

LAW NO. 10

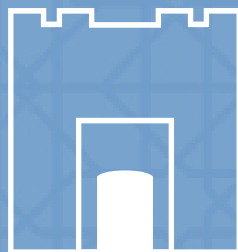
PROPERTY RIGHTS VIOLATIONS IN SYRIA AGAINST SUSTAINABLE SOLUTIONS FOR RETURNEES

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Al-Qaboun, Damascus, July 29, 2012. Photo by Syrian Revolution Memory Project.

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Executive Summary

Recent reports of Syrian refugees returning to their home country after several years of civil war raise important issues, one of which being the status of their properties in the country. A recently enacted law called Law No. 10 of 2018 – ostensibly part of benign reconstruction legislation – has proven to be problematic for the millions of Syrians who are refugees, internally displaced or living abroad. This is happening on a scale that affects conflict settlement and the emerging post-war social order, as it shapes the framework for reconstruction and reintegration into the economy and social life. Although several articles have addressed the potential problems raised by this law, there are no analyses that explicitly tackle Law no. 10 from a rule-of-law perspective.

In this paper, I argue that Law No. 10 will permanently exclude displaced residents especially from having a voice in reconstruction in their home areas. In the first instance, the paper expounds on the different historical and socio-political aspects of the issue, which is necessary for a better understanding of the current state of affairs. The paper then analyses the specific parts of Law No. 10 that provide grounds for rule of law violations in its practice. In the third section, based on the aforementioned analysis, I propose a series of measures – consistent with international standards and best practices – that must be taken in order to effectively guarantee property rights for returnees and contribute to an equitable reconstruction process, both in the immediate term (e.g. including returnee property rights in peace talks) and in the longer term (e.g. establishing an independent adjudication body).

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PROPERTY RIGHTS VIOLATIONS IN SYRIA AGAINST SUSTAINABLE SOLUTIONS FOR RETURNEES

The Syrian war has caused the largest displacement crisis in recent history, with more than 5.6 million refugees¹ and 6.2 million internally displaced people, many for the second or third time.² Recent reports of Syrian refugees returning to their home country³ after several years of civil war raise important issues, one of which being the status of their properties in the country. Following violent conflicts such as those in Rwanda⁴ and South Sudan,⁵ the lack of rule of law, especially as it relates to property issues, has curbed the return of displaced persons. In Syria, a recently enacted law called Law No. 10 of 2018 has proven to be problematic for the millions of Syrians who are refugees, internally displaced or living abroad, as they are at risk of being de-facto deprived of their property. This is happening on a scale that affects conflict settlement and the emerging post-war social order, as it shapes the framework for reconstruction and re-integration into the economy and social life.

How does Law no. 10 impact the property rights of Syrian citizens? More broadly, what needs to be done to ensure these rights are in line with the rule of law? In order to answer both of these questions, one needs to understand the background and socio-political context surrounding the enactment of this law, which the first section of this paper covers. Given this background, the second section analyzes Law no. 10 from a rule-of-law perspective, revealing how it constitutes in many instances violations of international rule of law standards and of internationally recognized human rights. Based on the aforementioned analysis, a series of measures regarding Law no. 10 and more broadly returnees' property rights are laid out in a third section, using normative international law texts as well as best practices from other conflict societies.

Background

Historically, land tenure systems in Syria consisted of different Islamic, tribal, customary, informal, statutory and other hybrid arrangements.⁶ In the twenty years before 2011, Syria's

1 UN High Commissioner for Refugees (UNHCR), "Syria Regional Refugee Response," *UNHCR.org*, accessed February 20, 2018, <https://data2.unhcr.org/en/situations/syria>

2 UNHCR, "Syria: Internally Displaced People," *UNHCR.org*, accessed February 20, 2018, <http://www.unhcr.org/sy/inter-nally-displaced-people>

3 Bassam Hatoum, "Hundreds of Syrian refugees return home from Lebanon," *AP News*, July 28, 2018, accessed June 25, 2019, <https://www.apnews.com/528b8f2b15154c82aa8a26f045efa2de>

