opposition politicians were contacting me to help me get our house back and end the bad publicity I was making for Operation Olive Branch.'*⁸³

Generally, houses in the Afrin area were first occupied on an ad hoc basis, with competing armed factions staking their claims by simply spray-painting their names and the words 'confiscated' or 'occupied' on buildings. While a series of local civilian institutions have subsequently been established to administer the post-conflict situation, KIs in this study were unanimous that the armed factions continue to dominate the HLP landscape in Afrin. Syrian opposition actors and the Turkish state have jointly set up local councils and civil police forces – which the armed factions have prevented from playing an effective role in resolving community concerns, including those related to HLP.⁸⁴ Rather than relying on the civilian actors who should resolve such matters, most interviewees who managed to recover housing, land or property did so by informally mobilising their own networks to engage with the armed groups. This section highlights how the Syrian armed factions' continued dominance has undermined the role of the local councils and civil police in Afrin, where locals consider that Turkey has further restricted their ability to serve the community's best interests.

On 18 March 2018, as Operation Olive Branch was ending, ahead of the chaos that followed, MIT and the SIG convened the 'Afrin Salvation Congress' in Gaziantep, Turkey.

81) Violations targeting Yezidis in Afrin are corroborated elsewhere: Khalil Shiyar, 'Violations against Yezidis by Opposition Factions in Afrin' (2 Oct. 2018), I am a Human Story, available at: <https://bit.ly/2M5366t> (accessed 19 Feb. 2019).

82) Violations in Afrin Observatory (28 Jul. 2018): 'Violation No. 157, Arab settlers refuse to leave Kurdish homes', available at: https://www.facebook.com/permalink.php?story_fbid=1458801424266706&id=1343386779141505&__tn__=-R (accessed 15 Feb. 2019).

83) Interview with an activist and artist from Sharan subdistrict now living in Europe, 1 Jan. 2019.

84) This point is underscored in a recently published study on Afrin: al-Hilu, Khayrallah (25 Jul. 2019): 'Afrin under Turkish Control: Political, Economic and Social Transformations', European University Institute, pp. 7-12, available at: https://cadmus.eui.eu/bitstream/handle/1814/63745/MED_2019_10.pdf?sequence=3&isAllowed=y (accessed 2 Aug. 2019).

The meeting concluded with resolutions to form a civil council and a civil police force to 'provide security and civil protection to the people of Afrin'.⁸⁵ The first civil council, mostly composed of people based in Turkey, failed to gain local acceptance in Syria. On 12 April, a council was formed in Afrin city, followed by similar councils in the other subdistricts. The local councils nominally operate under the SIG and its 'Free Aleppo Governorate Council' but Turkish state institutions closely monitor them and the armed factions interfere with their work. The civil police forces established in association with each local council and trained by Turkey remain similarly limited by the factions' monopoly on power.

KIs reported that a number of local council members in Afrin are known for being committed to serving their communities. Some have sought to support locals resolve HLP issues but are challenged by the armed factions that remain in authority. One interviewee described how by late 2018 his uncle had joined a local council and called for civilians to be able to access their homes: 'He is not political: He joined the council as a patriot. The whole family was against him getting involved, but he believed he could help. However, when people started to approach him about the problems with their houses, one of the armed factions took him and beat him up terribly. He still works for the council but cannot do anything.'⁸⁶ Several other members of local councils have reportedly been arrested and assaulted by armed factions, including the Deputy President of Sheikh al-Hadid Council, Ahmed Sheikho. According to a Kurdish news outlet, he was killed under torture while detained by 'Amshat faction of the National Army in the context of disputes between locals and IDPs.'⁸⁷

