

Property restitution in post-conflict Syria

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Although restitution of property should underpin any post-conflict agreement, in Syria this will be a complex exercise. Adherence to the UN's Pinheiro Principles will be critical.

The challenges in establishing property rights in any post-conflict Syria will be enormous. The dynamics of the conflict, together with the massive displacement of up to half of the population, have caused Syrians to move and find shelter wherever they can. While post-conflict property restitution is a recognised right under international law, the ongoing uncertainty in Syria means that few Syrians know if, and when, they will be able to reclaim their property.

Restitution and compensation processes will not only need to take into consideration the complex, pluralistic legal system governing housing, land and property (HLP) rights in Syria but they will also need to address the massive scale of damage, destruction and displacement. Restitution will be even more difficult because of the loss and damage to property records as well as the high proportion of displaced persons who were living in informal settlements before the conflict began. Women will face particular challenges in claiming their property and inheritance rights.

A complex picture

Research conducted with displaced persons and refugees, both inside and outside Syria, paints a challenging picture of lost documents, uncertain property ownership, informal and coerced transactions, and transitional housing solutions.¹ 2,280 communities (57%) out of 4,006 communities surveyed in Syria for the 2018 Humanitarian Needs Overview² reported HLP as an issue of concern. Lack of documents and disputed ownership were reported by more than 75% of the communities. The other challenges included destruction of houses, illegal and undocumented HLP transactions, disputes, property unlawfully occupied by others and the presence of explosive remnants of war. Such issues were especially prevalent

in non-government controlled areas where registration of property transactions and access to government registries are either impossible or very difficult.

An understanding of how HLP rights were governed before the conflict is key for the planning of future restitution processes. Syrian property law is heavily influenced by the Ottoman system of land administration and many informal land usage rights exist which are different in each locality and are based on historical practices; the underlying tenure system is governed by a range of statutory, customary, Islamic and informal systems. Government data indicate that up to 50% of land in Syria was not formally registered before the conflict began. According to World Bank data, prior to the conflict, over half of the country's 22.5 million inhabitants lived in urban or peri-urban areas and approximately one third of the urban population lived in informal settlements. In these informal settlements alternative papers such as sales contracts, notarised documents and even utilities documents were used to demonstrate ownership in absence of a title deed (*tabou*).

The conflict has massively exacerbated these pre-existing problems. The 2018 Whole of Syria Protection Needs Overview³ found that 60% of communities assessed reported that their property had been unlawfully occupied by others. Looting of private properties was reported by 56% of communities. A majority of refugees interviewed during our surveys reported that they no longer had their property documentation, primarily because it had been destroyed, lost, left behind or confiscated. Of those who had property documentation, over half noted that the *tabous* had not been issued in their names but typically in the names of older, male relatives.⁴ For those with formally documented property ownership

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rights, the reality is likely to be equally complex, given that property ownership is often shared by family members, the use of alternative documents is prevalent, and there are myriad complexities in interpreting HLP laws in Syria. Women are unlikely to have property documentation issued in their names, particularly in rural parts of Syria. Widespread falsification of property documents, particularly in non-government controlled areas, has also occurred. While sharia courts operate to resolve certain HLP issues throughout Syria, those working in opposition-held areas have no formal authorisation. This has resulted in conflicting and confusing practices and decisions.⁵ Against this complex background, what is to be done?

A roadmap for restitution

As a legal concept, restitution has been seen as a core remedy for violations of legal obligations within many jurisdictions for more than a century. United Nations (UN) Security Council resolutions have also reaffirmed the right of all refugees and IDPs to return freely to their countries, or places of origin, and to have restored to them any housing and property of which they have been deprived, or to be compensated for property that cannot be restored to them.

The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the ‘Pinheiro Principles’)⁶ provide a comprehensive set of international standards for HLP restitution, including specific ways to support women’s restitution claims, and should be used as a benchmarking standard. The principles require States to establish equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to address and enforce HLP restitution claims. Such processes must be accessible to displaced persons and, critically, be effectively enforced and implemented in practice.