4 John W. Bruce, *Returnee Land Access: Lessons from Rwanda*, London: Overseas Development Institute, June 2007, accessed June 25, 2019, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4176.pdf>

5 Shelter NFI Cluster South Sudan, *Key Housing, Land and Property Issues in Urban Areas of South Sudan*, Shelter Cluster, September 2017, accessed June 25, 2019, https://www.sheltercluster.org/sites/default/files/docs/key_housing_land_and_property_hlp_issues_in_urban_areas_of_south_sudan.pdf

6 Jon D. Unruh, "Weaponization of the Land and Property Rights System in the Syrian Civil War: Facilitating Restitution?" *Journal of Intervention and Statebuilding* 10, no. 4 (2016): 457, <https://doi.org/10.1080/17502977.2016.1158527>

population almost doubled,⁷ and this population boom occurred disproportionately in semi-urban informal settlements on the periphery of the main cities (a by-product of large migration from the countryside),⁸ where land use, planning, building and ownership were carried out on an informal basis.⁹ Similarly in the countryside, people organized land purchase, renting and sharecropping arrangements through extended family, without significant paper trail; and in land disputes, conflict resolution would be done by local tribal leaders and heads of family alongside official courts of arbitration and municipalities.¹⁰ Complicating matters further, prior to the war, only fifty percent of land was formally registered.¹¹ All of this means that the majority of pre-conflict housing arrangements are likely not recorded in governorate registries.

During the war, many of the poorer informal settlements to which people from the countryside migrated became centers of political contestation and later subject to deadly military campaigns,¹² forcing their inhabitants to flee. In parallel in the countryside, a big part of the informal tenants had to move elsewhere as they lost their livelihoods, leaving with little documentation. What's more, the Syrian government had only recently started to digitize its record of transactions, but the war put a stop to this process, meaning that authorities remain dependent on physical paperwork.¹³ The conflict destroyed many of the paper-based property registers throughout the country, which means that existing property records are currently dispersed, missing, or irregular – leaving original titleholders with no claim.¹⁴

The Syrian state has been using a complex housing, land and property (HLP)-related legal framework since before the conflict to appropriate large swaths of land to the advantage of its political supporters or to make it easy to dispossess poor households such as those in semi-urban informal settlements.¹⁵ And with the start of the conflict, other HLP laws were passed, threatening ownership claims for certain segments of the population using a combination of ostensibly benign laws from zoning to registration to rubble clearing.¹⁶ In one report, Human Rights Watch documented large-scale demolitions carried out by the government in areas for-

7 World Bank, “Syrian Arab Republic: Population, total,” [graph] *data.WorldBank.org*, accessed February 20, 2018, <https://data.worldbank.org/country/syrian-arab-republic>

8 David Kilcullen and Nate Rosenblatt, Kilcullen, “The Rise of Syria’s Urban Poor: Why the War for Syria’s Future Will Be Fought Over the Country’s New Urban Villages,” *PRISM* 4 (2014): 36, https://cco.ndu.edu/Portals/96/Documents/prism/prism_4-syria/The_Rise_Of_Syrias_Urban_Poor.pdf

9 Global Protection Cluster: Housing, Land and Property Area of Responsibility. “Emergency Response to Housing Land and Property issues in Syria.” *ReliefWeb*. January 30, 2013, 6, accessed June 25, 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/Emergency%20response%20to%20Housing%20Land%20and%20Property%20issues%20in%20Syria.pdf>

10 Jon Unruh, “Assembling Evidence for a Land and Property Restitution Database during the Syrian Civil War,” Paper presented at the 2016 World Bank Conference on Land and Poverty, Washington DC, March 4, 2018, https://www.researchgate.net/publication/310651449_Evidence_for_Land_and_Property_Restitution_in_Syria_Preparing_for_Mass_Claims_During_the_War

11 Human Rights Watch, “Q&A: Syria’s New Property Law,” *HumanRightsWatch.org*, May 29, 2018, accessed June 25, 2019, <https://www.hrw.org/news/2018/05/29/qa-syrias-new-property-law>

