RECLAIMING HOME

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

Edited by Hannes Baumann

RECLAIMING HOME

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

Edited by Hannes Baumann

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

من أجل تنمية أكثر عدالة
For **Socially Just** Development

Syrian ownership rights documentation and the challenge of 'reconstruction'

By Nour Harastani and Edwar Hanna

INTRODUCTION

This paper presents a historical[1] 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 houses[3] – 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 convolution 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.
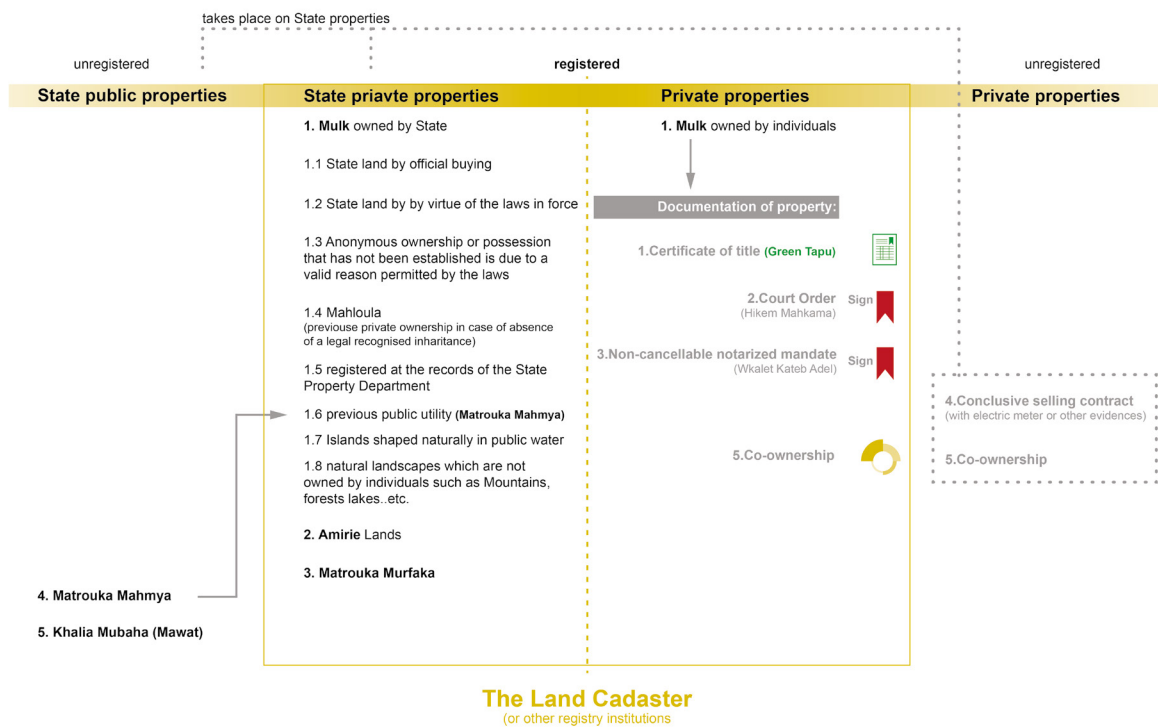
CURRENT HLP POLICY CHALLENGES

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 scale [12]. 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 tenure[16] 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.
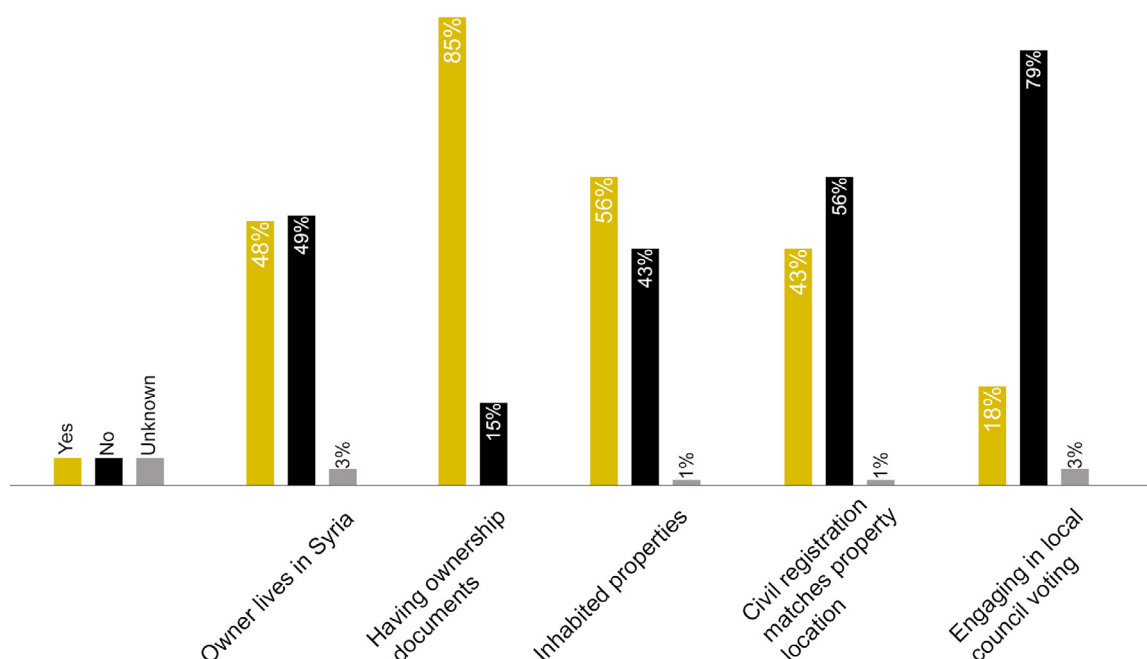
Respondents reported owning large and small houses and apartments. This diversity of property types amongst such a small self-selecting sample shows the Syrian urban landscape's diversity. 'Reconstruction' policies must not ignore this diversity in the interest of developing luxury apartment blocks and other building types that are central to the proposed reconstruction projects[21].

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.

Property type and size
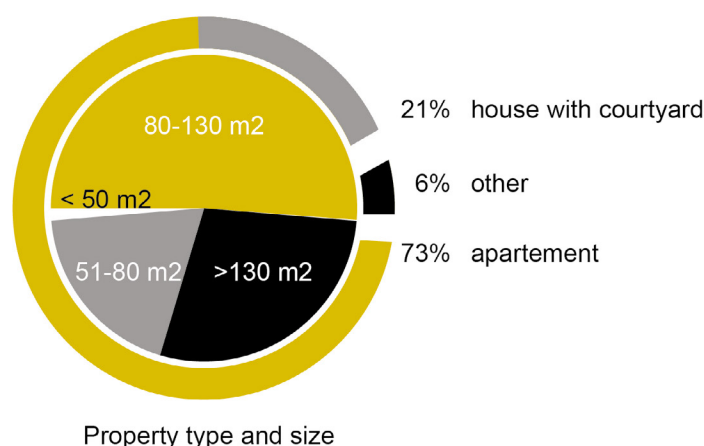
Survey respondents report extensive damage to their properties: Although a good 40 per cent of respondents' property is undamaged, 32 per cent is partly damaged and 28 per cent is mostly damaged. Apartment owners (73%) reported that 25 per cent of their properties are heavily damaged or have been torn 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 state[26] in order to maximise tax revenue[27] 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 Diplomatics', 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 delimited[32].

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.glo-balprotectioncluster.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.

من أجل تنمية أكثر **عدالة**
For **Socially Just** Development

من أجل تنمية أكثر عدالة
For **Socially Just** Development