Online monitoring of the main social media platforms of the local councils in the seven subdistricts of Afrin⁸⁸ shows that some efforts have been made to regulate HLP transactions in their jurisdictions. In October 2018, for example, the Afrin Local Council notified civilians to bring proof of existing ownership (from before Operation Olive Branch) to its Properties and Real Estate Documentation Office in order to legalise deeds and protect their rights.⁸⁹ It added that the Council 'does not consider any new sales, which are completely illegitimate and carry no legal weight'. More recently, the Jandarisi Local Council has issued notice that its technical office must pre-approve all real estate purchases – after reviewing their legality.⁹⁰ In practice, however, the local councils and their associated civil police bodies appear to lack the empowered role needed to implement such policies when armed actors are involved. As one interviewee stated, 'Nothing is in their hands. Even if the council recognises this is your house, they and the civil police cannot enforce any action.'

The local councils' ineffectiveness is exemplified by their inability to apply their own regulations on collecting fees for harvested olives. Both KIs and media report that factions were adding their own taxes to the local council fees, which often made the process unprofitable for Afrin farmers.⁹¹

85) Final Communiqué from the Afrin Salvation Congress, 18 Jan. 2019, published by Kurd Street, available at: <https://bit.ly/2ZDBhFb> (accessed 12 Aug. 2018).

86) A similar case has been recorded by activists: Afrin Now (27 Jul. 2018), available at: <https://www.facebook.com/afrinnow/posts/1836671356440894> (accessed 23 Mar. 2019).

87) 'Afrin: Deputy President of Sheikh al-Hadid Local Councils Martyred under torture at the hands of 'Amshat' (in Arabic), Rojava News (12 Jun. 2018), available at: <https://www.rojavanews.com/arabic/index.php/ku/item/23715-2018-06-12-08-21-29> (accessed 3 Mar. 2019).

88) The author reviewed all posts on these platforms from their establishment until mid-May 2019.

89) Afrin Local Council, Legal Department, Notification No. 1, issued on 8 October 2018 (in Arabic), available at: <https://www.facebook.com/maherElyase/photos/a.183211975904261/183211439237648/?type=3&theater> (accessed 5 Feb. 2019).

90) Jandarisi Local Council, 13 May 2019 (in Arabic), available at: <https://www.facebook.com/193083614687912/photos/a.193109254685348/330748440921428/?type=3&theater> (accessed 16 May 2019).

91) Gêncô Bahoz, 'Opposition militias impose additional fees on the olive season in Afrin', Bas News (in Arabic) (22 Oct. 2018), available at: <http://www.basnews.com/index.php/ar/news/kurdistan/474825> (accessed 28 Feb. 2019).

Local councils were likewise unable to prevent armed factions cutting down trees or stealing the olives.⁹²

In February 2019, a citizen journalist from Bilbil reported to the author that after an elderly man complained to the local council about a faction stealing his olive cart, the council could not prevent the same faction kidnapping the man. Following persistent interference by various armed factions, the Afrin Local Council organised a three-day strike in early October 2018 that called for all National Army factions and military police to be expelled from the city.⁹³

KIs frequently suggested that local councils are ‘superficial’ structures that primarily exist to execute Turkish authorities’ instructions. In the words of an activist from Afrin, they ‘just stamp forms and take administrative fees, and beyond that are powerless to intervene further in [HLP] issues... The most they can do to help is facilitate a connection with the factions or Turkish officers.’ The local councils’ work is closely coordinated with, and supervised by, the office of the wali (provincial governor) Rahmi Doğan of Hatay province in Turkey.⁹⁴ Interviewees said that Turkey distrusts and has disempowered the local councils after realising that many of their members prioritise service to Afrin over Turkey. One council member stated, ‘Turkey pays the salaries of the armed factions, just like it pays ours. Therefore, it has the leverage to control the actions of the factions, but chooses not to’. It is generally believed that in reward for the Syrian factions’ loyalty during Operation Olive Branch, Turkey has allowed them to dominate the HLP space and benefit from violations. Local civilians have dismal prospects for just redress to violations of their HLP rights. One stated, ‘We from Afrin are the ultimate victims – as supposedly allied factions steal our property from one another. They are fighting over the houses as if we do not exist’.

