



**RETURN IS A DREAM
OPTIONS FOR POST-CONFLICT
PROPERTY RESTITUTION
IN SYRIA**



Cover Photo:

Barzeh (Damascus), 29 April 2014

A part of the destruction in Barzeh caused by Syrian regime shelling on the neighborhood.

Photo by Lens Young Damashqi.

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The title of the report, *Return is a Dream*, was adapted from a quote by an internally displaced person in Idlib. The original quote is translated from Arabic as: "Leaving the camp, justice, and returning are dreams."

The Syria Justice and Accountability Centre (SJAC) is a Syrian-led, multilaterally supported non-profit that envisions a Syria defined by justice, respect for human rights, and rule of law — where citizens from all components of Syrian society live in peace. SJAC promotes transitional justice and accountability processes in Syria by collecting and preserving documentation, analyzing and cataloging data, and promoting public discourse on transitional justice — within Syria and beyond. Learn more at www.syriaaccountability.org.

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Report designed by Nada Mohamed-Aly.

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Executive Summary

As the conflict in Syria enters its eighth year, it is still unclear what shape, if any, a post-conflict transition will take. Regardless of the conflict's outcome, however, a fair and efficient return of the 12 million internally displaced persons (IDPs) and refugees will be a necessary challenge to overcome. Previous post-conflict contexts demonstrate that without clear processes in place, property disputes and continued displacement could lead to renewed instability. A property restitution framework offers a viable solution, if managed carefully and with the interests of victims in mind. Unfortunately, the limited number of previous examples of property restitution processes hinders the formulation of comprehensive best practices that can be applied in the Syrian context, but this report aims to put forth the relevant considerations and offer options for the path ahead.

The report begins with an overview of Syrian property law and a discussion of displacement in Syria, with particular emphasis on common contexts for property dispossession. Subsequent sections address components of a property restitution framework that should be included in a final peace agreement, such as:

- The right to return to one's home of origin;
- The legal obligations of signatories to the peace agreement;
- A framework for a future restitution program, the more detailed the better;
- An international monitoring arrangement with sufficient enforcement authority.

Once a peace agreement comes into force, implementation must begin swiftly, including through the passage of implementing legislation, the appointment of commissioners, and the creation of a process for registering and adjudicating complaints. Eligibility requirements must be designed with an understanding of the different forms of property possession in Syria, including historic political and economic inequalities, as well as to what degree relatives of individuals who are deceased or missing can file claims. For refugees, field offices must be set up to allow for the voluntary submission of property claims, particularly in countries to which large numbers of Syrians have fled. The adjudication of claims

must be fair with certain due process requirements, while also balancing the need for efficiency. Throughout, monitoring and enforcement mechanisms must actively ensure the process is carried out without delay, corruption, or discrimination. And finally, property restitution must be seen as a part of a larger transitional justice process to address all forms of victimization.

Based on the aforementioned considerations, SJAC proposes a series of recommendations to Syria, the UN Special Envoy, and foreign governments. These include demands that:

- Syria halt further government action with regard to private property until the country has reached a level of stability that allows for the fair adjudication of property disputes.
- The UN Special Envoy appoint an expert to advise upon a detailed property restitution framework.
- The UN Special Envoy meaningfully consult with civil society, victims, and displaced communities regarding property issues and other transitional justice demands.
- Governments require that any funds put forth for reconstruction be conditional upon compliance with property restitution agreements and that they participate and/or support an international monitoring mechanism with clear benchmarks for progress.
- Governments hosting refugees allow a restitution commission's field offices to register claimants, but refrain from placing undue pressure on refugees to involuntarily return.

Already, the Syrian government has realized the importance of property, evidenced by its passage of Law 10; however, its model has many intrinsic flaws. Without an adequate and informed international response, there is substantial risk for a chaotic and discriminatory process that leads to increased instability in Syria and the region. This is a reality neither Syria nor the international community can avoid.

Introduction

As the Syrian conflict enters its eighth year, the conflict's staggering human toll continues to mount – shocking the international community and inflicting immediate and long-term harm upon millions of civilians. Approximately 12 million Syrians have either been displaced internally within Syria's borders or live as refugees in neighboring states, Europe, and beyond.¹ Once the country stabilizes, a fair and efficient return of internally displaced persons (IDPs) and refugees will be a steep challenge. This is particularly true given the limited number of examples of large-scale post-conflict restitution programs, and therefore, a dearth of best practices from which to learn in Syria. Who is entitled to restitution? How are rights and remedies guaranteed? Which government apparatus handles these claims, and how is that apparatus established and managed to most effectively serve the needs of victims?

Queries such as these are complex and open-ended, yet the way in which they are addressed in Syria will fundamentally impact the rebuilding of Syrian society – as well as the lives and livelihoods of millions of individuals and families suffering from the devastating conflict. Without addressing restitution, property disputes could lead to discontent, revenge attacks, and possibly renewed conflict. Thus, where and under what conditions displaced persons will live when they return has a direct and immediate impact on victims and is one of the most pressing justice-related issues that Syria will face in the post-conflict period.

Report Overview

The following report attempts to distill answers based on documentation and a review of other post-conflict restitution and reparations programs, offering recommendations for how to implement a restitution program based on the Syrian context and best practices. Section 2 begins by examining the state of Syrian property law as it existed prior to the conflict's outbreak. This section surveys both property administration and the legal framework regarding property within the country. It then examines the application of the law and briefly discusses obstacles the current law could pose to a restitution program. Section 3 provides an overview of displacement in Syria, highlighting the causes of displacement and dispossession of property since 2011. Section 4 addresses the Geneva negotiations and the types of provisions on property rights and restitution that should be contained within a final peace agreement, including the use of incentives by the international community to compel and monitor compliance. Section 5 explores the foreseeable lifespan of a restitution program within Syria – specifically addressing conceivable difficulties in implementation. Finally, the report concludes with a number of recommendations SJAC offers to ensure that any program is victim-centered and tailored to the Syrian context and political climate.

Description of Sources

This publication relies upon a range of primary and secondary sources, as well as SJAC's own knowledge and perception of the situation on the ground in Syria and the United Nations (UN) peace negotiation process. Sources include first-hand material, such as peace agreements, restitution frameworks, and Syrian and foreign laws and legislation. Similarly, the report draws from SJAC's documentation, which includes first-hand interviews with persons who have experienced or witnessed violations and first-hand physical documentation collected by a team of Documentation Coordinators on the ground, as well as second-hand documentation from a network of on-the-ground source partners. The report likewise includes a host of multi-disciplinary secondary sources written by experts on property restitution, Syrian law, and transitional justice. Finally, this report utilizes reports by the United Nations, civil society groups, international humanitarian organizations, and journalists to provide a comprehensive analysis of the current and impending situation in Syria regarding return and restitution.

The case of post-conflict property restitution in Bosnia-Herzegovina is examined extensively throughout this report. This is because Bosnia is widely deemed to be the best example of a successful restitution program. Moreover,



Al Cornish (Homs), 16 May 2013
Destruction on Mimas Street in Al Cornish.
Photo by Lens Young Homs.

the fact that the program was imperfect – containing several crippling flaws early on – makes Bosnia a useful case study when examining potential challenges presented by a post-conflict restitution initiative. In Bosnia, the international community also had unprecedented influence in the creation and implementation of the program, and several of its actions throughout the return period were integral to its ultimate success. The international community is likely to play an important role in return and restitution in Syria, so Bosnia offers valuable insights into the way external actors can assist or hinder a future process.

The report likewise cites the “Pinheiro principles” often. These principles – drafted between 2003 and 2005 by Paulo Sergio Pinheiro, former UN Special Rapporteur on Housing and Property Restitution – are designed to offer practical guidance to states, UN agencies, and the broader international community on how to best address complex technical and legal issues related to housing and property restitution. These principles are grounded firmly within existing international human rights and humanitarian law, and, as such, were helpful as guiding principles on restitution programs.

One of the challenges in drafting this report was a lack of successful precedent available for guidance regarding post-conflict property restitution programs. While a number of states have attempted to implement some form of remedy to address property dispossession during armed conflict, very few of these have shown to be particularly

successful. While these states’ initiatives were useful in providing examples of what not to do, the lack of positive examples created some difficulty for the authors in prescribing specific elements of restitution programs that are successful in a large number of scenarios. In some instances, this necessitated the examination of post-conflict programs that did not specifically address property rights to illustrate the significance of a particular issue. In such instances, SJAC relied primarily on reparations programs and other transitional justice mechanisms as examples.

The Political Reality

Inevitably, the post-conflict political landscape will shape the extent to which restitution is prioritized in Syria. Without a negotiated end to the conflict, it is likely that the conflict will continue indefinitely, with armed groups continuing to wage either large- or small-scale offensives against the central government in Damascus. But the political reality does not obviate the necessity of restitution. This report aims to explain to stakeholders that, no matter what shape a future government takes, Syria’s future depends on the careful implementation of a process for the return of the over 12 million displaced people located in Syria and abroad, along with the equitable adjudication of their property rights. This is an operational reality that cannot be successfully sidelined by either Syria or the international community.

Property Law in Syria

Proffering a meaningful and effective strategy regarding property restitution is impossible without a clear understanding of the workings of Syrian property law. Property law in Syria has evolved considerably in the last century, and since 2011, the government has promulgated many new laws in response to the conflict. The following section aims to provide an overview of the fundamentals of property law in Syria, the manner in which property administration functions, and the differences between the law and its application in practice. Finally, this section asks a difficult but fundamental question: In post-conflict Syria, after seven years, if not decades, of unfair laws and practices with regard to property, which law(s) should govern property restitution and dispute settlement efforts?

The History of Syrian Property Administration

Syria's land area can be roughly divided into two categories: land owned by the Syrian state and private land.² While the majority of Syrian land is state-owned, these categories only reflect ownership of real property assets and do not consider the various use and access rights that govern public and private property. For instance, public land can fall under a number of distinct categories of usage, including infrastructure (e.g. roads) and national parks, agricultural land and pastures rented out or otherwise allocated to individuals, and the largely empty desert territories.³ As the owner of the majority of territory, the Syrian government plays a pivotal role in monitoring the distribution and administration of property, which could be a significant factor in the post-conflict period.

The administration of land and property in today's Syria bears traces of more than five decades of legal developments. Under Ottoman and French rule, land tenure was highly unequal, with most peasants working for a small number of large estate holders under informal tenancy agreements. Ottoman modernization in the 19th century led to the codification of laws and a centralized system of land management.⁴ In the 1950s, many countries in the Middle East implemented redistributive land reforms to address the needs of poor farmers. Starting in 1958, during the short-lived union between Syria and Egypt, Syria followed suit, beginning a program of nationalization and enacting a series of land reforms in an attempt to remedy the Ottoman and French legacies.⁵ Some reforms proved successful,⁶ but they did little to prevent the growth of landlessness or the issue of squatters on private lands.⁷

After the Baathist government took over, the rate of land expropriation rapidly increased, but more for the purpose of nationalizing land for state control than for redistribution. Although Hafez al-Assad liberalized the system to some extent in the 1970s, the state still exercised influence over how agricultural lands were managed. As examples, his government repressed the private sector and the majority of small farmers worked land under state-owned cooperatives.⁸

In the 2000s, Bashar al-Assad's government began giving more leeway to private investors to revitalize Syria's stagnant agricultural sector. Corruption and mismanagement of privatization efforts led to cuts that severely harmed rural areas. This – in conjunction with three straight years of drought – caused many rural Syrians to migrate to cities and nearby shantytowns.⁹

Even before rural Syrians migrated *en masse* to cities, local authorities were mismanaging urban growth. Due to the relatively lax government controls over the real estate sector as compared to other sectors of the economy, investors poured money into urban development, and cities like Damascus, Deir Ezzor, and others witnessed a proliferation of hotels, boutiques, and restaurants that benefited only a fraction of residents. Despite the relative freedom afforded to developers, the state still owned large tracts of land which limited the industry's growth. This reality, combined with the absence of a clearly enforced regulatory regime for real estate, led developers to invest in illegal settlements. Many of these settlements were allocated to government employees and their families as well as to other supporters of the Baath party, but when rapid urbanization outpaced the ability of cities to absorb the growth, rural migrants also resorted to illegal housing and slums, resulting in environmental degradation and poorly managed services.¹⁰ The

combination of rural deprivation and urban blight is credited by some scholars as a major factor in the discontent that led to protests in 2011.

Land Registration System

Given this complex history of property management in Syria, registration of land ownership is not a straightforward issue. Beginning in 1858, the Ottoman Land Code introduced a homogeneous property registration system, which meant that a formal deed – not actual cultivation of the property – constituted sufficient evidence of ownership.¹¹ Since then, the *tapu*, or land deed,¹² has been the most important property document available to Syrians. Equally important from the perspective of property restitution is the Ottoman legacy of permitting witness testimony to prove ownership in case of document loss. With many refugees no longer in possession of written property evidence, this could be relevant in many cases.

During the French mandate, authorities created a land cadaster for all governorates, which enabled better property protection and served as a reliable source for evidence of property transactions. However, the cadaster did not include informal (unregistered) transactions, only those conducted under the formal statutory system. Furthermore, there was no central, national-level registry to accumulate records from different governorates. In 2010, the government began the process of digitizing these records, but only for new records and not for those transactions that occurred prior to 2010.¹³ It has further been estimated that prior to 2011, only 20 percent of state land was officially registered.¹⁴

Prior to the conflict, over half of Syria's population lived in urban and semi-urban areas. One-third of those living in urban areas resided in predominantly unregistered informal settlements with little to no state recognition.¹⁵ In rural areas, individuals usually acquired land rights through prescription and other unregulated, customs-based systems, without formal land registration.¹⁶

Informal practices, while supported by local communities, may cause significant difficulties from a restitution perspective. Property negotiations conducted outside the statutory system do not necessarily rely on written documents and are not registered in the property registry.¹⁷ Although the Syrian Court of Cassation has already attempted to solve issues regarding non-registration,¹⁸ the lack of written documents could severely hamper the post-conflict resolution of property disputes.

Syria's Legal Framework Regarding Property

Most of the applicable Syrian property law can be found in either the Syrian Civil Code of 1949 or the laws and decrees that are – to this day – promulgated by the Syrian government.¹⁹ Given the complexity of property law, this report will not aim to provide a comprehensive analysis of the Civil Code or related decrees. Rather, the most significant issues will be explored from the perspective of their importance to a future restitution program.

Expropriation and Rezoning

One of the Syrian government's most powerful tools with regard to property is its power to expropriate land. Legislative Decree 20/1983 and subsequent amendments regulate expropriation.²⁰ The Decree provides that expropriation must be in the public interest, and both owners and rightful occupants must receive just compensation in accordance with their rights. In practice, the meaning of "public interest" has been interpreted loosely (as when the government infamously expropriated land in central Damascus to build a luxury hotel).