12 Kilcullen and Rosenblatt, “The Rise of Syria’s Urban Poor,” 37.

13 Sune Haugbolle, “Law No. 10: Property, Lawfare, and New Social Order in Syria,” *Syria Untold*, July 26, 2018, accessed June 25, 2019 <http://syriauntold.com/2018/07/law-no-10-property-lawfare-and-new-social-order-in-syria/>

14 Ibid.

15 Jihad Yazigi, *Destruct to Reconstruct: How the Syrian Regime Capitalises on Property Destruction and Land Legislation*, Friedrich-Ebert-Stiftung, July 2017, accessed June 25, 2019, <http://library.fes.de/pdf-files/iez/13562.pdf>

16 Reem Ahmad, Noura Hourani, and Sage Smiley, “‘A new Syria’: Law 10 reconstruction projects to commence in Damascus, backed by arsenal of demolition, expropriation legislation,” *SyriaDirect.org*, November 19, 2018, accessed June 25, 2019, <https://syriadirect.org/news/%E2%80%98a-new-syria%E2%80%99-law-10-reconstruction-projects-to-commence-in-damascus-backed-by-arsenal-of-demolition-expropriation-legislation/>

merly held by opposition groups, which they maintain is legal and for the purpose of urban organization, when in reality “they appeared to punish the civilian population”.¹⁷ The recent changes in the legislative framework and the cadastral landscape adversely affect the already fragile land tenure security of the displaced.

Law No. 10 in Practice: Dynamics and Likely Implications

Law no. 10, issued on April 2nd 2018, allows for the creation of redevelopment zones “within the general organizational plan of the administrative units” throughout the country.¹⁸ The government argues that this law will facilitate the return of the displaced by developing and regulating areas of informal settlements, with fair compensation to those affected by expropriation.¹⁹ However, a closer examination of its provisions reveals problems of arbitrariness, discrimination, unpredictability and ambiguity – violating the rule of law principles of legal certainty, fairness in the application of the law, equality before the law, transparency and avoidance of arbitrariness.²⁰

Firstly, the implementation of the law seems arbitrary. There are no specific criteria according to which redevelopment zones will be determined; instead, the law provides that decrees will be issued by the Minister of Local Administration, after which the local authorities have one week to request a list of property owners from the area’s public real estate authorities. The latter have then 45 days to provide the list of property owners. If a person owns property in the designated zone but is not on the list, they have one year to prove their ownership of the property (the initial period defined by law was only 30 days,²¹ but the Syrian Foreign Minister announced in June 2018 that the deadline will be extended to one year following pressure from rights groups and other international actors).²² The law does not state any principles of urban planning that should be adhered to, nor any books, reports or decisions from the ministry or governorate that should be used in the discussion of an area’s organizational plan. Not to mention that it neglects all the social and cultural aspects of Syrian cities by determining projects in designated areas solely based on their economic turnovers.²³

Under Law no. 10, when a decree is issued by the government designating an area for development, all individual owners automatically lose their sole ownership status. They can no longer

17 Human Rights Watch, *Razed to the Ground: Syria’s Unlawful Neighborhood Demolitions in 2012–2013*, New York: Human Rights Watch, January 30, 2014, accessed June 25, 2019, www.hrw.org/report/2014/01/30/razed-ground/syrias-unlawful-neighborhood-demolitions-2012-2013

18 Law no. 10 of 2018, Art. 1.

19 Syrian Arab News Agency, “إطار قانوني لإحداث مناطق تنظيمية بمواصفات عالية مع الحفاظ على حقوق الأطراف... للقانون (10) للعام 2018” [Law no. 10 of 2018... Legal Framework for the Creation of Organizational Zones while Guaranteeing the Rights of All Parties], SANA, sy. April 16, 2018, accessed June 25, 2019, <https://www.sana.sy/?p=739408>

20 UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, S/2004/616, August 23, 2004, accessed June 25, 2019, <http://archive.ipu.org/splz-e/unga07/law.pdf>

21 Law no. 10, Art. 2.

22 Stefan Braun, “Was Berlin gegen Assads “perfidies vorhaben” unternehmen will” [What Berlin wants to do against Assad’s “perfidious project”], *Süddeutsche Zeitung*, April 26, 2018, accessed June 25, 2019, <https://www.sueddeutsche.de/politik/syrien-wie-die-bundesregierung-assads-perfidien-vorhaben-entgegengetreten-will-1.3957836>