TURKEY’S HLP AGENDA IN AFRIN

Despite the obvious prevalence of HLP violations being committed in Afrin, it has proved difficult to hold actors to account. More broadly, the operational limitations of international law have left aggrieved locals with virtually no recourse to justice for the violations committed against them.⁹⁵ This is partly due to the international community’s difficulty in establishing the nature of the relationship between the Turkish state and its Syrian partner factions under the National Army. The United Nations has stated its inability to ‘confirm the exact extent to which Afrin or its environs were under the control of Turkish forces or [Syrian] armed groups’.⁹⁶ This situation is further complicated by conflicting interpretations within customary international law about attributing international responsibility to states for violations committed by groups acting under their instruction, direction or control in another state’s territory.⁹⁷

92) Dawson Daniel, ‘Turkey Accused of Selling Stolen Syrian Oil as Its Own’, Olive Oil Times (15 Jan. 2019), available at: <https://www.oliveoiltimes.com/olive-oil-business/turkey-accused-of-selling-stolen-syrian-olive-oil-as-its-own/66581/> (accessed 27 Feb. 2019).

93) Gêncô Baho, ‘Local Council in Afrin on Strike’, Bas News (in Arabic) (1 Aug. 2018), available at: <http://www.basnews.com/index.php/ar/news/kurdistan/456237> (accessed 7 Jan. 2019).

94) ‘Hatay Weli Rahmi Doğan in Afrin’ (in Turkish), Haber Turk (27 Dec. 2018), available at: <https://www.haberturk.com/hatay-valisi-rahmi-dogan-afrinde-2274703> (accessed 21 Jan. 2019).

95) Bodette Meghan, ‘Nowhere to turn: legal accountability in occupied Afrin’, The Region (17 Nov. 2018), available at: <https://theregion.org/article/13237-nowhere-to-turn-legal-accountability-occupied-afrin> (accessed 15 Dec. 2018).

96) UNHRC (9 Aug. 2018), ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/246/15/PDF/G1824615.pdf?OpenElement> (accessed 2 Oct. 2018).

97) International Committee of the Red Cross (2017): ‘Customary International Humanitarian Law Database, Rule 149. Responsibility for violations of International Humanitarian Law’, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule149#_om (accessed 20 Mar. 2019).

However, examining Turkey's role in Operation Olive Branch more closely reveals that not only did it fund, train and equip the Syrian factions, but it also engaged in organising, coordinating and planning their military actions alongside its own. Firstly, the operation was led and planned by the Turkish Special Forces, who advanced into Afrin alongside the Syrian partner factions they had trained and equipped.⁹⁸ Secondly, the instrumental airstrikes by the Turkish Air Force that facilitated the joint Turkish-Syrian advances into Afrin were clearly coordinated.⁹⁹ Moreover, in addition to top Turkish officials announcing both the launch and the 'successful' conclusion of the operation,¹⁰⁰ the Turkish state has explicitly presented itself as the guarantor of post-operation prosperity. Just a few days before Operation Olive Branch forces took control of Afrin, Turkish state media reported planes of the Turkish Armed Forces dropping flyers on the city that read in Kurdish and Arabic, 'We are here for your peace and security. Trust in Turkey's justice, take our hand, please surrender. A good future with peace awaits you in Afrin'.¹⁰¹

However, Turkey's historic engagement with its own Kurdish community would give the people of Afrin little cause for comfort. HLP violations have been a consistent feature of Turkish domestic policies to curtail the influence of the dominant Kurdish political movement. Indeed, for decades before Turkey's recent intervention in Afrin, the state had forced Kurds to migrate from southeast Turkey, depopulating and destroying their villages. The displacement of entire villages during Operation Olive Branch is reminiscent of the evacuation and destruction of some 3,500 Kurdish rural settlements in Turkey during the 1990s in order 'to deprive the Kurdish armed movements of logistical support from the civilian population'.¹⁰² In several cases, the European Court of Human Rights (ECtHR) has found Turkish security forces directly responsible for burning and destroying houses and property in Kurdish villages.¹⁰³ In the few years immediately before the Turkish-led invasion of Afrin, unprecedented HLP violations were committed by Turkish state institutions in urban centres across Kurdish-majority areas in southeast Turkey – especially Nusaybin, Cizre and the historic quarters of Sur in Diyarbakır/Amed.¹⁰⁴