Unfair compensation for expropriated land, however, has fostered even more resentment. The decree allowed the government to base compensation on out-of-date, fixed valuations that were far below the fair market values.²¹ Syrians living in Damascus have shared stories with SJAC of the government expropriating family land located in trendy areas only to be reimbursed with less than one percent of the property value and/or with cheap land many kilometers outside of the city. In 2013, the government sought to address the discontent resulting from expropriation by amending the decree to base compensation on actual appraisal value, but there have still been complaints that the government is not providing fair compensation.²²

In conjunction with expropriation, the government uses rezoning laws to shape urban areas. Decree 66/2012, passed after the start of the conflict, was intended to redevelop unauthorized housing and poor slums in Damascus.²³ In Basateen al-Razi,²⁴ a slum in Damascus that has been the stage of political protests, residents were given notice that the area would be rezoned under the new Decree and that they should register with the governor to preserve their rights as owners or occupants. Registration, however, required prior approval from Syria's security agency. In practice, this has prevented government critics and those living as refugees outside of Syria from claiming their rights. The slum has since been destroyed, to be replaced by a high-scale residential and commercial neighborhood, 'Marouta City.' The law is unclear as to how previous residents of

Basateen al-Razi may secure new housing, but in practice, the government has distributed housing shares that can be used to acquire new housing or sold. Thus, residents do not know with certainty if they will be given priority to use shares to return to their homes of origin or if the shares will even be enough to secure housing elsewhere. Meanwhile, a nearby slum in Maza 86, a pro-government stronghold, suffers from many of the same issues of blight, but so far remains untouched by the new decree.

As such, expropriation and rezoning have been tools for political favoritism in Syria, and without the proper connections, an occupant can lose possession of property at any time and with little notice or compensation. While the government unevenly applied expropriation and rezoning laws prior to the conflict, execution of the laws has taken on a new dimension since 2011. In the best-case scenario, decisions are being taken in a chaotic atmosphere without proper planning for the return of displaced populations. In the worst-case scenario, the laws and chaos allow the government to weaponize property as a tool to reassert political dominance. Reform is required to address historic and systemic grievances, and a restitution program may need to reexamine expropriation and rezoning decisions that were made during the conflict, if the government used its power to dispossess individuals or communities as part of its larger strategy. A future transitional government could also leverage the state's power to expropriate and rezone land to assist the restitution process, so long as any resulting decisions are transparent and taken with proper due process.

Reconstruction Laws

In the wake of the conflict and the related widespread destruction of property, the Syrian government has attempted to regulate reconstruction through legislation. Law No. 23 of 2015,²⁵ for example, attempts to finance the restoration of public utilities in destroyed areas by levying fees on property owners and encourages them to reconstruct by exempting them from reapplying for building permits and other reconstruction fees.

Importantly, Law No. 23 only applies to legally built and zoned areas. Owners of illegal buildings and settlements have no right to reconstruct under the law. In fact, the law specifies that owners of illegal buildings only have the right to the rubble of their destroyed property. Law No. 23 is much more complex than is described here, but this summary demonstrates the government's intent to address reconstruction efforts through strict control and oversight.

Rezoning and Reconstruction under Law No. 10

During the drafting of this report, the government issued a new rezoning law that must be addressed separately here due to its potential impact on future reconstruction efforts and a restitution program in Syria. In theory, Law No. 10²⁶ simply extends the provisions of Decree 66 to the entire country by creating regulatory areas without regard to whether the area constitutes illegal settlements or had been previously zoned and properly organized. Until the government issues implementing instructions or actually begins creating regulatory areas, it will be unclear exactly how extensively Law 10 will be used. But by creating regulatory areas, the government is, in essence, expropriating and rezoning land to then exert complete control over how the land is rebuilt or developed, which is particularly important in areas which were damaged or destroyed during the conflict.

Like in most expropriation and rezoning decrees, Law 10 allows for a notice period whereby owners and occupants can submit documents, such as deeds and leases, to prove their rights to the property in question and secure an interest in the new zones. While the notice period was originally one month, insufficient for this type of claim, the Foreign Minister has since stated that it will be extended to a full year,²⁷ though no legislation has passed to formalize this change. If a claimant's right to the property is deemed valid, the government will issue the claimant shares in the regulatory area, not monetary compensation or a continued right to the property itself. Although the Law explains that shares will be allocated based on the claimant's property value, it does not specify how share percentages will be determined among the entire population claiming a right to common property in the area.

Once shares are allocated, shareholders will have a maximum of one year to exercise one of three options: 1) establish a joint company to pool together shares which can be used to buy back property and build in the regulatory area, 2) sell shares to an existing real estate company that can aggregate shares and purchase the right to build, or 3) sell shares in a public auction. Since Syria's commercial laws make organizing a business costly and difficult and public auctions tend to be highly undervalued, the second option will be the most likely avenue for most shareholders. Moreover, the government does not exempt shareholders who are rebuilding destroyed property from fees and costs related to acquiring building permits, so it could impose high permit and license fees to discourage shareholders from organizing. Since there are very few real estate companies in Syria and most, if not all, have strong ties to influential families in the government, many legal experts fear that the

law will facilitate crony capitalism in the real estate market, rather than benefiting those who lost property in the conflict.

The law has also caused considerable fear and confusion among property owners, particularly those who are displaced.²⁸ Since the law could affect entire neighborhoods and towns that have been completely destroyed and evacuated, these actions could be carried out without any input or objection from locals. Moreover, given the state of chaos as a result of the conflict, which has led to rampant fraud and increased levels of corruption, the atmosphere is not ripe for such a massive project with no independent oversight. The involvement of Russia and Iran in the conflict, as well as indications that they have an economic interest in reconstruction, has also caused fear that this law will allow for land grabs by foreign-owned companies. On a fundamental level, it is unclear whether the shares will be valued the same after the area is rezoned and developed. For instance, if the government deems that a house destroyed in Aleppo is worth 1,000 shares prior to the creation of a regulatory area, it is unclear whether the property will continue to be worth 1,000 shares after the area is rezoned. If the government revalues the regulatory area, share owners may not be able to afford to buy back property in the regulatory area or nearby vicinities, leading to the potential for demographic changes, one of the biggest fears among Syrians.

Occupancy Rights

Occupancy rights are another dimension of the law that will affect a restitution program, particularly when determining eligibility requirements and just compensation. At first glance, it may seem that renters and squatters should be afforded few to no rights under a restitution program in comparison to landowners; however, the above examination of land administration in Syria, as well as an analysis of laws regulating occupancy rights, should lead designers of a program to assess the parameters of eligibility and compensation with more nuance in order to strike a balanced approach that is fair to all interested parties.

Although the rental market in Syria is quite low (in 2003, 88 percent of households in Damascus were owner-occupied, a number that is even higher in other regions of Syria),²⁹ landlord-tenant agreements are common enough, especially in cities like Damascus, to be given due consideration. In the past, tenants received significant protections under the law. After entering into a lease with a tenant, landlords had little recourse to evict, even if tenants were in breach of the lease agreement. A disgruntled landowner had to pay high costs and wade through an inefficient court process in order to evict a non-compliant tenant. As a result, many landlords forced tenants to sign very short-term leases so that tenant protections and “eviction compensation” would

not take effect. Tenants who had strict protections were said to be operating under “old leases.”

Law 6/2001³⁰ and a subsequent 2006 amendment³¹ reformed occupancy rights to become more favorable to landlords. After 2006, so-called old leases were abolished and tenants were forcibly evicted and compensated. However, if the landlord could not pay the tenant 40 percent of the property value, in other words, the “eviction compensation,” then the old lease continued to be enforced. While it is difficult to generate exact numbers, it is possible that the reform led to increases in the number of landlords leasing private property. It should be noted that 6/2001 was again amended in 2015³² to extend the right to evict even public tenants (with the exclusion of schools); however, landlords must still pay the “eviction compensation” and receive a positive decision from the court, after which there have been many instances of the government lessee still failing to comply.

Others have no clear title at all – whether by deed or lease – and have essentially squatted on state-owned land for years or even decades. In Damascus, illegal squatter settlements constitute one-third of households.³³ Their rights are the most tenuous. Although the Syrian Civil Code includes provisions allowing for lawful title through prescription, there must be 15 years of open and uninterrupted occupancy of unregistered land,³⁴ which is much more common (and feasible) in rural areas than in urban and semi-urban areas. The government claims the right to demolish illegal settlements at any time, a right it has exercised repeatedly prior to and since the start of the conflict.

Complicating matters further is the fact that marginalized groups have historically received unequal treatment under property laws. For example, stateless Kurds, who represented about 20 percent of Syria’s Kurdish population until citizenship was granted in 2011, historically faced discrimination in property ownership and the right to build and sell homes.³⁵ A series of laws stretching from 1952 to 2008 strictly limited property rights in border regions, which were defined to encompass largely Kurdish territories.³⁶ SJAC’s database includes documentation that indicates such laws were part of a larger policy of disrupting Kurdish areas. One document issued by the head of a regional branch of the Military Intelligence Directorate lays out a plan to economically address “the Kurdish reality,” which includes explicit instructions to limit the Kurdish population in border areas through measures such as dismantling Kurdish population zones, providing housing for government employees in these areas, and building streets that cross through the areas.³⁷ The rights of Kurds to own property were partially restored when, in 2011, the Syrian government granted citizenship to stateless Kurds and annulled the decree that limited property rights in Kurdish regions.³⁸

In brief, the tiers of occupancy can be summarized as follows:

1. Owner-occupied
2. Amiri tasarruf right (state-owned property which an occupant has the right to use, exploit, and dispose of, primarily in farming areas)
3. Title through prescription (usually unregistered)
4. Old lease right
5. New lease right
6. Illegal squatter (no right and regulated by law 82/2010)

A restitution program will need to consider the rights of tenants with “old” and “new” leases, as well as the rights of squatters with no title. Giving squatters the same rights as land owners may breed resentment in a post-conflict restitution program, but the socio-economic and legal barriers to ownership as well as the corrupt practices that led to the proliferation of urban slums must at least be acknowledged in a future program; otherwise, a significant number of city dwellers will be neglected. Moreover, marginalized groups who were historically denied ownership rights but who nonetheless suffered displacement as a result of the conflict would be unfairly excluded if eligibility requirements were restricted to land owners alone. Section 5 will further discuss options for structuring eligibility requirements and compensation allotments, keeping in mind the tiered rights in Syria.

Bad Faith Titles

Other provisions within the Syrian Civil Code may also bear importance to post-conflict property restitution. For instance, the Code allows for the annulment of an agreement if the property sale involved bad faith, exploitation, or an essential error by both parties that, if known, would have caused them not to conclude the sale. Similarly, the Code disfavors bad faith possessors and denies legal effect to possession obtained by fraud or deceit.³⁹ In theory, these provisions would allow Syrians returning through a restitution program to challenge transactions they made under duress as well as fraudulent sales made by third parties during their absence.

While these provisions may provide theoretical protections, conflicting claims and the loss or destruction of deeds since the start of the conflict complicate any available legal defenses. To address such concerns, the government passed Decree 33/2017,⁴⁰ which stipulates that individuals with digitized deeds can request a new copy of the deed if it was lost or stolen; however, if the deed was not digitized, the

individual must make a request from the appropriate court and show evidence of ownership, including witness testimony. If the magistrate determines the claim to be valid, the court will issue a public announcement to notify anyone who wishes to challenge the claim. The court affords six months for challengers to come forward to claim a lien or a right. If there is no dispute, the judge will issue the deed. Anyone challenging has to be physically present or send legal representation (issuance of power of attorney first requires security sector approval, discussed below). The decree then provides for another five-year waiting period for claims to a superior lien on the property before the issued deed is deemed final. This complex system affords certain protections, but also generates considerable uncertainty, the major problem with the decree being that displaced individuals may not receive the notice or have the ability to challenge claims to their property within the six-month or even five-year waiting period.

Property and the Security Apparatus

Syria's security apparatus plays a role in many aspects of civil life, ranging from permits for parties to marriage certificates. Such permits and licenses are typically submitted to the political security branch of the Ministry of the Interior in the governorate where the request is being made. Permits and licenses deemed to be particularly sensitive are then sent to the General Intelligence Branch of the Armed Forces. In some circumstances, the General Intelligence Branch forwards the request to the Airforce Intelligence Branch for the final recommendation for approval. Each branch will conduct its own security check to determine the applicant's political opinions, the opinions of his or her family members, ties to terrorism, and religious and ethnic background. This complex bureaucratic process is well-documented in the papers that SJAC has been able to extract from abandoned intelligence facilities in Syria. Each step of the process normally requires the payment of bribes, which can allow for an expedited process and a positive determination, depending on how much money the applicant is willing to pay.

Property is no exception. According to government documents collected from intelligence facilities and conversations with many Syrians, the security sector must provide the ultimate approval for all property-related agreements, including building permits, property registration, property sales (both residential and commercial), and residential leases, both in zoned and un-zoned areas.⁴¹ Even the process of expanding an existing home often requires extensive “fees” to the governorate, head of the municipality, and political security branch in order to acquire the necessary legal permits. Fees is written in quotation marks because

such money is often solicited without reference to an official fee structure, without the issuance of receipts, and through methods that can only be described as extortionary.

Many of the new decrees related to property since 2011 allow for individuals to make claims for ownership and occupancy rights through a legal representative if the individual is not physically present to make the claim in person. Such legal representation must be evidenced through a power of attorney authorization. This accommodation would theoretically allow for displaced Syrians to secure their property rights, except, as with other aspects of property law, the power of attorney authorization must be first approved by the security sector. If the principal is found to have ties to terrorism, his or her authorization will not be accepted.⁴² In practice, this has meant that many individuals who participated in protests since 2011 and are now living outside the country have been unable to petition for claiming titles to property while living abroad.

Inheritance of Property

Given the length of the conflict and the number of people reportedly dead and missing, an analysis of inheritance laws vis-à-vis immovable property is also warranted. Inheritance is governed by the Code of Personal Status. Relatives of the deceased have two types of inheritance rights, one under civil law and the other under Islamic law (i.e., Sharia), depending on the type of property as well as other factors. Non-Muslims may choose their own inheritance rules to be determined by their religious affiliation. Since the Code of Personal Status mirrors Sharia in many aspects, inheritance rules in Syria give men twice as many shares in the property as women.⁴³ Whether a restitution program will also reflect these religious and cultural norms when determining property ownership of wives and children will be another point of debate when designing a future program. International donors may prefer to implement such a program under a secular framework without gender discrimination, but such reforms may not be supported by the local population.

Another aspect of inheritance that requires elaboration is the provisions on missing people. Article 34 of the Civil Code⁴⁴ and Article 205 of the Personal Status Code⁴⁵ regulate how to handle inheritance claims when the individual in question cannot be confirmed dead. When a relative cannot prove the death, he or she must wait four years before selling or making any claims on the property. If the missing person was in military service at the time, the waiting period may be reduced, but in general, the missing claim must be officially filed before the waiting period commences.