23 Edwar Hanna, “The politics of urban reconstruction in Syria,” *University College London: Bartlett Development Planning Unit*. July 2, 2018, accessed June 25, 2019, <http://blogs.ucl.ac.uk/dpublog/2018/07/02/politics-urban-reconstruction-syria/>

build on the land or sell it; instead, they become shareholders in a collective ownership scheme (that is, if they manage to successfully submit a claim of ownership).²⁴ The shareholders have a variety of options but none of them allow for the original property to be preserved. Most options require the involvement of the local administrative unit with unreasonably expedited procedures and without sufficient legal protections for individual rights holders,²⁵ who may be indirectly excluded due to the centralization of decision-making in the hands of the government-affiliated committee, the dominance by wealthier property owners designated by the local authority or by other external commercial actors.²⁶ And if an owner fails to make a claim within the one-year period, they cede their property to the state. This contravenes the Syrian constitution which states that “confiscation of private property shall not be imposed without a final court ruling”.²⁷

Furthermore, the procedural requirements in this law coupled with the political context make the Law’s claim-making process discriminatory. This process automatically excludes the millions of Syrians who cannot or face difficulties to provide documentation. As described above, especially in peri-urban regions, such documentation either does not exist or has been destroyed during the war. And the hundreds of thousands that were displaced outside of the country do not have such documentation: Recent surveys by the Norwegian Refugee Council found that 70% of Syrian refugees lack basic identification documents,²⁸ while only 9% reported that they have their property deed with them and in good condition.²⁹ Many women who lost or have been separated from their husbands will not be able to claim marital property without a marriage certificate. In addition, important formal information throughout the process – such as the announcement of the designated zone or the results of the evaluation of share values – is disseminated through local media outlets and a billboard in the area,³⁰ which millions of Syrians currently may not have regular access to. On the other hand, the submission of the claim can be made either in person or by a relative. This automatically excludes those who do not have family back home to assist with registration. And if a claimant cannot appear in person, only a relative with no criminal record can be appointed as a legally recognized agent, i.e. they have to obtain a security clearance. Local authorities may interpret this clause to exclude anyone who has been associated with the opposition.³¹ This is particularly concerning as the majority of the residents of areas considered for reconstruction under the law (Homs, Aleppo and

24 Haugbolle, “Property, Lawfare, and New Social Order.”

25 Center for Rule of Law & Good Governance, “Law no. 10: Where Advocacy Energy Should be Focused,” June 28, 2018, 2, accessed June 25, 2019, <https://crlgg.org/en/4692-2/>

26 Maha Yahya, “The Politics of Dispossession,” Carnegie Middle East Center, May 9, 2018, accessed June 25, 2019, <http://carnegie-mec.org/diwan/76290>

27 Constitution of the Syrian Arab Republic, Art. 15(3).

28 Norwegian Refugee Council (NRC), “Syrian Refugees’ Right to Legal Identity: Implications for Return,” *NRC.no*, January 2017, accessed June 25, 2019, <https://www.nrc.no/globalassets/pdf/briefing-notes/icla/final-syrian-refugees-civil-documentation-briefing-note-21-12-2016.pdf>

29 NRC, *Displacement, housing land and property and access to civil documentation in the south of the Syrian Arab Republic*. ReliefWeb. July 2017, 4, accessed June 25, 2019, https://reliefweb.int/sites/reliefweb.int/files/resources/final_nrc_displacement_hlp_and_civil_doc_s_syria_23_07_2017_en.pdf

30 Law no. 10, Art. 7.

31 Joseph Nasr, “Assad’s Property Law Hits Hope of Return for Syrians in Germany,” *Reuters*, June 14, 2018, accessed June 25, 2019, <https://www.reuters.com/article/us-mideast-crisis-syria-germany-insight/assads-property-law-hits-hope-of-return-for-syrians-in-germany-idUSKBN1JA1V1>

Damascus)³² had housed rebels during the war and are unlikely to be granted this clearance. In any case, residents of such areas are unlikely to be willing to apply for a security clearance for fear of abuse. Human Rights Watch has documented the security services' highly abusive treatment of individuals suspected of affiliation with opposition groups.³³ And the mechanisms of this law, which involves many instances of interaction with government officials, create opportunities for the same type of treatment. The Counterterrorism Law of 2012 has also criminalized a large segment of the population without any due process,³⁴ in turn eliminating their ability to claim property. As a result, all of the concerned individuals will neither be able to make a claim themselves nor appoint a representative, and their relatives will likely not be able to prove – as required by law – why the owners cannot make the claim themselves (for example if they are forcibly disappeared).