This situation occurred after the two-year peace process between the Turkish state and the PKK collapsed, and violence resumed in July 2015. While acknowledging the challenging circumstances, Amnesty International considers that Turkey's violations of Kurdish HLP

98) 'Turkish police, gendarmerie special forces enter Syria's Afrin to clear YPG in urban warfare', Daily Sabah (26 Feb. 2018), available at: <https://www.dailysabah.com/war-on-terror/2018/02/26/turkish-police-gendarmerie-special-forces-enter-syrias-afrin-to-clear-ypg-in-urban-warfare> (accessed 25 May 2019).

99) Kasapoglu Can, 'Military Scorecard of Operation Olive Branch: Turkish Armed Forces once again proved its advanced capabilities, with Turkey's defense industry putting forward a visionary roadmap', Anadolu Agency (26 Mar. 2018), available at: <https://www.aa.com.tr/en/analysis-news/military-scorecard-of-operation-olive-branch/1099535> (accessed 14 Apr. 2019).

100) 'Turkey launches "Olive Branch Operation" against "PKK threat in Syria"', Hürriyet Daily News (20 Jan. 2018), available at: www.hurriyetdailynews.com/turkey-launches-major-land-operation-into-ypg-militants-in-syrias-afrin-126031 (accessed 14 Mar. 2019). Presidency of the Republic of Turkey (18 Mar. 2018): 'Now, the symbols of peace and security are waving in Afrin, not the rags of the terrorist organization', available at: <https://www.tccb.gov.tr/en/news/542/91811/now-the-symbols-of-peace-and-security-are-waving-in-afrin-not-the-rags-of-the-terrorist-organization> (accessed 27 Feb. 2019).

101) Ahmet Aytac Seyit, 'Flyer in Afrin: Trust Turkey, don't believe terrorists', Anadolu Agency (16 Mar. 2018), available at: <https://www.aa.com.tr/en/middle-east/flyer-in-afrin-trust-turkey-dont-believe-terrorists/1090616> (accessed 7 Mar. 2019).

102) Global IDP Project (2001), 'Profile of Internal Displacement: Turkey', available at: https://www.ecoi.net/en/file/local/1412241/dh1804_00629tur.pdf (accessed 13 Apr. 2019). See also: Jongerden, Joost (2010): 'Village Evacuation and Reconstruction in Kurdistan (1993-2002)', *Études Rurales*, 186, pp. 77-100.

103) The Foundation for Society and Legal Studies (TOHAV), Diyarbakır Bar Association, Minority Rights Group International (MRG) and the Mesopotamian Culture and Solidarity Association (MEZODER) (2006): 'The Problem of Turkey's Displaced Persons: An Action Plan for Their Return and Compensation', pp. 8-11, available at: <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-163-The-Problem-of-Turkeys-Displaced-Persons-An-Action-Plan-for-Their-Return-and-Compensation.pdf> (accessed 15 Nov. 2018); e.g. Ayder v. Turkey (No. 23656/94) 8 January 2004; Yöylar v. Turkey (No. 26973/95) 24 July 2003; Akdivar v. Turkey (No. 21893/93) 16 September 1996; Selçuk and Asker v. Turkey (No. 23184-5/94) 24 April 1998.