Once again, for those living outside of Syria who have a claim to inheritance, when a family member dies, they must authorize a power of attorney to act as their legal representative inside of Syria to make their claim. This authorization must be approved by the security sector, barring many Syrians from their ability to authorize an agent to act on their behalf.

Areas Controlled by Non-State Actors

After armed groups formed to fight the Assad government and successfully captured territory from the state, they began creating and enforcing laws in the territories that they controlled. Some armed factions opted to continue implementation of the Syrian civil and criminal codes, enforced by defected judges, while others implemented varying forms of Sharia, anything from the Unified Arab Code to extremist interpretations issued by the armed group itself.⁴⁶ Property administration and property dispute resolution have been issues adjudicated by these newly formed entities. A post-conflict restitution program will need to determine the legitimacy of these decisions and whether to honor a claim to a title when the title was determined by a non-state actor.

Even among groups that implemented the existing Syrian civil and criminal codes, courts have prioritized criminal cases and generally lacked expertise on specific areas of civil law. To address the backlog and provide needed expertise, the Free Syrian Lawyers Association (FSLA) has established arbitration panels to adjudicate civil and commercial disputes.⁴⁷ Although arbitration has been effective in many cases, it is not available in all opposition-held areas, limiting its reach and adding to the complexity of how the law is applied in Syria. Further complicating matters, the Syrian government has so far not recognized property transfers that happened outside government control, even when opposition authorities followed Syrian property law. After the return of Eastern Ghouta to government control, the government threatened to nullify close to 10,000 property sales.⁴⁸

While some non-state courts may have resolved disputes in good faith, there are also cases of bad faith seizure of property. For example, in Tabqa, SJAC's coordinator witnessed cases in which members of Ahrar al-Sham and Jabhat al-Nusra entered unoccupied homes and recited the *takbir* (a short expression of faith) to turn what would otherwise be a sinful theft into a *halal* (allowable) seizure. This has served as a *de facto* transfer of ownership. While these armed groups have since lost control of much of their territory and the property within it, some of this seized property was sold for a profit or transferred to recruits before the

armed groups retreated. Hence, some property may still be held by those who purchased or received it from illegitimate owners, a complex chain of ownership that will have to be untangled in order to institute a restitution program.

Areas under Islamic State of Iraq and al-Sham (ISIS) control have operated under a different model, abandoning existing institutions – including *Sharia* courts – and replacing them with their uncompromising interpretations and decrees. ISIS framed the seizure of property and redistribution of land as a way to compensate for historical injustices, which led to initial support for the group in some areas of Syria. ISIS also resolved property disputes quickly, which many local residents deemed as a positive aspect of their governance, particularly for those who had disputes tied up in Syrian courts for years.⁴⁹ It is telling of the general lawlessness in the region that some Syrians at first welcomed ISIS and its institutions, as even draconian law was preferred to having no law at all.⁵⁰ Despite this initial enthusiasm, these decisions regarding property administration and dispute resolution will now need to be revisited, first by the entities that have taken over ISIS-held territories in Syria, and ultimately by a future post-conflict government. Whether it was ISIS or another group, the continual change in territory held by parties to the conflict may have led to conflicting or overlapping decisions on property that will prove to be incredibly complicated in the post-conflict period.

Application of the law

Despite its deep-rooted tradition in civil law, the biggest obstacle to property rights in Syria has always been the application of the law and the lack of enforcement mechanisms to protect private property from state or private interference.⁵¹ Corruption and inefficiency were common prior to the conflict, but political instability has amplified opportunism in the system. In some instances, the lopsided application of the law has been purposeful, in order to punish political dissidents and reward loyalists. Cases of property theft and counterfeiting have proliferated and gone unpunished in recent years. Some of the most egregious examples include networks of legal professionals working together to forge documents authorizing the sale of property, unbeknownst to the owner. The buyers are often accomplices who subsequently transfer the property to

a third party, who may or may not be acting in good faith. It is unclear to what extent Syrian authorities sanction illicit property transfers, and displaced owners have been unable to access the local courts to pressure them to pursue justice or take other action to reclaim their property.

What Law is to Govern a Restitution Program?

With a complex legal framework that does little to protect property rights and some opposition-held territories having openly rejected Syrian law, the question of what law to apply in post-conflict Syria is a highly contentious one. Whatever legal framework ends up governing restitution and dispute settlement, it will have to reconcile the various legal sources currently at play in Syria, effectively aiming for a compromise that can rely on both legitimacy and ownership by the Syrian people. In this regard, the aforementioned Civil Code cannot be ignored, but the extent to which its provisions are altered could have tremendous impacts on the individuals attempting to make claims under a restitution program. Additionally, the designers of a restitution program will have to give weight to the informal practices that are central to how Syrians understand property ownership and usage.

The complex layers of property laws and lack of trust in institutions will make legal and institutional reforms essential. First, it is important to consider whether rules governing a restitution program will be integrated into the Syrian legal framework or operate independently, applicable only to the mandate of the restitution program. Since unequal property rights and arbitrary property seizure existed before the conflict, a property restitution program could be envisioned as one aspect of a larger effort to reform property law. However, if a restitution program is put on hold until new property laws are passed through a legislative process, there will be an unacceptable delay in the return and redress of displaced persons. Thus, implementing a restitution program with a separate legal framework, accompanied by property law reforms that mirror the broad principles outlined by the program, could be an opportunity to not only resolve conflict-era disputes but also tackle systemic inequalities and build citizens' faith in private property protections. These options are elaborated upon in Section 5.

Displacement in Syria During the Conflict

The aim of this section is to explain the various ways through which the Syrian people have been deprived of their property. Displacement and loss of property – through coercion or voluntarily – are not always the result of military action. In many cases, Syrians are bereft of their houses as a result of an exploitative justice system, or through the consent of the international community.

Indiscriminate Attacks

Gross violations of international humanitarian law continue to be primary drivers of displacement in the Syrian conflict, with indiscriminate attacks⁵² and the use of indiscriminate weapons⁵³ as primary examples. Chemical and incendiary shells, cluster bombs, rockets, fuel-air explosives, and barrel bombs are used to strike densely populated areas, failing to adequately distinguish military from civilian targets and in clear violation of the Geneva Conventions of 1949⁵⁴ and customary international law.⁵⁵

As early as November 2011, residential areas in Syria have been the target of bombardment, with violent clashes taking place between state and anti-government forces in areas such as Homs, Hama, Rif Dimashq and Idlib.⁵⁶ Over time, as the conflict evolved from a violent crackdown to an armed conflict, the frequency and scale of these attacks increased.⁵⁷ Despite calls by the international community to cease indiscriminate attacks in populated areas,⁵⁸ both government and non-government actors have failed to do so. In particular, the government's use of barrel bombs - makeshift aerial explosive devices known for their "high lethality and significant level of damage" - have been a particularly destructive tool of war. While some refuse to leave their homes due to personal circumstances or the unwillingness to abandon family property, others remain trapped while their town or city is under siege.⁵⁹ However, with essential infrastructure destroyed and basic human services no longer available, many Syrians were forced to flee their homes and abandon their livelihoods.⁶⁰

It is relevant to note that displacement is not just caused by the attacks themselves. Often the sheer terror of an impending attack is sufficient to force Syrians to abandon their homes. Such attacks are part of what has been called "a strategy of terrorizing civilians by making opposition-con-

trolled areas unlivable."⁶¹ A witness account of the shelling campaign targeting Aleppo in 2014 offers a clear example. After extensive bombardment with barrel bombs and missiles on 31 January, which lasted from approximately 8 a.m. to 4 p.m., thousands of civilians fled the city. Among them were people who resolutely refused to leave their homes under previous bombardments but fled due to fear of being subjected to another such attack.⁶² Such instances of abandonment subsequently expose the property to other types of dispossession. Once they have fled their towns and provinces, displaced property owners are either uninformed that their property has been illegitimately occupied or find themselves unable to defend their property rights in a climate of instability and weakened legal security.⁶³ These types of dispossession will be discussed in detail below.

Remnants of War

While a direct attack on civilian areas constitutes a clear and perceivable threat to both civilians and (their safe access to) property, there is also a significant risk of the land being contaminated with various explosive devices. According to surveys conducted by the United Nations Mines Action Service (UNMAS), approximately 8.2 million Syrians live in areas that are potentially littered with explosive remnants of war.⁶⁴ Though attacks are mostly directed at urban centers,⁶⁵ reports indicate landmine-related incidents are more often recorded in the countryside. Mines and improvised explosive devices (IEDs) are placed in the vicinity of roads or near other key infrastructure, such as wells or hospitals.⁶⁶ Since the devices are operational and often hidden from sight, living in these contaminated areas is extremely dangerous. Disarming unexploded devices requires proper training and resources, and the devices constitute a major hazard for citizens who attempt to return to their houses during a lull in the fighting. Those who decide to leave their

houses behind do so knowing they will not be able to return unless their neighborhoods are safely cleared, which will take time and political will on the part of those who control the territories in question.

Legal Dispossession

Modern-day wars are fought in a variety of ways, with opposing parties utilizing more than solely military means to gain the upper hand. While international media extensively covers conventional warfare and its disastrous humanitarian consequences, the war in Syria has seen land and property rights used as tools to wage war in a similarly relentless fashion. Though this section will primarily focus on court-based property dispossession by government entities, it is important to note that the Assad government is not the only party in the conflict to weaponize property rights.⁶⁷

Dispossession as Form of Punishment

In 2012, the Syrian government issued Counter-Terrorism Law No. 19,⁶⁸ which contained far-reaching definitions of “terrorist act,”⁶⁹ “terrorist organization,” and “terrorism financing,” as well as Decree No. 22,⁷⁰ which established the Counter-Terrorism Court (CTC), tasked with enforcing the aforementioned law.⁷¹ Since the law criminalizes “every act” and “every method” aimed at “creating a state of panic among the people, destabilizing public security and damaging the basic infrastructure of the country,” the law can and has been interpreted broadly by authorities. Besides imprisonment, forced labor, and the death penalty, the accompanying Decree 63⁷² also authorizes the court to seize and expropriate all movable and immovable property.⁷³ Furthermore, according to a 2012 circular, all detainees brought before the CTC could be subject to property seizure from the moment a claim was filed against them.⁷⁴

Tracking Opponents

Property ownership serves another function: it allows tracking and targeting of suspected pro-opposition members based on the information contained in the documents. The confiscation of property documents at checkpoints is a good example of this practice.⁷⁵ Through examination of such documents, government authorities based at checkpoints can easily trace names to specific areas in the country, assume the political affiliation of the owners, and identify the number of their holdings. In the short term, this practice has compelled Syrians to leave behind their documents, as the risk of being traced is too great. In the long run, however, the conflation of personal property with state security has created a deeply politicized statutory framework for property rights.⁷⁶

Use of State Laws to Evict and Expropriate Property

Even before 2011, the practice of using state laws to expropriate property was a common occurrence in Syria, most notably infringing upon the property rights of the Kurdish population.⁷⁷ While the aims of expropriation and confiscation are not always clear from the outset, there can be little doubt that in wartime, these tools can be useful weapons to further the war effort. Illustrative in this case is a recent court finding which allows the Syrian government to take over any property abandoned over the course of the war.⁷⁸ Similarly, a governmental decree of 2013 bestows extensive expropriation powers on the Syrian government to provide room for electric power projects.⁷⁹ Syrians who face eviction orders as a result of these decisions have no choice but to abandon their property and accept disproportionate compensation. As mentioned in Section 2, other laws on expropriation and rezoning, such as Decree 66 and Law No. 10, are also tools the government has enacted that have the potential to have far-reaching consequences for the wartime legal dispossession of property rights.

Local Ceasefires and Forced Transfers

Ceasefire negotiations have been taking place in the Syrian conflict as early as 2012, when Zabadani – a small town west of Damascus – witnessed preliminary negotiations between the Syrian government and local opposition forces. Since 2014, the frequency and scope of such negotiations have increased as political and military stalemates between the conflict parties, as well as fear that the government would eventually gain an upper hand, forced concessions from the fighting factions.⁸⁰

While the terms of each ceasefire agreement may differ, all agreements usually indicate what is to become of the contested territory and its population. In Syria, the government has typically framed the agreement as a compromise, but in reality, the agreement is often presented to local leadership following extended use of siege tactics.⁸¹ These population transfers are highly controversial, as the voluntary nature of the evacuations – a requirement under international law⁸² – has been dubious at best.⁸³ In what has been called the “surrender or die” tactic, communities are coerced to accept the conditions of population swaps. After armed groups in Darayya surrendered to pro-government forces in August 2016, its residents were left with the choice between surrender – including transfer to government-controlled areas – or continued violence.⁸⁴ In 2017, thousands of people were transferred out of Madaya and Zabadani, as well as Foua and Kfraya, after grueling sieges

by government and rebel forces, respectively.⁸⁵ More than 20,000 residents of Al-Waer were transferred out of the city between March and May 2017 following a Russian-mediated agreement between local officials and the government.⁸⁶ In March and April of 2018, tens of thousands of residents of the Harasta, Douma, and Central sectors of Eastern Ghouta were transferred to northern Syria.⁸⁷ Other examples include various neighborhoods in the Old City of Homs and Qudsayya near Damascus.⁸⁸ Facing starvation or continued siege, many Syrians consequently “choose” to abandon their homes in a desperate bid to save their lives.