Law no. 10 and the process surrounding it are equally tarred by unpredictability, undercutting legal certainty for millions of Syrians. The law remains ambiguous on what documents are required to prove ownership: Article 2, Act 1 merely states that the claimant should appear with “files and documents supporting his rights [claim] or copies of them”. This gives leeway for subjective decisions on the part of local authorities. In theory, Law no. 33 of 2017 provided a way to re-issue real estate documents that were stolen, lost or damaged; but field reports indicate that the relevant legal councils have not begun their work yet, which makes it even more difficult to prove ownership within the one-year period especially in recently-designated areas such as Qaboun, Barzeh and Jobar in Damascus.³⁵ Additionally, everyone residing in a designated area will have to move out, with those who do not qualify for alternative housing receiving compensation equivalent to two years' rent; however, there is no set criteria for how an individual qualifies for alternative housing. Moreover, rehousing for those who qualify is done based on the value of their shares, which is in turn determined according to the size of the property that was owned by the person in question (before the area was designated for redevelopment). This can prove problematic due to the variation of scale: if someone lived in a small informal house, their entitlement would be too small to secure access to newly developed residential units that are generally larger.³⁶ Lastly, after eight years of war, local authorities handling such complex procedures will most likely lack the necessary resources, expertise and qualified staff. In particular, the first step in designating an area for redevelopment, and on which the shares of former homeowners depend, is a feasibility study conducted by the local administration unit,³⁷ which may lack the capacity to do so properly and in a way to guarantee equitable compensation for homeowners-turned-shareholders. In one instance, requests for information and other types of pressure from local residents in the Damascus countryside led the director of the Directorate-General for Real Estate in Rif Dimashq to announce that “submitting demands to the Directorate to obtain documents of ownership proof is untimely as it is

32 Maha Yahya, “The Politics of Dispossession.”

33 Human Rights Watch, “*We’ve Never Seen Such Horror*”: *Crimes against Humanity by the Syrian Security Services*, New York: Human Rights Watch, June 1, 2011, accessed June 25, 2019, <https://www.hrw.org/report/2011/06/01/weve-never-seen-such-horror/crimes-against-humanity-syrian-security-forces>

34 Human Rights Watch, “Syria: Counterterrorism Court Used to Stifle Dissent”, *HumanRightsWatch.org*, June 25, 2013, accessed June 25, 2019, <https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>

35 Ahmad, Hourani, and Smiley, “A new Syria.”

36 Hanna, “The politics of urban reconstruction.”

37 Ibid.

currently not possible to take advantage of these documents and it constitutes a burden on the Directorate and on citizens [sic]”.³⁸

International law, in particular the International Covenant on Economic, Social and Cultural Rights which Syria has ratified, recognizes the right to adequate housing,³⁹ with the Committee on Economic, Social and Cultural Rights affirming that there should be guarantees against forced eviction.⁴⁰ In situations where evictions must occur, the same Committee declared that there should be in place certain due process procedures, none of which are explicitly covered by Law no. 10.⁴¹ These procedural protections include an opportunity for genuine consultation with those affected, adequate and reasonable notice, and provision of legal remedies. Other international treaties to which Syria is a signatory and which prohibit arbitrary deprivations of property – as can be argued in cases under Law no. 10 – include the Universal Declaration on Human Rights (Article 17) and the Arab Charter on Human Rights (Article 22). Furthermore, in many provisions, Law no. 10 constitutes a clear violation of the UN Pinheiro Principles,⁴² which outline additional protections that should apply in the situation of refugees and displaced persons. According to this widely-agreed upon guideline, legislation related to housing, land and restitution for people from these two categories especially should be transparent, consistent, and neither de facto nor de jure discriminatory.⁴³ And they should be entitled to submit a claim for restitution from an independent and impartial body.⁴⁴