104) International Crisis Group (ICG) (2017): 'Managing Turkey's PKK Conflict: The Case of Nusaybin', available at: <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/243-managing-turkeys-pkk-conflict-case-nusaybin> (accessed 22 Dec. 2018); Mazlumder Conflict Investigation and Resolution Group (Mar. 2016): 'Cizre Investigation and Monitoring Report on Developments During the Round-the-Clock Curfew Imposed on the Town Between December 14, 2015 and March 2, 2016', available at: http://www.mazlumder.org/fotograf/yayinresimleri/dokuman/MAZLUMDER_CIZRE_REPORT_20162.pdf (accessed 14 Jan. 2019); Amnesty International (2016): 'Displaced and Dispossessed: Sur Residents' Right to Return Home', available at: <https://www.amnesty.org/download/Documents/EUR4452132016ENGLISH.PDF> (accessed 27 Feb. 2019).

rights were part of ‘a premeditated plan to displace residents, destroy and rebuild the areas to ensure security through changes in infrastructure and transfers of population’.¹⁰⁵ A UN report, drawing on satellite image analysis, states that ‘[t]he most intensive period of destruction started in the immediate aftermath of security operations, when the authorities reportedly prevented the displaced population from returning and reconstructing their own homes and brought in machinery to raze entire city quarters to the ground, including lightly damaged buildings and cultural heritage.’¹⁰⁶ Despite generally using other means (occupation by Arab IDPs), HLP violations in Afrin similarly serve Turkey’s objective of countering the dominant Kurdish movement’s ‘self-governance’ initiative by changing the demographics. Displacement and HLP violations have coincided with new political structures backed by the Turkish state: the wali and local council in Afrin and ‘trustee’ figures appointed to replace Kurdish mayors elected in southeast Turkey.¹⁰⁷

Turkey has clearly drawn on its domestic experiences of military campaigns and repressive policies against its own Kurds for its engagement in Afrin. The commander in charge of Operation Olive Branch and the Afrin security situation for a year afterwards, Lieutenant General Ismail Metin Temel, is infamous for his career-long involvement in counter-insurgency operations against Kurds in Turkey.¹⁰⁸ Some Special Operations officers deployed to Afrin were reportedly selected because of experience acquired during the months of curfews in 2015 that devastated Kurdish communities (Diyarbakir, Şırnak and Mardin) in Southeast Turkey – revealing Turkish state intentions.¹⁰⁹ Moreover, resettling Syrian Arabs in Kurdish-majority areas is not unprecedented. It follows policies from 2016 to relocate non-Kurds (including Syrian refugees) in the destroyed districts of Kurdish towns like Diyarbakir.¹¹⁰

Although the Turkish state has directly committed few of the individual HLP violations in Afrin since the end of Operation Olive Branch, its status as the de facto occupying force arguably makes it responsible for those of its Syrian partners. As an international power claiming legal presence in Afrin under the UN Charter, Turkey is obviously failing its responsibility to maintain order and prevent HLP violations. Instead, it is reportedly giving ‘free reign’ to its Syrian partners, ‘turning a blind eye’ to their violations, including those related to HLP.¹¹¹ Given that Turkish institutions trained, equipped and mobilised the Olive Branch factions and continue to finance them, they should be able to use their chain of command to positively influence the HLP landscape in Afrin.

Based on interview findings, arguments that Turkey – with the world’s second largest NATO army – cannot control the situation on the ground in Afrin appear disingenuous.

Interviewees emphasise that, under the umbrella of the ‘Syria Task Force’ affiliated with the Turkish Police Special Operations Department (composed of members of the Ankara,

105) Amnesty International (2016), op. cit. p. 6.

106) OHCHR (Feb. 2017): ‘Report on the human rights situation in South-East Turkey: July 2015 to December 2016’, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/OHCHR_South-East_TurkeyReport_10March2017.pdf (accessed 19 Feb. 2019).

107) ICG (2017), op. cit.