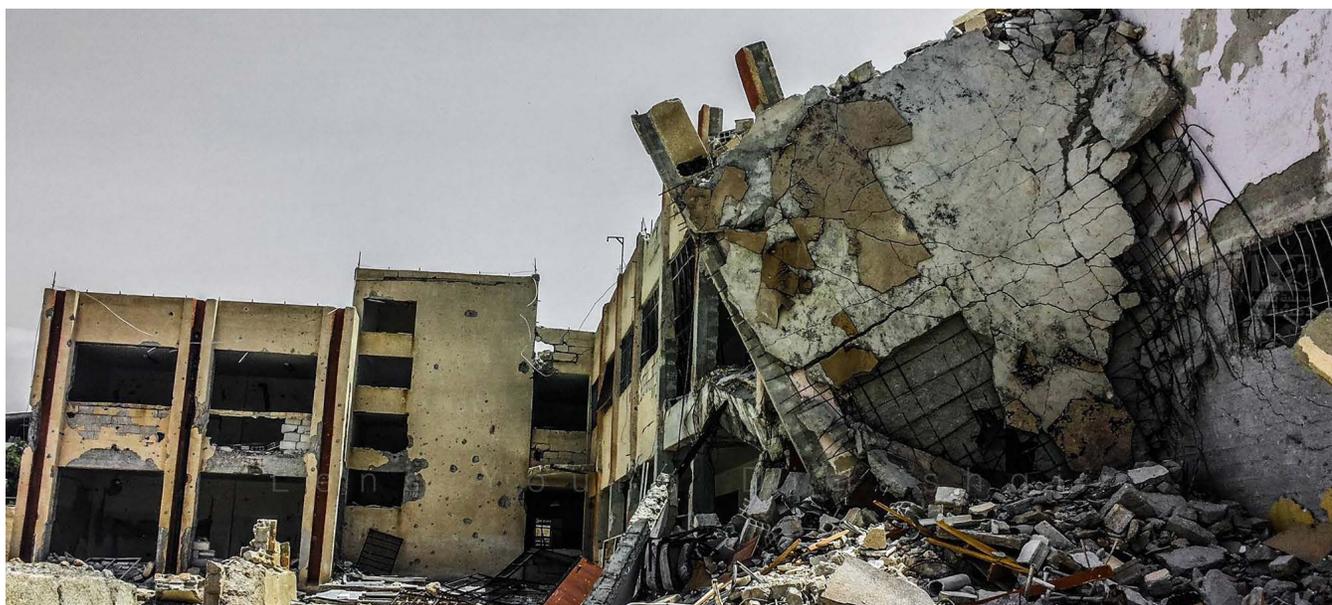
The Madaya/Zabadani and Foua/Kfraya population swap is often framed as having occurred with the intent of fundamentally changing the sectarian demographic of the towns. In other cases, population transfers appeared to be politically motivated, but primarily resulted in the displacement of Sunnis.⁸⁹ Instances of displacement have also occurred during the Syrian conflict between Arabs and Kurds.⁹⁰ Regardless of the intent to alter demographics in each instance, the population transfers have inevitably bred resentment and sectarianism among the populations.

Sales to Third Parties

Throughout the Syrian conflict, property transactions have continued to take place, often in good faith and in the form of private contracts between buyers and sellers. As a result of the breakdown of government administration, many (if not all) of these transactions are not re-

corded in the registry.⁹¹ The conflict has also given rise to so-called “distress sales,” in which people sell all or part of their property in order to purchase food or finance their journey to safer areas.⁹² It is not unlikely that the intense psychological pressure caused by the violence has left Syrians in weak bargaining positions, forcing them into property transactions on unfair or illegal terms.⁹³ In all the chaos and turmoil of the ongoing conflict, many Syrian property owners now find themselves in an extremely vulnerable position. Without proper proof of ownership, it is fairly easy to forge documents and force people out of their rightful homes. This has given rise to fraudulent transactions and seizure of property assets by opportunists who exploit the weakened legal environment. Testimonies from Jasim, a city in the southern governorate of Daraa, have revealed how a local lawyer forged documents for at least two hundred properties so they could be transferred to third parties without the knowledge or consent of the owners.⁹⁴

It is highly likely that fraudulent transactions will be followed by transactions done in good faith, which will result in future disputes about who is legally entitled to the property. Such disputes could exacerbate the difficulties surrounding property restitution.⁹⁵ Even if certain home owners were to possess proof of property, the (often intentional) destruction of property records and forced evacuations have left many Syrians bereft of proper evidence. Knowing this all too well, Syrians are often unwilling to leave behind their property for fear of losing it at the hands of looters or forgers, sometimes at risk to their own lives.⁹⁶



Yabroud (Damascus), 6 August 2014
Destruction caused by the shelling on Yabroud by the regime.
Photo from Lens Young Damashqi.

Restitution in Peace Agreements

The following section examines key elements of property restitution that should be addressed during Syrian peace negotiations, focusing particularly on comparisons of past precedent and methods that proved most effective in facilitating property return and restitution to victims in post-conflict areas. Noting that the UN-led negotiating team has yet to undertake the issue, this section attempts to articulate the value and necessity of an effectual restitution program to the wider reconstruction of Syrian society in the post-conflict period.

Overview of the Current Syria Negotiations

Syria has posed an unprecedented challenge to the United Nations in contriving diplomatic solutions to one of the most devastating modern humanitarian crises.⁹⁷ Despite the extraordinary level of violence and human suffering that has endured in the country for more than seven years, the UN has failed to broker a lasting agreement for de-escalation, political transition, or humanitarian assistance – let alone a formal peace agreement – though not for a lack of effort.

Attempts to end the civil conflict through negotiations began in 2012 when former UN Secretary-General Kofi Annan was appointed UN Special Envoy to Syria, tasked with mediating peace negotiations between the opposing factions and bringing an end to all violence and human rights violations.⁹⁸ Annan initiated the Geneva I Conference in June of that year, which ended with a mutual recognition of the need for a transitional government that abides by human rights standards.⁹⁹ Yet, growing militarization and disunity among world powers led Annan to resign just five months after his appointment.¹⁰⁰

Peace talks stalled for 18 months until parties came back to the negotiating table in January 2014, with Lakhdar Brahimi serving as Special Envoy. The Geneva II Conference sought to address the implementation of a transitional government, but the Syrian government delegation's unwillingness to discuss President Assad's removal led to a breakdown in negotiations after only two rounds. Brahimi, described by UN Secretary-General Ban Ki-moon as "one of the world's most brilliant diplomats," resigned three months later, reportedly frustrated by the stalemate.¹⁰¹

Talks stalled for another two years until the Geneva III Conference convened in February 2016, this time led by current Special Envoy Staffan de Mistura. The talks – slated to address a possible ceasefire, the release of prisoners, terrorism, and aid deliveries – were temporarily suspended after three days due to reported military advances by the Syrian government in violation of the negotiations framework.¹⁰² Subsequent talks have discussed prospects of a new Syrian constitution, elections, and system of governance, but these efforts have not resulted in furthering a peace deal, and as the war continues into its eighth year, confidence in UN-led talks has all but evaporated.¹⁰³

Discussion of Property Restitution in the Talks

During UN-led peace negotiations between the Syrian government and opposition groups, both sides have recognized the importance of addressing land and property issues post-conflict.¹⁰⁴ After a March 2016 negotiation round, de Mistura noted 12 points of commonality between the two sides in their respective visions for Syria's future; these points included the need for a voluntary and safe return home of all refugees and internally displaced persons and the importance of making property restitution available to all those who have suffered loss or injury as a consequence of war.¹⁰⁵ However, the peace talks have failed to specifically address refugee and property restitution issues, and no substantive discussion has since occurred. Instead, de Mistura has chosen to hurriedly focus on issues such as constitution drafting, which many experts and Syrian NGOs, including SJAC, have argued should not be an immediate priority.¹⁰⁶ Instead, the Special Envoy's team has been encouraged to focus on reaching an agreement on the rights of detainees, the disappeared, and the displaced to establish a human rights framework that can build trust between

the parties and address pressing issues. Property restitution is particularly connected to the short-term need to reconstruct Syrian society, and on February 4, 2016, eighteen Syrian human rights groups encouraged de Mistura and parties to the conflict to prioritize property restitution as one of five transitional justice topics that must be included in a final agreement in order for long-term peace and stability to be possible.¹⁰⁷

Restitution Frameworks within Peace Agreements

As very little progress has been made to advance a restitution framework in the talks, other countries can offer examples and lessons learned that can help guide negotiators and their international supporters on incorporating such a framework into a final agreement. Since World War II, international legal norms and practices have increasingly grown to respect the legitimacy of individual property restitution claims after periods of conflict or displacement.¹⁰⁸ Consequently, post-conflict peace agreements refer increasingly to the rights of refugees and displaced persons to return to their homes and to repossess property.¹⁰⁹ However, restitution programs addressing property loss and destruction have no standard format.

While some states establish restitution programs primarily within a final peace agreement, others do so with subsequent legislation. However, precedent and scholarly analyses suggest that large-scale post-conflict restitution initiatives generally realize greater success when a clear and detailed outline of the program is laid out within the final peace agreement – including reference to rights of return under the law, the program’s legal framework (including authoritative scope), and methods of enforcement. Bosnia’s Dayton Accords addressed property restitution at notable length, including the rights of refugees and displaced persons, the restitution program’s general framework, and the relevant commission’s authority and limitations regarding the handling of claims.¹¹⁰ Coupled with an enforcement mechanism, clarity within the peace agreement regarding property restitution served to guide the return and reparations process, making it one of the most successful restitution programs to date.¹¹¹

States that have addressed property restitution primarily in subsequent legislation have struggled to ratify and implement property laws expeditiously and with sufficient clarity to facilitate the timely return of refugees and displaced persons. South Sudan’s peace agreement following its separation from Sudan in 2005 contained few details of the restitution initiative to come – leaving discussion of restitution for subsequent legislation. However, the South

Sudanese government has since failed to pass a formalized land policy, and a pervasive lack of clarity remains regarding land administration.¹¹² Guatemala’s peace agreement was similarly vague regarding the issue of property restitution, creating a lack of clarity that greatly hampered the restitution program’s chances for success.¹¹³ Clarity and detail at the outset of the Syrian restitution program can help minimize similar complications accompanying subsequent legislation, increasing the rate and success of restitution and return.

The Significance of Right to Return in Restitution Frameworks

In addition to provisions on restitution, a peace agreement also needs to grapple with the issue of return, which is very much linked to property rights and long-term peace. Return and reintegration not only preempts renewed conflict and prevents further displacement, but also enforces international legal norms and principles on human rights in the post-conflict state.¹¹⁴ Return can also be a meaningful signifier of peace and cessation of violence since many fighters on both sides of the conflict have themselves been displaced since hostilities began in 2011.¹¹⁵ Affording these parties the ability to return home can thus significantly impact the prospect of conflict resolution and easing of tensions. Return of displaced populations can likewise serve to validate the post-conflict political order and contribute to the recovery of local economies.¹¹⁶ Resolving the widespread displacement of Syrians can thus serve to honor individual rights deferred during years of internal conflict, construct norms and trust, and generate a strong political and economic infrastructure. All these elements play key roles in establishing and maintaining societal peace and stability.

Components of a Negotiated Restitution Framework

While no standard template exists, scholars have noted several key components that should be included in a peace agreement, including refugee/IDP rights, enforcement and monitoring mechanisms, and incentives. Including these components within the Syrian peace agreement can aid in the creation of an effective and fair restitution program.

Rights

The express inclusion of rights within a negotiated peace settlement can aid in establishing a basis for an eventual restitution program – de-politicizing the concept of return and grounding it in the rule of law.¹¹⁷ The right to return to one’s home country is an established international legal principle. It is enshrined in the International Covenant

United Nations, 21 September 2017
High-level event on the Syria crisis, hosted by the EU in
the margins of the 72nd UN General Assembly in New
York and attended by close to 50 countries and partners.
Photo by United Nations Development Programme.



on Civil and Political Rights as well as the Universal Declaration of Human Rights.¹¹⁸ Many States have integrated similar rights directly into their peace accords (and subsequent constitutions). Bosnia, Cambodia, Guatemala, Mozambique and Somalia have all incorporated various forms of returnee rights into their agreements to end hostilities.¹¹⁹

However, a right to return to one's country does not guarantee return to one's *home of origin*. This distinction is consequential; restitution rights inherently accompany a right to a *specific property or home of origin*. As a result, the right to return to one's home of origin has been increasingly favored by the international community.¹²⁰ UN Security Council resolutions have affirmed this right in Abkhazia and the Republic of Georgia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Croatia, Cyprus, Kosovo, Kuwait, Namibia, and Tajikistan.¹²¹ Peace agreements have likewise begun to recognize this right in the past quarter-century. In 1992, Mozambique's General Peace Agreement articulated that refugees should preferably return to their original residences, although it stopped short of guaranteeing the right to do so.¹²² Three years later in Bosnia, the Dayton Accords enshrined strong language on the right to return to home of origin,¹²³ and subsequent peace agreements have articulated similar rights for returnees, particularly in cases where ethnic cleansing and forcible displacement were pervasive.¹²⁴ Doing so establishes property repossession as an individual right and expressly denotes a legal responsibility upon governing authorities to secure reparations to all who assert legitimate claims.¹²⁵

In Syria, the following language could be included in a peace agreement to enshrine a right to return: "*Refugees and displaced persons have the individual right to freely return to their homes of origin to the extent it is possible within the framework and parameters set by the Syrian peace agreement.*" Inclusion of such language grants returnees a specific right of return and repossession regarding their specific dwelling and property, creating a basis for legal recourse regarding prop-

erty restitution. In addition, the peace agreement should include special protections for marginalized groups that may otherwise be denied property rights: "*The right to return and property restitution extends to all refugees and displaced persons without discrimination.*" This guarantee could apply to women, non-citizens, religious/ethnic minorities, and the disabled, as well as others.

Obligations

In conjunction with rights, the inclusion of specific obligations confers legal responsibility upon governing authorities to remedy property claims. While fewer states have incorporated language on obligations into their peace agreements, it was a noted element of the Bosnian agreement credited with advancing the restitution initiative. The agreement obliged Bosnian authorities to indiscriminately aid return and repeal contradictory domestic legislation.¹²⁶ These obligations, when coupled with an effective monitoring and enforcement mechanism, were helpful in expediting property restitution.

Likewise, in Syria, the inclusion of obligations for signatories of the peace agreement can reinforce the effective implementation of return and repossession. In drafting the agreement, potentially significant language on obligations could be: "*The Syrian government will accept and aid the return of refugees and displaced persons, facilitate property restitution, and make amends to victims by other means when restitution is not a viable means of reparation.*" This obligation compels proactivity on the part of the Syrian government to support the restitution program and remedy for those who, for whatever reason, cannot be compensated through a restitution program. Moreover, given the extensive laws the government has passed since the start of the conflict, it will be important to include language regarding the effect of such laws moving forward, such as the following: "*The government will revoke, within a timeframe set by the established Commission, any legislation that hinders rights of returnees to repossess property.*"



Incorporating obligations that facilitate the ouster of such restrictions into the peace agreement promotes the holistic protection of returnee rights in Syria on all levels of government.¹²⁷

Framing the Process of the Program

While there is more than one school of thought regarding the importance of peace agreement language and content, agreements hold value when they provide a degree of detail regarding the restitution program's substantive laws and method for implementation.¹²⁸ While this language can be interpreted and modified over the course of the program's lifespan, a peace accord should firmly articulate the restitution initiative and set parameters for the entities tasked with implementation. Doing so will allow Syria's restitution program to move forward expeditiously and with clarity regarding the final intended outcome. Subsequent implementation legislation could help reinforce and provide greater detail to the restitution framework, but negotiators should not wholly rely on future legislation and must encourage the parties to agree to concrete provisions from the outset in order for the program to be a success.