Measures Necessary to Uphold the Rule of Law and Returnees’ Rights

Application of Law no. 10 in its current form lays the groundwork for major population displacement. In order to counter this trend in the broader property-related legal system that may be characterized as ‘lawfare’⁴⁵ or ‘warchitecture’,⁴⁶ and to support durable returns of refugees and displaced persons through tenure security, different legal and political measures must be carried out, both in the immediate and longer terms.

Allies such as Russia and Iran should put pressure on the Syrian government to suspend the application of Law no. 10, and to repeal the Counterterrorism Law of 2012. At the same time, housing, land and property (HLP) rights should be included in UN peace talks. This can build on Security Council resolution 2254 which underscored the need to build the conditions for

38 Enab Baladi Investigations Team, “Properties Ownership Law No. 10: Regulation, Acquisition or Demographic Change,” *Enab Baladi*, May 1, 2018, accessed June 25, 2019, <https://english.enabbaladi.net/archives/2018/05/properties-ownership-law-no-10-regulation-acquisition-or-demographic-change/>

39 UN General Assembly. *International Covenant on Economic, Social and Cultural Rights*. December 16, 1966. United Nations Treaty Series, vol. 993, 7.

40 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, E/1992/23, December 14, 1993, 3.

41 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions*, E/1998/22, May 20, 1997, 4.

42 UN Economic & Social Rights Council (Sub-Commission on the Promotion and Protection of Human Rights), *Report by Special Rapporteur on the Housing and Property in the Context of the Return of Refugees and Internally Displaced Persons*, E/CN.4/Sub.2/2005/17, June 28, 2005. (The Pinheiro Principles)

43 Ibid.

44 Ibid.

45 Haugbolle, “Property, Lawfare, and New Social Order.”

46 Unruh, “Weaponization of the Land and Property Rights System,” 458-468.

voluntary return.⁴⁷ In parallel, participants in the political negotiations in Geneva, Astana and Sochi should put HLP rights on the agenda.

Donor countries and investors involved in reconstruction, as well as humanitarian agencies, should ensure that there are mechanisms in each program to preserve the property rights of residents and displaced persons and that due diligence procedures prevent funds from ending up with actors responsible for human rights violations.

Lessons from post-conflict situations in the Balkans⁴⁸ and Iraq⁴⁹ show that property issues for the displaced should be resolved in a timely manner through a transparent, fair and dedicated process.⁵⁰ A similar process should be established in Syria before the end of the year 2019. The restitution mechanism – be it a court, an administrative agency or another hybrid type incorporating supplementary adjudication models such as an HLP commission or local dispute resolution – should be independent, readily accessible and robust enough to be able to process the expected massive volume of cases.⁵¹ Its jurisdiction must be carefully defined, including the substance and timeframe of claims that can be considered. It should be based on clear, equitable and non-discriminatory principles of reviewing claims, and contain the right of appeal of negative decisions.⁵² The quasi-judicial body having exclusive jurisdiction over property-related claims by refugees and displaced persons should be financially and logistically autonomous and be able to issue decisions that are enforceable. In this respect, one useful example is Kosovo, where the Property Comparison and Verification Agency is responsible for implementing Housing and Property Claims Commission decisions.

Restitution and compensation should take into account the pluralistic legal system of land governance and customary practices that existed before the conflict as well as the impact of displacement on them.⁵³ There need to be flexible arrangements without requirements of formal ownership, with the removal or tolling of statutes of limitations for initiating HLP claims.⁵⁴ The restitution process should also be gender-sensitive, addressing women's differing challenges vis-à-vis HLP rights and civil documentation. Such a mass claims restitution program should be supported by the use of specific mechanisms such as matching and non-party evidence, evidentiary patterns and presumptions, standards of proof modification, and database grouping.

47 UN Security Council, *Security council resolution 2254 (2015) [on the situation in the Syrian Arab Republic]*, S/RES/2254, December 18, 2015, 14.