108) Yahyaoğlu Suat, ‘The heroes of Afrin and Al-Bab operations in 5 articles: Ismail Metin Temel’ (in Turkish), GZT Politika (5 Jun. 2018), available at: <https://www.gzt.com/dunya-politika/5-maddede-afrin-ve-el-bab-operasyonlarini-yuruten-ismail-metin-temel-3388928> (accessed 17 Apr. 2019).

109) ‘Turkey sends police special forces to Afrin, signaling urban fight’, Hürriyet Daily News (22 Feb. 2018), available at: <http://www.hurriyetdailynews.com/turkey-sends-police-special-forces-to-afrin-signaling-urban-fight-127771> (accessed 13 Feb. 2019).

110) Cetingülec Tulay, ‘Syrians shifting demographics in Turkey’s Kurdish regions’, Al-Monitor (10 Aug. 2016), available at: <https://www.al-monitor.com/pulse/originals/2016/08/turkey-syria-syrian-refugees-kurdish-region.html> (accessed 28 Apr. 2019).

111) Amnesty International (2 Aug. 2018), op. cit.

Hatay and Gaziantep security structures),¹¹² a Turkish intelligence officer acts as the security focal point in each subdistrict and leads coordination with the armed factions. Three interviewees who had been detained in Afrin also confirmed that Turkish officers led their investigations.¹¹³ Turkey's institutions have been deployed as top decision-makers. The UN reports that by June 2018, the wali of Hatay had appointed two Turkish nationals to perform the functions of wali in Afrin.¹¹⁴ Field sources explained that Turkish officials in each subdistrict of Afrin report to the Hatay wali.

Interviewees stressed that Turkey has been selective in disciplining factions under its direction for their HLP violations. For example, multiple interviewees reported that their complaints to the wali about the various factions' conduct had gone unanswered. A local council member confirmed the same when he had approached the wali. In contrast, they emphasised that when the Turkmen brigades, closely linked to Turkey, complained about one faction's troubling presence, the Turks swiftly remedied the situation.¹¹⁵ The continued dysfunction of factions in Afrin that operate under the Turkish-backed National Army is in striking contrast to the well-ordered security apparatus it regulates through a strong central command in the Arab-majority areas of Jarabalous and 'Azaz. This indicates that Turkey ought to be able to manage the situation between the groups it trained and stationed in Afrin. Its failure to do so has naturally led locals to believe that Turkey is refraining from using its influence to bring the situation under control as part of a strategy to cement its presence in the area. A journalist from Afrin suggested that 'Turkey wants us to see the in-fighting between the Syrian factions and call for it to expel them, which would give it even greater power over us'.

Interviews for this study reveal the strong perception among people from Afrin that, in addition to neglecting its responsibilities under international law, Turkey is actively pursuing a strategy to change the area's Kurdish-majority demography. They presented recurring arguments that Turkey had allowed, or even instructed, its Syrian partners to cultivate chaos to drive out the original inhabitants and change the local identity. The Turkification of the education system, along with the prominent display of Turkish nationalist political symbols, and replacement of Kurdish street names with Turkish ones (e.g. Rajeb Tayyeb Erdogan Square) have only increased such concerns.¹¹⁶ HLP violations, as in southeast Turkey, appear to be an important pillar of the Turkish strategy initiated by Operation Olive Branch in Afrin. Indeed, the arrival of large numbers of Arab IDPs to occupy Kurdish homes, who in some locations now represent the demographic majority, could not have happened without facilitation at checkpoints controlled by the Turkish military.

112) In Turkish: Suriye Görev Gücü, Emniyet Genel Müdürlüğü – Özel Harekat Başkanlığı. See: 'Turkish forces launch operation against crime group in Syria's Afrin', *Hürriyet Daily News* (19 Nov. 2018), available at: <http://www.hurriyetdailynews.com/turkish-forces-launch-operation-against-crime-group-in-afrin-139004> (accessed 13 Dec. 2018).