A Monitoring and Enforcement Mechanism

A monitoring and enforcement mechanism can be vital to the success or failure of a restitution program, particularly in post-conflict settings where there are many competing priorities, ethnic and sectarian tensions, and high levels of resentment among citizens and governing authorities. If given the necessary authority, such a monitoring mechanism can help ensure restitution is carried out thoroughly and efficiently, identifying any intentional or unintentional road blocks and removing or prosecuting individuals or entities causing delays. The United Nations has noted the importance of incorporating monitoring and enforcement mechanisms within restitution programs and has express-

ly called upon states undergoing a restitution process to designate a specific public agency to enforce decisions and judgments, ensuring that authorities respect, implement, and enforce restitution decisions and prevent public obstruction of such aims.¹²⁹

In Bosnia, the international community learned first-hand the effect a monitoring and enforcement mechanism (or lack thereof) can have upon post-conflict property restitution. For years following the peace agreement's 1995 ratification, Bosnian legislators, judges, and political officials intentionally obstructed the implementation of its provisions, causing the program's stagnation for half a decade, and there was no clear and effective way to compel compliance.¹³⁰ It was not until 2000 that the international community crafted and implemented an effective monitoring and enforcement mechanism. This apparatus, the Property Law Implementation Plan (PLIP), eventually established a presence in every BiH municipality and helped ensure unimpeded implementation.¹³¹ It is widely regarded as the critical component to Bosnia's success in post-conflict restitution. Conversely, a lack of monitoring and enforcement by the international community in Guatemala allowed the ruling oligarchy – who had little to gain from restitution – to continually delay implementation.¹³²

The Syrian conflict has been driven by violence of exceptional brutality largely predicated on preexisting divisions and inequalities.¹³³ Corruption, nepotism, and discrimination have been hallmarks of the Syrian government for decades. Accordingly, enforcement mechanisms will be of particular importance in Syria. Without an established entity with the power to ensure compliance, restitution could be easily sidelined, or worse, entrenched political and economic interests in Syria could manipulate the process, to the detriment of victims.

Compliance Incentives

Incentives such as monetary assistance or access to multinational institutions have been increasingly used to induce treaty compliance, with limited application to enforcement of international human rights standards and principles of good governance.¹³⁴ When tied to a restitution program, incentives can hinge benefits upon a state's implementation of – and compliance with – obligations established in the peace agreement. In Syria, European countries as well as others have increasingly emphasized the possibility of allocating funds to Syria's future reconstruction efforts. Although monetary incentives have induced favorable action regarding return and restitution in other contexts, reconstruction funds in particular have seldom been made contingent upon justice, accountability, or human rights reform. However, such measures could be undertaken within Syria's peace agreement if done in conjunction with the strict monitoring and oversight provisions elaborated upon above.

In Bosnia, both political and economic incentives were used to induce compliance with restitution initiatives. The state's membership in the Council of Europe was contingent, in part, on implementation of refugee return and property restitution. Since Bosnia sought to rejoin the international community through ascension to the Council, this condition gave the international community significant leverage to induce the government's compliance with restitution efforts. The Council cited needed improvement in property restitution processes as one of many reasons why it rejected Bosnia's request to join the Council in 1999.¹³⁵ When Bosnia joined the Council in April 2002, its invitation was based partially on progress made with regard to property restitution and was contingent upon Bosnia's continued dedication to the restitution process.¹³⁶ Likewise, international assistance in post-war reconstruction was conditioned on adherence.¹³⁷ Damage to Bosnia's infrastructure and housing by the end of its three-year civil war was massive. The country's GDP was one-eighth of its pre-war level, and reconstruction was estimated to cost approximately \$8 billion.¹³⁸ Thus, the country was heavily dependent upon international financial assistance in its rebuilding efforts. The eleven members of the Steering Board of the Peace Implementation Council supported conditionality of aid in a 1997 statement, affirming that "assistance for housing and local infrastructure should be dependent on the acceptance of return" of displaced individuals.¹³⁹ This phenomenon occurred to a marginal degree in Bosnia. For example, the World Bank and the Office of the High Representative engaged in a limited degree of screening at the local level before providing aid. However, compliance with human rights and property restitution was typically only one factor

in determining whether aid would be dispersed, and some actors prioritized human rights compliance over others.¹⁴⁰ Scholars have since recognized incentives as a useful tool in ensuring government compliance wherein it might otherwise resist.

In addition to positive incentives, punishment or threat of punishment, such as in the form of economic sanctions, can also compel compliance. While sanctions may be an effective tool, incentives should be the first resort as they are often more effectual and less harmful to civilian welfare as leaders often pass along the cost of sanctions to the general population.¹⁴¹ With Syria's current reconstruction costs estimated at some \$300 billion,¹⁴² incentives may produce more rapid and complete results. A noteworthy argument contends that incentives pose the risk of bad faith signings by parties who seek to extract rewards or simply meet international expectations without a substantive commitment to reform.¹⁴³ Considering this risk, any articulation of incentives within the comprehensive peace agreement would be aptly served if accompanied by subsequent implementation provisions, detailing temporal or substantive benchmarks and conditioning disbursement of funds based on the achievement of those benchmarks throughout the reconstruction period. In the absence of such detail, both providers and recipients of aid are less likely to be held to agreed-upon standards set forth in a peace agreement.

Next Steps in the Process

As the Syrian peace talks move forward, it is imperative for the UN Special Envoy and negotiating parties to acknowledge that lasting peace and security requires not only political and military solutions, but also human rights reforms and transitional justice mechanisms such as a property restitution initiative. The ability to return home or gain compensation for the loss of property will restore dignity to victims while increasing trust in the new Syrian government – furthering the goal of stability. Syrians displaced by the civil conflict have consistently articulated that dignity will play an important role in establishing the necessary conditions for return and coexistence.¹⁴⁴

As described in Sections 2 and 3, however, the property rights environment and complex nature of displacement make it difficult to craft viable solutions. In order to ensure a well-planned framework, discussion of the program components must begin early in the negotiations. While there is no set way in which these restitution laws should be established and implemented, the aforementioned elements are important, if not essential, to creating an effective program and should be given due attention during any talk of return for victims of the conflict.

The Steps of a Restitution Program

The following section examines the lifespan of a restitution program while identifying foreseeable hurdles to implementation in the Syrian context. Section 5 discusses the initial steps necessary to launch a program, the process for claim registration, adjudication, and enforcement, the estimated timeframe for implementation, the role of international oversight, and the challenge of longer-term institutional reform. The section concludes by laying out key recommendations identified by SJAC as Syria looks ahead at return and restitution issues.

Initial Start-Up

Several initial steps will be required to get a restitution program “off the ground.” Past precedent demonstrates that a program’s foundation sets the tone for the resulting trajectory of implementation, and a weak foundation does not bode well for the success of the program. To lay this foundation, the startup period requires the creation of an impartial authoritative entity responsible for overseeing the restitution program, the passage of supplementary legislation, and the establishment of a field network capable of receiving claims from areas throughout the country.

Passing Supplementary Restitution Legislation

Even if a final peace agreement includes detailed language on a restitution framework, Syrian officials will still need to pass and implement property restitution laws that codify and supplement the agreement’s mandates. Subsequent legislation, often in the form of a Land Act, will generally provide more detail on the restitution program than the peace agreement. This legislation may establish a restitution commission, including provisions for the selection of commissioners, guidelines for meetings of the commission, and elaboration on its functions, delegation of powers, and procedures. Restitution legislation may also establish a land claims court tasked with adjudicating disputes based on decisions of the commission. Such legislation could include qualifications and functions of judges and the procedures of the court.

To pass comprehensive legislation, Syrian lawmakers could consider collaboration with and assistance from international experts. In the case of Bosnia, four international or-

ganizations¹⁴⁵ complemented and supervised the legislative process. Two factors played a key role in signaling the need for international involvement in Bosnia’s restitution effort: 1) hesitation (or even obstruction) on the part of domestic authorities to undertake meaningful legislative action, and 2) the realization that solely relying on local actors to complete the restitution program would take too much time, particularly in light of competing priorities.¹⁴⁶ International actors have exercised similar lawmaking powers in Cambodia, Somalia, Kosovo, East Timor, and Iraq.¹⁴⁷

During the legislative process, drafters should be mindful of the balance between expediency and accuracy. Delays in legislation can prevent advances in the country’s return process and cause frustration among those who do return and have nowhere to settle, as a clear framework for restitution will not be available to guide fair and uniform resettlement and adjudication. Conversely, legislative expediency at the expense of accuracy and fairness can likewise delay the long-term success of Syrian restitution, increasing the likelihood of gaps in the law and mistrust in the system. Additionally, as with provisions established in the peace agreement, drafters should be wary of “over-selling” promises in legislation without ensuring their practical application. Restitution programs rarely, if ever, meet every ambitious goal outlined in their founding legislation. In order to avoid disappointing claimants’ expectations and, in turn, diminishing trust in the newly formed government during reconciliation, drafters should avoid inflated promises to returnees.¹⁴⁸

Establishing a Property Restitution Commission

In addressing land and property restitution, peace agreements often prescribe the creation of an authoritative entity to oversee the process. One option would be to rely solely on the existing domestic court system. This could be less expensive, but in countries where the judiciary is typically inefficient, lacking in independence, and historically corrupt, the domestic courts may not be an appropriate forum, particularly in the immediate post-conflict period.

The second, more common option is to create some form of independent “commission” tasked with receiving, investigating, and deciding upon property claims. If Syria chooses to create a separate commission, supplementary legislation must clearly delineate the jurisdiction and powers of the commission as compared to the domestic courts so as to avoid confusion, conflicting decisions, and overlapping authority. Annex 7 of the Dayton Peace Agreement established the *Commission for Real Property Claims* (CRPC),¹⁴⁹ which functioned in parallel with the domestic housing authorities.¹⁵⁰ While the CRPC and the housing authorities shared some procedural similarities, the CRPC only issued decisions on the right of the claimant while the housing authorities could decide on the rights of both the claimant and the current occupant. Not only did this overlap cause confusion, but it created obstacles for the enforcement of the CRPC’s decisions. The presence of local housing magistrates can also complicate the workings of an independent commission. For example, in Sudan, the restitution program was hindered in part by an inability to implement uniform, formal land laws throughout a region governed for centuries by a customary tenure system.¹⁵¹ Ambiguity from the outset may result in conflicting claims outcomes and can create substantial complications as the restitution process moves forward in Syria.

The process of property restitution under an independent commission is an administrative, rather than a judicial, process, in that a judge is not required to preside over claims disputes. This distinction provides several advantages that may benefit the Syrian restitution process. First, taking the administrative route prevents the courts from being overwhelmed by a large number of claims. This would not only increase waiting times for the claimants, but, in the case of Syria, would most likely hamper (and be hampered by) any type of judicial reform. Secondly, it avoids the risk of political stigmatization.¹⁵² One of the reasons the Syrian judiciary is in such dire need of reform is because of its high level of corruption and political involvement. Any restitution process that has to rely primarily on these institutions could decrease its legitimacy among many Syrians.

If the peace agreement expressly mandates the creation of a commission to manage property restitution claims and compensation and elaborates upon the method of and standards for selecting commissioners, then the commission members can be immediately appointed to lead the start-up phase upon the implementation of the peace agreement. If the peace agreement is silent as to the commission’s creation, the post-conflict government would need to prescribe its creation via legislation.

Since commissioners are typically responsible for all claims of property loss related to a conflict, their aptitude and integrity are crucial to the overall restitution process. Post-conflict constitutions or peace agreements often outline the requisite qualifications for commissioners. South Africa’s interim constitution of 1993 mandated that commissioners must have previous competency in investigating claims and mediating disputes.¹⁵³ Subsequent legislation also required commissioners “be fit and proper persons to hold” commissioner positions.¹⁵⁴ Kosovo’s claims program in the early to mid-2000s likewise called for commissioners with expertise in the field of housing and property law and competency to hold judicial office.¹⁵⁵ Syria’s legacy of corruption necessitates that commissioners not only have the skills necessary to implement a restitution program, but also have a strong record of integrity and impartiality in their careers.

Regarding the appointment process, there is very little uniformity in methods across contexts. South Africa’s legislation left appointment to the Minister of Land Affairs,¹⁵⁶ while Kosovo’s commissioners were appointed by the Special Representative of the UN Secretary General. Each of these methods carry some risk, with one allotting considerable power to a single domestic representative and the other prescribing complete control to an international stakeholder. Other countries have spread appointment powers across multiple individuals or entities. Bosnia prioritized an ethnic balance in its commission membership, and as a result, Republika Srpska and the Federation of Bosnia and Herzegovina each appointed proportional numbers to the commission.¹⁵⁷ Syria will need to determine which governing entity is perceived as having sufficient legitimacy to make fair and balanced appointments to the commission, as well as to what extent appointments should be overseen by the international community.

Creating a Field Network Throughout Syria

Considering the heightened tensions in Syria as a result of the conflict, there is a risk that a restitution process will further exacerbate resentment, particularly if the process is viewed as politicized. As seen in Bosnia, lingering divisions

can be a powerful barrier to the resolution of property disputes post-conflict. To preempt concerns that ethnic and religious divisions would be replicated in property dispute resolution, Bosnia established monitoring and enforcement entities (the PLIP, discussed in Section 3.3.4) in each of the 140 municipalities.¹⁵⁸ Doing so established regular contact between field officers and Bosnian officials and compelled greater adherence to a standardized and rule-based restitution process by focusing on local issues, which helped to overcome political barriers. This mechanism was complemented by a network of regional offices throughout Bosnia and Europe that supported the restitution commission's executive office in Sarajevo.¹⁵⁹

Given the vast number of displaced persons throughout Syria, the region, and Europe, there is ample need for a network of regional offices to support the restitution program both internally and abroad. These regional offices would ideally receive property claims, assist in disseminating information among Syrians, and monitor local implementation. Mobile units similar to those established in post-conflict Bosnia would likewise be useful to assist the elderly, sick, or poor who cannot travel to a regional office to file a property claim. By localizing the process, a commission not only increases access to potential claimants, but also enables greater outreach and local buy-in for the process that may be a means to overcome distrust of the central government and fear of politicization.