48 Rhodri Williams, "Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice," *New York University Journal of International Law & Politics* 37, no. 3 (March 2005): 442-444, HeinOnline.

49 UNHCR, *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*, PPLA/2005/01, March 2005, 16-18.

50 Internal Displacement Monitoring Centre, "The Right of IDPs to Return Home and Property Restitution," accessed February 12, 2019, accessed June 25, 2019, <http://idp-key-resources.org/documents/0000/d04392/000.pdf>

51 In Kosovo, there are currently backlogs of cases going back to a decade. See for example Serbeze Haxhiaj and Filip Rudic, "Stolen Homes: Kosovo Struggles with Wartime Property Seizures," *Balkan Insight*, May 28, 2018, accessed June 25, 2019, <http://www.balkaninsight.com/en/article/stolen-homes-kosovo-struggles-with-wartime-property-seizures-05-22-2018>

52 Martin Clutterbuck, "Property Restitution in Post-Conflict Syria," *Forced Migration Review* 57, (February 2018): 68, accessed June 25, 2019, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria2018/clutterbuck.pdf>

53 NRC, "Syrian Refugees' Documentation Crisis," *NRC.no*, January 27, 2017, accessed June 25, 2019, <https://www.nrc.no/news/2017/january/syrian-refugees-documentation-crisis/>

54 NRC, "Reflections on Future Challenges to Housing, Land and Property Restitution for Syrian Refugees," *NRC.no*, January 2017, accessed June 25, 2019, <https://www.nrc.no/globalassets/pdf/briefing-notes/icla/final-hlp-syrian-refugees-briefing-note-21-12-2016.pdf>

These methods of claims resolution have been successfully utilized in conflict situations by, inter alia, the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, and the southern Yemen Land Commission, but also by the Arbitral Commission on Property, Rights and Interests in Germany and the Claims Resolution Process for Dormant Accounts in Switzerland.⁵⁵

The establishment of the independent claims agency should be promptly accompanied by a public awareness campaign about the restitution process, extending to all the countries where Syrian refugees are living. Additionally, in order to ensure access for all Syrians, this agency should have bureaus abroad where there is a demonstrated concentration of Syrian refugees, and decisions should be publicized online with adequate anonymity and privacy safeguards.

As with other issues in the Syrian war, housing, land and property have been politicized by the ruling government; it follows that any attempt to provide redresses in this regard needs to entail a representative element in order to be sustainable, by ensuring that the rights of all persons concerned are guaranteed, especially those that have been opposed to the government - whether inside or outside the country. In this respect, the adjudication mechanism described above can only be truly representative of and responsive to all stakeholders' interests if it stems from a truly representative body, e.g. the Syrian parliament. To that end, it is imperative that a political solution is reached whereby genuinely free and fair elections are held for the Syrian parliament, after which the members of the agency responsible for the property rights of the displaced are appointed in an open and transparent process by members of parliament.

Any future legislation affecting property rights of refugees and displaced persons should adhere to the Pinheiro Principles, and in particular guarantee due process through for example designating specific criteria according to which redevelopment zones will be determined, or specifying who exactly may qualify for alternative housing. Moreover, specific measures should be in place to make sure that widowed or divorced women have access to HLP rights and that all women have access to dispute resolution mechanisms.

Concluding Remarks

In reality, Law no. 10 does affect property rights “without due process or adequate compensation, amounting to forced eviction and property seizure of owners whose property rights are not recognized”, as Human Rights Watch rightly put it.⁵⁶ By denying owners their HLP rights, Law no. 10 would prevent millions of Syrians that are refugees, internally displaced or living abroad from having a say in reconstruction. Both political and legal steps need to be taken to ensure tenure security for displaced Syrians. This is needed for timely returns and the desire of refugees to return, and ultimately for an inclusive reconstruction process. It is also essential in order to avoid violent alternatives to reclaiming land and property by rights holders. In case the above is not addressed, the legitimacy and sustainability of any post-conflict outcome in Syria will be jeopardized.

55 Unruh, “Assembling Evidence for a Land and Property Restitution Database,” 5-9.

56 Human Rights Watch, “Q&A,” s5.

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