113) Human rights groups and media have reported that other Kurds from Afrin have been transferred to prisons in Turkey in violation of international criminal law: Syrian Observatory for Human Rights (15 May 2019): 'Turkish intelligence and the loyal factions move hundreds of Kurdish detainees from Afrin residents to unknown places amid increased fears for their lives', available at: <http://www.syriahr.com/en/?p=127880> (accessed 16 May 2019); 'Turkey transfers all Kurdish prisoners to Turkish territory' (in Arabic), *Dar News* (16 May 2019), available at: darnews.net/?p=4961 (accessed 20 May 2019).

114) OHCHR (Jun. 2018), op. cit. p. 5.

115) 'Clashes between pro-Turkish rebel factions kill 25 in Syria's Afrin', *Middle East Eye* (19 Nov. 2018), available at: <https://www.middleeasteye.net/news/clashes-between-pro-turkish-rebel-factions-kill-25-syrias-afrin> (accessed 28 Dec. 2019).

116) 'Policies of assimilation and cultural genocide continue in Afrin', *ANF News* (12 Nov. 2018), available at: <https://anfenglish.com/women/policies-of-assimilation-and-cultural-genocide-continue-in-afrin-30781> (accessed 4 Apr. 2019).

CONCLUSION

This chapter highlights the HLP rights violations committed in the Afrin area since Operation Olive Branch began in January 2018. All 28 key informants interviewed for this study had lost housing, land and/or property in Afrin – either their own or that of their families. Their accounts paint a grave picture of an HLP landscape dominated by armed factions.

The study acknowledges the legal complexities in attributing international responsibility to states for HLP violations committed by factions acting on their instruction or under their control in foreign territory. However, Turkey's 'behind the scenes' role in Afrin does not lessen its presence or responsibility as the state actor that launched, coordinated and led the operation. Moreover, although its allied Syrian armed factions have been most prominent in committing HLP violations since the end of Operation Olive Branch, the Turkish state has been controlling the situation as the de facto occupying force. Its Special Forces and the MİT, which embedded in Afrin when the operation gained control of the area, selectively intervene on issues of concern. Although further research is needed, the Turkish state should be closely scrutinised and not permitted to evade legal responsibility by distancing itself from the HLP and other violations committed in association with Operation Olive Branch.

There are obvious parallels between HLP violations in Afrin and Turkey's historic repression of its own Kurdish population, including the evacuation of the civilian population for purposes of demographic engineering and spatial control. Turkish policies of mass displacement (including the use of airstrikes during Operation Olive Branch) and deterring return (tolerating the factions' intimidating practices) have created an enabling environment for HLP violations by its Syrian armed partners. Pre-conflict restrictions imposed by the Syrian government on the HLP rights of citizens in Afrin's border areas set the scene for the violations carried out under Operation Olive Branch. It is somewhat ironic that the Syrian government's 'Arab Belt' project to isolate Kurds from their brethren in Turkey appears to have been expanded under the Turkish state and the Syrian factions it directs – who nominally oppose the Syrian government.

Ongoing looting, confiscation and house occupations, not to mention the failure to provide any remedy, challenge social cohesion and future reconciliation in Afrin. The chapter's case study highlights the intractable nature of compound HLP issues in the Syrian conflict. These findings lead the author to recommend the following actions to the international community:

- Hold Turkey accountable, morally and legally, for HLP violations taking place in Afrin.
- Call for representative civil structures to be set up and empowered – over the armed factions – to regulate HLP cases in Afrin.
- Promote social cohesion in Afrin between local residents and IDPs by supporting civilian participation to resolve HLP disputes. Consider how to compensate those who have lost HLP.
- The UN to monitor conditions for voluntary return of IDPs to and from Afrin, and ensure continued relief for those still displaced in Syria.
- Support mechanisms to re-engage the peace process between Turkey and the PKK.