Registration of Complaints

Following the start-up phase, the newly established commission will need to create a system for registering property claims. In determining the registration procedure, the commission must answer several important questions that will impact the scope and mandate of the process. First, the commission must announce *who* is eligible to benefit from the restitution program. In the Dayton Peace Agreement (DPA) and the commission's Book of Regulations,¹⁶⁰ the direct beneficiaries were displaced persons and refugees who had been deprived of their property in the course of hostilities (starting in 1991).¹⁶¹ The initial peace agreement can provide the basic framework for assessing claimant status, with domestic property laws or supplementary legislation providing further clarification if necessary.¹⁶² Broad accessibility of the program requires a sufficiently low threshold for claimants, so as to not deter them with excessive bureaucracy. Bosnia's commission made a presumption in favor of a claimant's refugee or displaced person status. In practice, this simple provision removed the need for a separate verification procedure and allowed the Commission to focus on ownership evidence instead. Also important is the

ability to provide alternative housing if a property owner is making a claim on property that has since been occupied. While officials should have the right to evict current occupants in order to restore ownership, the officials should be prepared and adequately resourced to house the occupants elsewhere if they lack nearby family or the financial means to procure different housing, as was the case in Bosnia.¹⁶³

Second, the commission must decide *what type* of property rights will be honored. In Bosnia, deed holders were not the only individuals eligible; holders of occupancy rights (such as persons living in an apartment building) could also file a claim.¹⁶⁴ The recognition of occupancy rights is an important development in contemporary restitution practice. This shift means the right to restitution could be open to many displaced persons who did not own their land or homes prior to the displacement, including those with communal property rights, rental leases, or unregistered/illegal status.¹⁶⁵

Third, the commission must determine *whether* to allow relatives or a legal representative to file claims on a claimant's behalf. Over the course of the conflict, the original owner might have died or the claimant may face practical difficulties to submit a written claim. To make the restitution procedure as accessible as possible for the broadest number of people, eligibility requirements should also allow claims from those with a legal interest¹⁶⁶ in the property, such as legal heirs¹⁶⁷ and proxies.¹⁶⁸ The Bosnian commission allowed claims through an authorized representative so long as they presented a valid power of attorney, which could only be given by a person entitled to submit a claim and which was verified by the responsible authorities.¹⁶⁹

As for heirs, the amount of time since the end of a conflict will determine how many claims will be filed by descendants of the original victims. For example, the property restitution programs in Bosnia and Kosovo concerned events from the past decade. National laws determined inheritance rights, and rightful heirs could file claims under the same formal requirements as the original victims.¹⁷⁰ The Commission for the Resolution of Real Property Disputes (CRRPD) in Iraq covered a time period of over thirty years (1968-2003)¹⁷¹ while more than fifty years passed between the events giving rise to claims and the establishment of the German Forced Labor Compensation Program (GFLCP) and the Property Loss Program in 2000.¹⁷² The long lapse in time meant that a significant number of claims were filed by heirs who had relocated worldwide. For Germany, the Foundation Act designed a self-contained legal regime that did not rely on domestic law, but instead created a set of inheritance rules that defined the eligibility of heirs.¹⁷³ Depending on when Syria implements a restitution program, claims based on inheritance could be widespread. A sim-

ilar self-contained legal framework could effectively avoid conflict of laws when dealing with inheritance claims from outside Syria.

Fourth, the commission must determine *how* to submit a claim. When submitting, standardized claim forms help streamline the registration process, and the use of such forms is common in many restitution efforts,¹⁷⁴ as forms guide claimants through all the required information and avoid time-consuming follow-up. While paper forms should be made available, also allowing for the digital submission of forms can help create a database that is easy to compile and search.¹⁷⁵ Digital submission options can also facilitate the submission of claims by individuals living abroad or by those who lack access to a regional office for any reason. While many claimants will have little or no access to documentary evidence of property rights, any evidence that might prove their rights to the claimed property should be attached to the registration form,¹⁷⁶ including sworn witness statements. However, claim forms should at least require a minimum threshold of proof (such as details about the claimed property and the signature of the claimant)¹⁷⁷ before it can be accepted for registration. International oversight of this process is key to prevent misuse of documentation requirements by local officials; in some parts of Bosnia, regional offices were found to be requiring physical documentation in order to prevent displaced persons from certain ethnic groups from returning, despite instructions from national officials to the contrary.

The commission must also establish a policy of claims fees. Ideally, there should be no cost for individuals to submit a claim, regardless of whether it is for ownership or tenancy of property. If the commission determines that fees are necessary to facilitate the workings of the restitution process, the fees should be minimal, perhaps adjusted on a sliding scale so that the fees are not prohibitive. In Bosnia, the subject of fees was not addressed in the initial agreement, and as a result, offices in some areas of Bosnia were found to be charging between ten to one hundred KM, which was sometimes more than half of the average annual income for the area.¹⁷⁸ Such high costs result in only the wealthiest individuals being able to seek restitution.

The commission, its staff, and even the media will have an important role to play in the dissemination of registration instructions and in ensuring that the general population is aware of the restitution process.¹⁷⁹ Transparency and clarity regarding eligibility and submission requirements are essential to the success of the program. The reality is that not everyone who suffered a loss during the conflict will be eligible, which will affect the perception of the program. While it is not important that everyone be happy with the

rules, it is crucial that they believe the standards and the process to be understandable and fair.

Temporal Scope

Related to eligibility requirements is the temporal scope of the restitution program. In other words, in what time period must the property loss have taken place to enable a claimant to seek relief. In Bosnia, half the country's population was displaced within just three years. In Iraq, dispossession under the Baath Party lasted over three decades.¹⁸⁰ Temporal scope can greatly affect whether the intended beneficiaries can actually seek relief. In the Czech Republic, the initial "cut-off date" selected for post-WWII restitution excluded a period wherein a large number of Nazi takings from Jewish victims occurred, as well as a period shortly before the communist takeover in which some three million ethnic Germans were expelled from the Czech lands, thus limiting the impact of the program.¹⁸¹ Although restitution programs become exponentially more complex (and expensive) the longer the scope, Syria's restitution program likely should encompass dispossession which occurred throughout the entire length of the conflict. The key will be to designate an official start and end date of the conflict. Moreover, if victim grievances regarding property predate the conflict, some Syrians may call for a reevaluation of corrupt and unjust expropriation decisions prior to 2011. Ultimately, however, there must be a defined date range, which, ideally, peace negotiators would decide upon from the outset. Otherwise, it may be left for the restitution commission itself to define the temporal scope as it creates eligibility standards.

Adjudication of Ownership Disputes

Once a commission is established and individuals have an opportunity to submit their claims, commissioners will begin the arduous task of adjudicating claims. The process of adjudication will involve evaluating and deciding upon the appropriate remedy (including by addressing competing claims to the same property), whether it be return, compensation, or redistribution. After the commission issues decisions, claimants must have the opportunity to appeal unfavorable outcomes in order to allow for a second instance of review and create an additional layer of due process. The procedures described in this section share many similarities with a regular court process and should reflect similar due process considerations while also balancing the need for flexibility and efficiency to deal with what could potentially be a large volume of extremely complex cases.

Evaluating Claims

In adjudicating property disputes, past restitution programs have faced several challenges that will likely arise in the Syrian context. The most prominent of these is the administration of evidence, including the collection and storage of data from a wide range of sources. As a result of the chaos that is inherent to any conflict, many victims will lack the evidence required for restitution. Whether due to the destruction or misplacement of deeds and other documentary evidence or the mere passage of time, various factors can affect victims' ability to account for property ownership. Evidentiary weaknesses influence adjudication and the restitution process must strike a balance in order to succeed.

A straightforward way to tackle the difficulties arising from lack of access to evidence is to relax the evidentiary requirements in favor of the claimants. This can be done by distributing the burden of proof to oblige all interested parties to cooperate in the gathering of evidence.¹⁸² The German Forced Labor Compensation Program, for example, required German enterprises and state entities to provide records that could be used to determine a claimant's eligibility for compensation.¹⁸³ In Bosnia, regulations allowed the commission and other offices to assist claimants in gathering and presenting evidence.¹⁸⁴ Similar powers were entrusted to the United Nations Compensation Commission (UNCC),¹⁸⁵ established in 1991 to process claims related to the occupation of Kuwait by Iraq.¹⁸⁶ Although the UNCC was not a tribunal, it performed a quasi-judicial function when resolving disputed claims for compensation¹⁸⁷ and had broad fact-finding powers to supplement incomplete evidence.

Another option has been to relax the standard of proof, meaning claims only need to be *plausible* or *credible* as opposed to *highly probable*.¹⁸⁸ As a rule, claims to the German program required documentary evidence to be deemed eligible; however, recognizing the difficulty for claimants to obtain such evidence (particularly considering how much time had passed since the violations had occurred), the rules further stipulated that "If no relevant evidence is available, the claimant's eligibility can be made credible in some other way."¹⁸⁹ Even though requiring lower standards could result in exploitation or fraud, with the right balance, such a system might be appropriate for Syria.

Presumptions of evidence have also been used to assist claimants in substantiating claims, specifically in proving a causal link between conflict-related events and damages. A technique used by the German program combined geographic data and existing timelines to establish the in-

volvement of German companies in the loss of property.¹⁹⁰ With the prevalence of satellite imagery and extensive data on troop movements at specific time periods, a Syrian program could benefit from such intelligence to presume that a loss occurred during a certain period in a certain territory as a result of hostilities.

Evaluating thousands of claims within a reasonable time-frame will also require the use of mass claims processing techniques. Most of the recent programs have relied extensively on grouping of claims, IT support in the form of data matching and, where compensation is in order, standardized valuation methodologies.¹⁹¹ The specifics will depend on the standards of proof, burden of proof, and evidentiary presumptions described above to determine how best to integrate statistical models and new technologies to assist a commission with the monumental task of evaluating claims.

Addressing Competing Claims and Current vs. Subsequent Occupants

Often in conflict zones, property is not merely vacated or destroyed but re-inhabited by subsequent occupants. Because these occupants may develop legitimate rights to abandoned property over time, there is no established canon in addressing who retains post-conflict ownership. This may be of particular concern in Syria. The length of the conflict and mass population displacement makes the probability of subsequent occupancy high. In addition, wartime rezoning and expropriation decrees and population transfers through ceasefire agreements have caused forcible displacement under unclear legal rubrics. In Homs, former residents have reported that after being forcibly displaced by Syrian forces, government supporters illegally sold or inhabited their homes.¹⁹² Adding to the complexity, subsequent occupants may themselves have been displaced or may have sold the property to unsuspecting buyers during the conflict, making a commission's task of facilitating return and restitution even more difficult.

Post-conflict states have established different policies to address this issue. Some, such as Guatemala, have recognized outright the primacy of an original property occupant's ownership rights over those of subsequent occupants. The series of 1994 agreements that ended the Guatemalan conflict required the government to revise legal provisions to enshrine the inalienable nature of land ownership rights, thereby promoting the return of land to original owners.¹⁹³

Other states, however, have given equal consideration to subsequent owners, depending on the circumstances. In the Czech Republic, subsequent purchasers were protect-

ed unless it could be demonstrated that they acquired the property illegally or through personal involvement in the persecution of the former owners; in cases where the property transfer was legal, claimants were remedied by monetary compensation.¹⁹⁴

Many housing, land, and property scholars and Syrian civil society groups argue that precedence should generally be given to original property owners.¹⁹⁵ However, some argue that subsequent occupants with a *bona fide* interest in the contested property should also be given due consideration.¹⁹⁶ Whichever policy the Syrian program adopts, it is important that this policy is clarified at the outset so as to avoid delays and to ensure due process according to a standardized set of rules.

Determining the Remedy - Return, Compensation, or Redistribution

With 27 percent of Syria's housing supply damaged or destroyed,¹⁹⁷ property repossession will not be plausible for a sizable number of Syria's 12 million refugees and internally displaced persons.¹⁹⁸ Consequently, comprehensive laws addressing compensation and/or redistribution are necessary to remedy victims of property dispossession whose claims cannot be addressed via restitution.

Compensation and/or redistribution orders that complement wider restitution efforts are common, and the United Nations has recognized a right to compensation when restitution is unavailable. Yet, the overwhelming consensus is that compensation is a secondary option and should only be used when restitution is not logistically feasible or when the claimant voluntarily seeks compensation in lieu of restitution.¹⁹⁹ Various states have adopted this concept, at least in theory. While Bosnia is widely hailed as a restitution success story, compensation as an alternative to restitution proved an ineffective remedy due to the insufficient allocation of funds for the program.²⁰⁰

Redistribution is a less common remedy but is often used when a state is attempting to remedy historical land injustices beyond the individual claims of owners. For example, small scale land redistribution initiatives in post-WWII Eastern Europe and post-apartheid South Africa attempted to achieve this goal.²⁰¹ To address seizures of large estates by the Hungarian communist party following WWI (while it briefly governed), Hungary utilized redistribution under the premise that wealthy landowners should not merely receive land back but that the wider public is entitled to the land.²⁰² Similarly, South Africa's program sought to remedy past injustices through government expropriation and redistribution.²⁰³ Such initiatives are often politically sensitive and require careful planning to be successful. Given the

Baathist legacy of expropriation and redistribution as well as backlash against Law No. 10, which enables government redistribution, Syrians may be reluctant to revisit such initiatives as a means of remedy.

Some restitution programs have offered displaced persons the choice between compensation and restitution. Such was the case in Iraq.²⁰⁴ Yet, despite being a common feature to many programs, examples of comprehensive and effective compensation and/or redistribution remedies are in short supply. Lack of funding, political will, and clear laws can easily stymie programs. In Guatemala, provisions on restitution within the peace accords did not establish clear legal guidelines regarding precedence of victims' restitution claims over those of subsequent occupants. As a result, the only option for many claimants was remedy via land redistribution – a program not fully implemented due to inadequate funding and political neglect among politicians who did not consider displaced persons as part of their constituency.²⁰⁵ In light of past precedent, Syria's plan to address compensation and/or redistribution will require strict enforcement mechanisms and a sufficient, reliable funding apparatus.

Appeals Process

There are several reasons for a restitution process to provide for a second instance review after a commission issues its decision. Not only are appeals a basic due process principle, they encourage uniformity and standardization of rules and procedures. Furthermore, the possibility to challenge a decision lends to the public perception of legitimacy and fairness and helps claimants accept the commission's decisions. Offsetting the benefits of legal remedies are considerations of time and funding. Past restitution efforts have wrestled with competing priorities of fairness and efficiency, and these lessons can help guide a future restitution program in Syria.

The type of appeals process Syria adopts will depend on several factors. First, whether the claims procedure is predominantly national or international will influence the preferred legal standards for the appeals. A country hosting a purely national restitution program may choose to mirror its national laws and procedures. Second, if first-instance review allows for an in-depth, individual review of each claim, a second-instance review can take a much more limited form. Conversely, a first-instance review that groups claims might benefit from a more extensive appeals process. Furthermore, due to the nature of the property restitution process, which essentially involves a decision on whether families can safely return to their property, achieving individual justice will be of primary concern. Third, considering the number of claims that are expected,

extensive layers of review may cause considerable delays.²⁰⁶

Past restitution programs have used a variety of legal remedies, ranging from the option to correct only clerical errors²⁰⁷ to a comprehensive second-instance substantive review.²⁰⁸ In the case of Bosnia's commission, every claimant could file an appeal request,²⁰⁹ but the review was limited in scope. The claimant (or any other person with a legal interest in the real property designated in the original decision) could only request reconsideration within sixty days of learning of new evidence which could materially affect the decision.²¹⁰ After individual reviews of such requests, the commission could refuse the request as inadmissible, reject it as unfounded, or accept the request and revoke the previous decision before issuing a new decision.²¹¹ Similarly, claimants in Kosovo²¹² could appeal within thirty days of the decision on the basis of material procedural errors.²¹³

As some have noted, the preferred method and scope of review seems to have depended little on the characterization of the first-instance procedure.²¹⁴ For Syria, this means that regardless of how high the number of claims is expected to be, the drafters of the restitution framework are, in theory, free to choose the broadest possible review. In reality, however, a delicate balance will need to be struck between attaining a high level of individual justice on the one hand and completing the restitution process within a reasonable timeframe on the other.