The future return of IDPs and refugees to their communities of origin inside Syria is likely to result in a very high number of competing claims over the use and occupancy of land and property by original owners, secondary occupants and illegal occupants. Throughout the course of the conflict property transactions have continued to take place, often as private contracts or agreements between individuals that are not recorded in statutory systems. Many owners have sold property due to financial pressures. In addition, there have been forced evictions, expropriation and property transactions made under duress. Secondary occupation and land and property disputes



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are already common throughout the country. De facto authorities in non-government controlled areas have been engaged in mediating or negotiating property disputes.

The widespread tendency for people in Syria to have HLP documents in someone else's name (normally an older male family member) also suggests that there will be large-scale challenges for people trying to regain access to their HLP assets if they are unable to provide other evidence of either ownership or familial relationship to the person who is named in the document. The deaths of many thousands of property owners during the conflict highlight the need for accessible and effective inheritance procedures.

Restoration of cadastral records must be a high priority, as must building the capacity to deal flexibly and fairly with the many, often long-standing, informal tenure arrangements that existed prior to the conflict. Procedures will also need to be put in place to assess the many informal property transactions that have taken place in non-government controlled areas, as well as decisions made by de facto authorities and sharia courts.

Women are likely to face particular challenges in asserting their property rights. In Syria, as in many other countries, laws, norms and practices around ownership, inheritance and decision favour men. For example, a woman's registered legal identity in the Syrian civil registration system both prior to the conflict and today is linked to that of her husband or father, and women often relinquish their inheritance rights to a male family member. Further obstacles include the fact that marriage contracts, which establish the property to be held by the woman upon death or divorce, do not typically cover assets acquired during the marriage. Any post-conflict property restitution system should facilitate equal recognition of the property rights of women and work toward the rectification of historical inequalities.

A body of knowledge has been generated through property restitution and reparations processes in other post-conflict situations, most notably in the Balkans (Bosnia, Kosovo), Eastern Europe following the end of communism, Iraq and Colombia. A number

of important lessons from these contexts may be of relevance to the Syria context, namely that property restitution processes should be readily accessible, expeditious, independent and transparent; based on clear, fair and non-discriminatory criteria; contain the right of appeal of negative decisions; and be compliant with international standards as well as domestic law. Any judicial or cadastral processes to provide confirmation of ownership must be sufficiently robust to cope with the massive volume of cases and the complexity of issues. Of critical importance is a public awareness campaign about any property restitution process – a campaign which must extend beyond the country in question to neighbouring host countries and indeed globally to all countries in which refugees from the conflict may be living. Processes which were unable to counter the ethnic and demographic changes to property ownership and usage which took place during the conflict (and which were often a cause of the conflict) have been shown to be flawed, while processes in which there was limited enforcement of decisions on the ground have been shown to be ineffectual.

The institution of fair, effective and responsive land and property dispute mechanisms with the power to resolve competing claims and validate transactions, either through courts, administrative agencies or other property restitution mechanisms, will be key to ensuring tenure security and avoiding further conflict. Whatever forum is selected, fairness, impartiality and rigour in weighing competing claims will be central to the credibility of the outcomes.

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1. Research by the Norwegian Refugee Council.
2. <http://bit.ly/HNO-Syria-2018>
3. <http://bit.ly/PNO-Syria-2018>
4. NRC (2017) *Reflection on future challenges to Housing, Land and Property restitution for Syrian refugees* <http://bit.ly/NRC-HLP-Syria-2017>
5. NRC and UNHCR (2017) *Displacement, housing, land and property and access to civil documentation in the north west and in the south of the Syrian Arab Republic* <http://bit.ly/NRC-HLP-Syria-2017>
6. <http://bit.ly/Pinheiro-Principles>