- Continue to advocate for access for international research, human rights and UN monitoring groups to conduct fact-finding fieldwork and document the situation in Afrin.
- Western states to review the provisions of arms and material support to Turkey and ensure that it cannot use foreign aid and exports against its own or Syrian civilians.
- EU states to ensure olive oil from Afrin is not imported into the Common Market as Turkish produce.
- Call for the release of those detained for politically opposing Operation Olive Branch

AUTHOR BIOS

Amr Shannan is a researcher and activist working on Syria and the preservation of HLP records in opposition-held areas. He previously worked as Senior Programme Manager for The Day After, a Syrian organisation supporting a democratic transition in Syria. He holds a Masters of Advanced Studies in Transitional Justice, Human Rights and the Rule of Law at Geneva Academy Of International Humanitarian Law And Human Rights. Additionally, he supports GIZ in the implementation of its HLP programme in Syria.»

Edwar Hanna is an architect and urban practitioner with a specialised focus on the role of communication and urban dialogue as participatory tools for social justice and post-conflict reconstruction. Holding an MSc in Development Planning and Urban Design from University College London (UCL) and a BSc in Architecture, Edwar has an interdisciplinary approach to project design, implementation and research. He co-founded the urban activism platform Syrbanism in 2017. Edwar led participatory peacebuilding projects in more than ten war-torn countries around the world for different NGOs and UN agencies.

Hannes Baumann is a Lecturer in the Department of Politics of the University of Liverpool. He specialises in Middle East political economy and is the author of ‘Citizen Hariri: Lebanon’s Neoliberal Reconstruction’.

Ina Rehema Jahn is a Housing, Land and Property (HLP) specialist with a focus on Syria and the integration of HLP considerations into humanitarian interventions. She holds a BA in Social Anthropology from the School of Oriental Studies (SOAS), an MSc in Nature, Society and Environmental Policy from Oxford University as well as the European Master in Migration and Intercultural Relations. Ina has worked with the Refugee Law Project and GIZ and is currently Protection Officer at IOM.

Javier Gonzalez is the pseudonym of a researcher at a European University.

Kayfi Maghdid Qadr is a legal researcher based in the Kurdistan Region of Iraq. He holds a Bachelor and Master degree in Private Law from the University of Salahaddin, Iraq.

Leila Vignal is an Associate Professor in Human Geography at the University of Rennes-2. Her research interests centre on cities, globalisation and transnationalism in the Arab World. Since 2011, she has also researched and published on several aspects of the transformation of Syria during the conflict, with a special focus on destructions and economic, territorial and demographic changes.

Nour Harastani is an architect and urban researcher with a background in social housing and environmental design. She is a DAAD Alumna with a Diploma in Architecture from Damascus University and a MSc in Urban Design from TU Berlin. Nour has co-founded the Syria-focused urban activism platform Syrbanism, where she focuses on social justice, informality, spatial transformation and urban laws and legislations in post-conflict contexts.

Sangar Youssif Salih is a Lecturer in the Social Work Department at the University of Salahaddin, Iraq. He holds a BA in Sociology from the University of Salahaddin and an MA in Sociology from the University of Cincinnati, US. Sangar also works as Programme Manager and Researcher for the Peace and Freedom Organisation (PFO) since 2015, where he focuses on education, social inequality, and minority and other vulnerable groups.

Suliman Ibrahim is an Assistant Professor of Private Law at Benghazi University, and the Director of the Benghazi University Centre for Law and Society Studies. He is also a Senior Researcher at the Van Vollenhoven Institute for Law, Governance and Society at Leiden University.

Thomas McGee is a PhD researcher at Peter McMullin Centre on Statelessness at Melbourne University's Law School, focusing on Syria's changing statelessness landscape since the start of the country's civil war in 2011. He obtained his undergraduate and Masters degrees from the University of Cambridge and University of Exeter respectively. Speaking Arabic and Kurdish, Thomas has worked for a decade as an analyst and advisor on humanitarian and development programmes implemented in Iraq and Syria. Thomas' time living in Aleppo (Syria), with regular visits to the Afrin area between 2009 and 2011, provided valuable contextual understanding for his contribution to this volume.



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