Enforcement of the Remedy

After a commission has issued its decision and interested parties have had an opportunity to appeal, the next step is to implement the remedy. The way in which remedies are enforced depends on two distinct factors: the type of remedy (i.e. monetary compensation or physical restitution) and the role of domestic authorities in the program. If monetary compensation is an option, the commission must designate the domestic authority responsible for establishing a compensation fund. Additionally, it is important to establish from the outset whether displaced individuals have the choice between monetary compensation or physical restitution, or whether monetary compensation is only an option if physical restitution is not possible. In Bosnia, the Dayton Accords granted the choice of compensation or physical restitution to displaced individuals, but fear that the option of compensation would result in displaced persons declining to return home prevented the creation of such a fund.²¹⁵

In many cases, commissions have designated compensation and enforcement to domestic bodies. For instance, the Iraqi property commission's mandate did not include

the enforcement of restitution decisions. Rather than set up a separate enforcement body, the commission's statute authorized the Enforcement Department and Real Estate Registration Department of the Ministry of Justice in Iraq to implement the decisions in accordance with Iraqi law.²¹⁶ In awarding compensation, the commission's compensation department requested the necessary funds for a group of claims from the Ministry of Finance.²¹⁷ After receipt of such funds, the commission awarded a check to each beneficiary in the group.²¹⁸ Similarly, the Dayton Peace Agreement relied on domestic authorities to "cooperate with the work of the Commission, and [to] respect and implement its decisions expeditiously and in good faith."²¹⁹ Furthermore, the agreement made a number of existing international organizations responsible for various aspects of the restitution program, including its enforcement, through the appointment of a High Representative to coordinate between agencies and resolve disputes, as well as the creation of the Office of the High Representative (OHR).²²⁰ While the enforcement process ideally comes through domestic agencies, it is useful to have an outside international authority with designated enforcement power to resolve disputes and ensure proper receipt of the remedy. In the Bosnian case, the OHR was able to request draft budgets and adjust distribution of funds as necessary to ensure that each entity within the restitution framework had adequate resources.²²¹

As with the preceding steps of a program, enforcement is most successful when there is a strong and detailed framework in place. In the case of Bosnia and Herzegovina, enforcement stagnated until the country adopted legal reforms that specified the enforcement responsibilities of authorities.²²² Even when a special-purpose commission is created to decide on property issues, restitution programs will have to rely, to some extent, on existing state infrastructure, such as courts, local administrative authorities, or police. These institutions, particularly in a post-war context, are seldom in perfect working order, as they likely suffer from a lack of resources, independence, or both. Instead of attempting to marginalize domestic institutions, a program should consider allocating adequate resources and providing training to the authorities best suited for the task.²²³

Since the impartiality of the individuals assigned to such a mechanism is crucial, a peace agreement could mandate the inclusion of international experts. In Bosnia, the PLIP included one representative from the international community in each of the country's municipalities to help monitor the implementation of property laws.²²⁴ Information sharing between these branches allowed for close monitoring of the country's overall progress in property restitution.

A similar monitoring and enforcement apparatus in Syria that includes unbiased and experienced representatives from the international community can help compel progress by local government officials and create a more neutral environment of security and trust than would otherwise exist. Additionally, a monthly statistics report requirement from each region enabled monitors to compare restitution progress across all municipalities and identify areas where it lagged behind.²²⁵ However, it is integral that the restitution process as a whole not be dictated by international actors or organizations, but that Syrians themselves are engaged. Thus, an effective mechanism will likewise need a strong presence throughout Syria, not merely a central office in Damascus.

An additional consideration for the commission is the issue of enforcement of property transfer protection rules while claims are pending. It is likely that the timeframe between the filing of a claim and having the claim adjudicated will be significant due to the sheer number of claims expected, and the timeframe could be extended if the case involves appeals or if multiple individuals are making claims on the same property. In past commissions, the request for an appeal halted any changes as the result of a previous decision.²²⁶ This rationale could be applied to all pending claims, but it would be necessary to consider to what degree the suspension would occur; the interim timeframe could require many degrees of cessation, including halting the transfer of occupants of a property, preventing demolition or construction of a property, and/or requiring tenants to relocate until a final decision is made. Suspending such activity would prevent further complication of cases, however, it could also cause unnecessary hardship on individuals as it could prevent them from relocating or making other necessary changes over what could be a lengthy wait for a final decision by the commission.

Timeframe

To ensure the Syrian restitution program's timely advancement, a timeframe for completion should be established during its initial start-up. Designating a target date can encourage Syrian officials to work expeditiously and discourage the program's indefinite deferral. A timeframe can also establish milestones by which observers can measure incremental progress and donors can monitor the financing of the program and related reconstruction. Making these funds contingent upon compliance with deadlines can further elicit compliance and expediency.

Deadlines should be ambitious but realistic, which requires taking into account several factors, including the number displaced, the number of anticipated claims, political

will, the extent of destruction, and the amount of resources available. The South African case illustrates the pitfalls of establishing a short timeframe: by the deadline in December 1998, only 80,000 claims had been filed, which was less than one percent of the number that officials expected to receive.²²⁷ Bosnia provided an indefinite timeframe for submission of property ownership claims, but in cases of "socially owned property" (i.e. rentals, employer-provided housing), displaced individuals had only six months, which severely limited the number of claims submitted.²²⁸

In Bosnia, where some two million people were displaced, the total number of claims approximated 216,802. Within five years of implementation, nearly 100 percent were adjudicated.²²⁹ Given that Syrian displacement currently hovers around 12 million, more than five times the number in Bosnia, a longer timeframe should be anticipated.²³⁰ In discussions of timeframe, it is also important to discuss the process of sufficiently training and staffing offices tasked with processing and adjudicating claims. South Africa managed to process only 560 claims each year, a rate at which it was expected to take more than 35 years to process the relatively small number of claims submitted.²³¹ While the claims process should not be allowed to continue indefinitely, as it is necessary to provide displaced individuals with closure and assurance that after a certain amount of time their property ownership will not be challenged, it is possible that private companies could continue the restitution process indefinitely, as has occurred in Germany with some companies that have been restoring property ownership to Jewish families into the 21st century.²³²

The physical limitations of the reconstruction process must also be considered when determining a timeline for restitution. Even if the rebuilding process is fully funded, an estimated cost of more than \$250 billion, more than one-fifth of all housing in the country must be rebuilt. The country's public infrastructure has fared similarly poorly: more than thirty percent of schools are damaged beyond use, and more than half of health facilities are non-operational.²³³ Though there is no clear indication of how long the reconstruction process would take, it is clear that the process would be lengthy; recent reports suggest that it would take upwards of six years to fully remove the debris from cities such as Aleppo, which would preclude completion of reconstruction.²³⁴ Even if an individual's property claim is adjudicated successfully and the property remains in sufficient physical shape so as to allow occupancy, it is important to consider accessible resources in the area as well; a lack of functioning schools, health facilities, or opportunities to buy groceries and other necessary household goods in a neighborhood would impede the ability to reside at a property.

Balancing Efficiency and Fairness

To ensure an orderly resolution of property disputes that facilitates country-wide stability, an expedient start up, adjudication, and enforcement process is important. However, Syria's restitution program must simultaneously prioritize fairness. A program which overlooks the rights of individuals in order to resolve property disputes quickly will compromise safe and sustainable returns.²³⁵ For example, many states have established arbitrary filing deadlines that risk alienating victims of dispossession who are entitled to relief. In the cases of South Africa and Sudan, many potential claimants missed filing deadlines because they were not aware that such deadlines existed.²³⁶ Principles of due process, such as reasonable notice, fair and impartial hearings, transparent decision-making, and opportunities to appeal, are time-consuming procedures, but essential to the ultimate success of the program.

Managing Public Expectations

Discrepancies between a restitution program's ambitious mandate and the realities of its subsequent implementation have often led to disappointment among claimants. Regardless of the detail and foresight in an initial peace agreement, most claims programs undergo structural changes and adjustments during their lifespans, whether the result of funding shortages, modifications after "lessons learned," or shifts in focus of activities. Iraq's property restitution program, complicated by post-war turmoil, was restructured twice in four years. As discussed above, Bosnia's program, deemed one of the most successful in history, was stalled for six years due to flagging political will and ineffectual enforcement measures. To avoid public disillusionment in case of delays or changes in the program, Syrian leaders, civil society, and the international community must work to manage expectations.²³⁷ Transparency and public outreach regarding the projected timeline and outcomes will minimize tensions that could arise if the realization of the rights under a peace agreement takes longer than victims had hoped.

International Oversight

Whether on the battlefield or through external support to fighting groups, the Syrian conflict has been riddled with both regional and international intervention. Moreover, UN efforts to end the conflict have been in vain and have sometimes empowered parties responsible for human rights abuses. Consequently, Syrian society may be fatigued with international influence and skeptical that such influence would be beneficial. Yet, international oversight

can also be a powerful post-conflict tool to aid in the implementation of a restitution program, as long as it can be detached from the external political tensions that have defined the conflict.

In Bosnia, three of the nine restitution commissioners were international representatives appointed by the President of the European Court of Human Rights.²³⁸ The international community also asserted influence to prevent domestic leaders from stalling and derailing the restitution program. Without the international community stepping in to implement an effective monitoring and enforcement mechanism, experts projected that restitution would have taken up to forty years.²³⁹ In contrast, the absence of international political will to enforce restitution initiatives in Guatemala heavily politicized the program, ultimately disenfranchising displaced persons.²⁴⁰

Particularly in countries with significant ethnic, sectarian, or political divisions, international oversight has helped depoliticize and expedite restitution. In certain circumstances, civilians may accept and trust the neutrality of international experts over domestic representatives, particularly in post-conflict environments like Syria where restitution can help secure the country's fragile peace. International influencers can also play a useful role as scapegoat when domestic agencies must implement unpopular or difficult aspects of the restitution program.²⁴¹ As in Bosnia, UN coordination may be the least contentious option so that the program is not connected with any single foreign power. The impartiality of international actors is just as important as with domestic actors. International expertise and oversight predicated on skill and integrity can help ensure progress and create a more neutral environment of trust and security.²⁴²

Institutional Reform

Attempts to consolidate peace in a post-conflict context can be rendered meaningless without strengthening confidence in domestic institutions.²⁴³ Therefore, additional efforts must be taken to destigmatize institutions, from the parliament to the courts, so they are no longer regarded as tools for corruption, repression, and political factionalism. A key component of reform is reexamining laws; however, in the context of immovable property, international best practices for legal reform have no direct relevance. No international standards exist for property administration or laws. Human rights treaties do not tackle the issue of property rights, except to mention the principle of non-discrimination on the basis of property and the prohibition of arbitrary deprivation of property.²⁴⁴

Largely due to the impact of Cold War-era debates, property has generally been conceived as a wholly domestic concern with cultural and political legacies that are beyond the realm of international intrusion.²⁴⁵ For countries with a history of communism or socialism, property reform is often equated with agrarian reorganization, redistribution, and nationalization of privately owned and operated land. For countries with a history of capitalism, privatization and inalienable individual rights to accumulate, alter, and dispose of land have been emphasized. With the rise of the regulatory state and concerns about environmental degradation, many countries have adopted a balanced approach between private property rights and government regulations. Thus, there is no one-size-fits-all model, and this paper does not aim to dictate the specific direction which Syria should take – it is a matter for democratically elected legislators and the Syrian public to decide.

Although reforms should be rooted in a country's history, past injustices, and cultural attitudes towards property, there are several principles that can and should be addressed in the drafting and implementation of laws in Syria that will impact property administration. This list is not exhaustive, but includes the following principles:

1. Limits on the state's power to directly or indirectly expropriate land with requirements that dispossession not be arbitrary, that adequate notice be given, and that compensation be based on a transparent and fair assessment of market value;
2. The elimination or redrafting of vague laws that allow for arbitrary implementation;
3. Reform of the security sector, and removal of the security sector from property administration;
4. The inclusion of principles of non-discrimination within the laws and their implementation;

5. Reform of the judicial sector to be independent, fair, and efficient in its adjudication of civil disputes;
6. Adherence to principles of accountability and transparency in the public sector, including housing authorities and municipal officials;
7. Adoption of anti-corruption laws and training to investigate and prosecute corruption offenses;
8. A balanced approach towards the respective rights of landlords and tenants.

For legal and institutional reform to succeed, the relevant domestic actors must pinpoint the gaps in existing legal and institutional frameworks down to their root causes and potential obstacles. This, in turn, helps to prioritize key legislation, the efficient management of scarce resources, and methods by which to advance institutional performance, integrity, transparency, accountability, and fair treatment of members of vulnerable groups.²⁴⁶ The process of reviewing, revising, amending, and abolishing laws will take significant time and resources and should happen in tandem with other transitional justice priorities. It should generally be accepted that reforms will take years with a precarious beginning and no perfect endpoint – as in all democratic countries, laws are gradually amended and institutions reformed as lessons are learned, technology advances, and the needs of society evolve.

Conclusion and Recommendations

Any legal practitioner who has worked in the property law field in their domestic jurisdiction understands the inherent complexity of property adjudication. In a post-conflict setting, these complexities are heightened. This paper has been an attempt to describe the considerations and obstacles to implementing such a program in Syria, while emphasizing the importance of doing so despite the challenges. Already, the Syrian government has realized the importance of property rights and reconstruction in areas affected by conflict, but its model for addressing these issues, including through the passage of Law 10, has many intrinsic flaws, including the lack of proper due process or buy-in from displaced communities, which has caused widespread criticism in Syria and abroad.

While a restitution program will be important for long-term peace and stability, it must be seen as part of a larger transitional justice process. The international community's desire to end and reverse the refugee crisis should not lead to a disproportionate allocation of resources and political attention on property rights. Otherwise, the result will be a hierarchy of victimization, whereby property victims are given precedence over victims of torture or sexual violence and the families of the disappeared. If it seems that victims of property loss have a greater right to compensation, Syrians will be left with the impression that property is valued more than their lives, which is not an appropriate tone to set at the start of a long path towards stability. A mechanism with sufficient resources that includes reparations for other categories of victims should be considered alongside a restitution program.

Moreover, as stated throughout the report, restitution should go hand-in-hand with reconstruction efforts. Europe has already vowed that its reconstruction funds will be contingent upon a credible political transition in Syria, but the release of the funds should also be based upon the achievement of benchmarks for justice programs, including property restitution, to ensure that the funds are not used to marginalize victims and the displaced or to assemble control by the post-conflict government.

As such, SJAC proposes several concluding recommendations to Syria, the UN Special Envoy, and foreign governments based on the information in this report:

Recommendations to Syria:

1. Syria must halt further government action with regard to private property, including laws and expropriation decrees, until the country has reached a level of stability that allows for the fair, transparent, and orderly adjudication of property disputes.
2. The Syrian government and its allies must abstain from further indiscriminate attacks and targeting of civilian areas to avoid subsequent damage and destruction of civilian property.
3. Syrian negotiators must acknowledge the need for a holistic transitional justice process in Syria that includes redress for property loss.
4. Within the peace agreement, Syrian negotiators must include a detailed framework for addressing property loss throughout Syria that includes individuals' right to freely return to their homes of origin, without discrimination, and the state's obligation to aid in the return of refugees and displaced persons and facilitate property restitution or fair compensation by other means when restitution is not possible.
5. Without undue delays, the post-conflict Syrian government must thereafter revoke any legislation or policies that hinder an individual's right to return and pass supplementary legislation that enables the formation of a property restitution commission that has the mandate and power to adjudicate property disputes and determine appropriate redress to individual victims.
6. Syria must appoint appropriate authorities responsible for enforcement of the commission's decisions.
7. Although the temporal scope of the commission will likely start in March 2011, the post-conflict Syrian government should reevaluate property laws that existed prior to 2011 and make adjustments to the laws and their implementation of the laws.

Recommendations to the UN Special Envoy:

1. The UN Special Envoy must appoint an expert to his team that can help advise upon and guide negotiations on a detailed property restitution framework.
2. The Special Envoy must emphasize the importance of a resolution to property disputes during the talks, including special protections for women, children, and the elderly, to encourage parties to enter into good faith negotiations.
3. The Special Envoy must shore up support among the state sponsors of the Geneva track negotiations for the property restitution framework in order to integrate international monitoring and incentive mechanisms into the peace agreement.
4. Throughout the talks, but particularly when discussing restitution and other justice programs, the Envoy must meaningfully consult with civil society, victims, and displaced communities so that a final agreement reflects the needs and grievances of society.
5. The Special Envoy must emphasize and clearly delineate the rights of victims and obligations of a future transitional government with regard to restitution, and to the extent possible, encourage the parties to agree upon a detailed and unambiguous framework.

Recommendations to Governments:

1. Governments should pressure the Special Envoy and the negotiating parties to prioritize a feasible, comprehensive plan for property restitution as a component of the peace agreement.
2. Governments should require the funds they put forth for reconstruction of housing and infrastructure to be conditional upon compliance with property restitution agreements and the UN Human Rights Council's Guiding Principles for Business and Human Rights, specifically Principle 7 on supporting business respect for human rights in conflict-affected areas. To this end, governments should take steps to ensure that such reconstruction financing does not compound existing human rights and property rights violations.
3. Even if they financially or politically support a restitution program, governments should not put undue pressure on their refugee populations to utilize the program for returns, thereby making their returns involuntary. The option for compensation should be made available in addition to return and restitution.
4. The desire of governments to support a restitution program that facilitates the voluntary return of refugees to Syria should not overshadow other justice mechanisms, including reparations to victims of gross human rights violations, such as torture and sexual violence.
5. Governments should be willing to participate in and/or support international monitoring mechanisms of a restitution program and agree to such participation in a peace agreement. Despite the need for international monitoring, Syrians should lead and have an active role in implementing the program so as to ensure local buy-in and Syrian-led justice processes.
6. Countries hosting large numbers of refugees should allow a restitution commission to establish regional offices in their jurisdictions to conduct outreach and collect claims.

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- ¹⁴⁴ Rim El Gantri & Karim El Mufti, *Not without Dignity: Views of Syrian Refugees in Lebanon on Displacement, Conditions of Return, and Coexistence*, INT'L CTR. FOR TRANSITIONAL JUSTICE (2017), www.ictj.org/sites/default/files/ICTJ_Report_Syria_NotWithoutDignity.pdf.
- ¹⁴⁵ The organizations included the Office of the High Representative (OHR), United Nations High Commissioner for Refugees (UNHCR), Organization for Security and Co-operation in Europe (OSCE), and the United Nations Mission in Bosnia and Herzegovina (UNMiBH). Charles B. Philpott, *From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina*, 18 INTERNATIONAL JOURNAL OF REFUGEE LAW 43 (2006).
- ¹⁴⁶ *Id.*, Philpott, at 42-56.
- ¹⁴⁷ Rudiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, 9 MAX PLANCK YEAR BOOK OF UNITED NATIONS LAW 649-696 (2005), http://www.mpil.de/files/pdf2/mpunyb_wolfrum_9_649_696.pdf.
- ¹⁴⁸ *Property Restitution and Compensation: Practices and Experiences of Claims Programmes*, INT'L ORG. FOR MIGRATION 14 (2008), http://publications.iom.int/system/files/pdf/property_restitution_compensation.pdf [hereinafter *Property Restitution and Compensation*].
- ¹⁴⁹ Article XI, Annex 7.
- ¹⁵⁰ *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 10-11; *Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice*, at 507.
- ¹⁵¹ Sharmala Naidoo et al., *Mine Action and Land Rights in South Sudan: Key Findings and Recommendations*, GENEVA CTR. FOR HUMANITARIAN DEMINING/NORWEGIAN REFUGEE COUNCIL 12 (2013), <https://www.nrc.no/globalassets/pdf/reports/mine-action-and-land-rights-in-south-sudan.pdf> (last visited Jun. 22, 2018).
- ¹⁵² *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 9.
- ¹⁵³ S. AFR. CONST., Act 200 of 1993.
- ¹⁵⁴ Restitution of Land Rights Act 22 of 17 Nov. 1994 (S. Afr.), <http://www.justice.gov.za/lcc/docs/1994-022.pdf> (last visited Jul. 16, 2018).
- ¹⁵⁵ *Property Restitution and Compensation*, at 52.
- ¹⁵⁶ Restitution of Land Rights Act 22 of 17 Nov. 1994 (S. Afr.), <http://www.justice.gov.za/lcc/docs/1994-022.pdf> (last visited Jul. 16, 2018).
- ¹⁵⁷ *Property Restitution and Compensation*, at 44.
- ¹⁵⁸ Office of the High Representative (OHR), United Nations High Commissioner for Refugees (UNHCR), Organisation for Security and Cooperation in Europe (OSCE), United Nations Mission in Bosnia and Herzegovina (UNMIBH) & Commission for Real Property Claims (CRPC), Property Law Implementation Plan (PLIP) Inter-Agency Framework Document at 11-12 (2000), http://www.ohr.int/?ohr_archive=plip-inter-agency-framework-document&print=pdf (last visited Jul. 16, 2018).
- ¹⁵⁹ *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 43.
- ¹⁶⁰ The CRPC Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees contains the “rules and regulations” the Commission adopted in pursuance of Article XV of Annex 7 of the DPA. According to its first article, the book “regulates the conditions and decision making on claims for the return of real property of displaced persons and refugees and other persons with a legal interest in order to confirm rights to real property which is not in their possession.” Commission for Real Property Claims of Displaced Persons and Refugees, Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees, at art. 1 (Mar. 4, 1999), <http://www.refworld.org/docid/3ae6b57c4.html> (last visited Nov. 13, 2017) [hereinafter CPRD Book of Regulations].
- ¹⁶¹ Annex 7.
- ¹⁶² For instance, while Article I of Annex 7 to the General Framework Agreement For Peace In Bosnia and Herzegovina declared that “All refugees and displaced persons have the right to have restored to them property of which they were deprived in the course of hostilities (...)”, further clarification was required in the relevant domestic legislation to ensure that any individual who had left their property

- during the conflict could be considered a refugee or displaced person. *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 9-10.
- ¹⁶³ Lynn Hastings, *Implementation of the Property Legislation in Bosnia Herzegovina*, 37 STANFORD J. INT'L L. 221, 242 (2001).
- ¹⁶⁴ CPRD Book of Regulations.
- ¹⁶⁵ See Pinheiro Principles, at Principles 13.6, 16; *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at 9.
- ¹⁶⁶ This was the criterion used in proceedings before the CRPC, which meant “natural persons with a legal interest in the claimed real property” were authorized to submit a claim. These natural persons were defined as those people “in a family or civil law relationship with the person who was the right holder to the claimed properties.” The types and degrees of family relationship that were eligible as well as the evidence required to establish these ties were later specified in a special instruction. CPRD Book of Regulations, at art. 10(c), 13.
- ¹⁶⁷ This was one of the main developments in the South African restitution project. Due to the inter-generational nature and sheer scale of the discriminatory dispossession that had occurred in South Africa, eligibility to file a claim was extended to collectivities, such as tribes, as well as direct descendants of the dispossessed. *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at 26; Restitution of Land Rights Act 22 of 17 Nov. 1994, art. 2(1)(c)-2(1)(d) (S. Afr.), <http://www.justice.gov.za/lcc/docs/1994-022.pdf> (last visited Jul. 16, 2018).
- ¹⁶⁸ For instance, Article 5 of the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (Bosnia and Herzegovina) allowed the owner of the property to authorize another person to submit a claim. Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens, at art. 5 (July 17, 1999), http://www.ohr.int/?ohr_archive=law-on-the-cessation-of-the-application-of-the-law-on-temporary-abandoned-real-property-owned-by-citizens-6; CPRD Book of Regulations, at art. 14.
- ¹⁶⁹ The peace agreement should indicate the authorities responsible for such verification and provide the legal basis for their mandate. In the case of CRPC proceedings, these authorities included “(...) diplomatic/consular offices of Bosnia and Herzegovina, or (...) the authorized bodies of the countries where a claimant has temporary or permanent residence.” CPRD Book of Regulations, at art. 15-16.
- ¹⁷⁰ *Property Restitution and Compensation*, at 103-105.
- ¹⁷¹ Statute of the Commission for the Resolution of Real Property Disputes, Order No. (2) of the year 2006, at art. 4 (Jan. 9, 2006), <http://www.refworld.org/pdfid/5b3e23484.pdf> [hereinafter Statute of the Commission for the Resolution of Real Property Disputes].
- ¹⁷² *Property Restitution and Compensation*, at 110; The GFLCP was established by the International Organization for Migration (IOM) on behalf of the German Foundation “Remembrance, Responsibility and Future” that had been created by the German government in 2000 to provide reparations to former slave and forced laborers of the Third Reich. R. Bank, *The New Programs for Payments to Victims of National Socialist Injustice*, 44 GERMAN YEARBOOK OF INTERNATIONAL LAW 307 (2001).
- ¹⁷³ Law on the Creation of A Foundation “Remembrance, Responsibility, and Future,” August 2, 2000, Federal Law Gazette I 1797 at art. 13(1) (Ger.) [hereinafter German Foundation Act]. Both the German Forced Labour Compensation Programme and its property equivalent allowed for heirs to submit claims, but their terms of eligibility differed. The main difference between the two programs existed in the cut-off date, which meant heirs could only file a claim if the victim had died on or after 16 February 1999. This cut-off date did not exist for property restitution claims. In terms of eligibility, both programs required the claimant to fulfill three formal requirements: 1) Notification of the International Organization for Migration (IOM) of the death of the victim within six months from the date of death; 2) Provide evidence, such as a death certificate, that the victim was deceased; 3) Provide evidence of the heir’s relationship to the victim, which included decisions of national authorities. *Id.*, Bank, at 111-13.
- ¹⁷⁴ The CRPC for instance provided such forms to claimants. *Id.*, German Foundation Act, at Article 9; Similarly, Chapter IV of the CRRPD Statute tasked the Commission with the creation of a claim form and further stipulated its mandated use.
- ¹⁷⁵ *Property Restitution and Compensation*, at 237.
- ¹⁷⁶ Note that the CRPC Book of Regulations also allowed a claimant to submit a claim without any evidence “because it is not available to him.” CPRD Book of Regulations, at art. 17-18.
- ¹⁷⁷ CPRD Book of Regulations, at art. 26.
- ¹⁷⁸ Lynn Hastings, *Implementation of the Property Legislation*

- in *Bosnia Herzegovina*, 37 STAN. J. INT'L L. 221, 231 (2001).
- ¹⁷⁹ CPRD Book of Regulations, at art. 7; Example on awareness might include South Africa, where a significant number of people were not even aware a restitution progress was taking place. Ruth Hall, *Land Restitution in South Africa: Rights, Development, and the Restrained State*, CANADIAN J. OF AFR. STUD. 654, 657 (2004).
- ¹⁸⁰ Peter Van der Auweraert, *Policy Challenges for Property Restitution in Transition – Iraq*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 467 (Carla Ferstman, Mariana Goetz, & Alen Stephens eds., 2009).
- ¹⁸¹ *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at 4.
- ¹⁸² Heike Niebergall, *Overcoming Evidentiary Weaknesses in Reparation Claims Programmes*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 148-153 (Carla Ferstman, Mariana Goetz & Alan Stephens, eds., 2009) [hereinafter *Overcoming Evidentiary Weaknesses in Reparation Claims Programmes*].
- ¹⁸³ German Foundation Act, at Section 18(3).
- ¹⁸⁴ Book of Regulations, at art. 33-41.
- ¹⁸⁵ Mojtaba Kazazi, *An Overview of Evidence before the United Nations Compensation Commission*, 1 INT'L L.F. D. INT'L 219 (1999).
- ¹⁸⁶ S.C. Res. 687, at ¶ 18-19 (Apr. 8, 1991); S.C. Res. 692 (May 20, 1991).
- ¹⁸⁷ U.N. Security Council, Report of the Secretary-General pursuant to paragraph 19 of Security Council Resolution 687 (1991), ¶ 20, U.N. Doc. S/22559 (May 2, 1991).
- ¹⁸⁸ *Overcoming Evidentiary Weaknesses in Reparation Claims Programmes*, at 156-159.
- ¹⁸⁹ German Foundation Act, at Section 11(2).
- ¹⁹⁰ German Foundation Act, at Section 160.
- ¹⁹¹ *Property Restitution and Compensation*, at 181-218; *Overcoming Evidentiary Weaknesses in Reparation Claims Programmes*, at 161-165.
- ¹⁹² *No Return to Homs: A case study on demographic engineering in Syria*, THE SYRIA INSTITUTE 44-46 (2017), syriainstitute.org/wp-content/uploads/2017/02/PAX_REPORT_Homs_FINAL_web_single_page.pdf (last visited Jun. 25, 2018).
- ¹⁹³ *Return and Resettlement as a Result of Ethnic Cleansing in Post-Conflict Former Yugoslavia*, in POPULATION RESETTLEMENT IN INTERNATIONAL CONFLICTS: A COMPARATIVE STUDY 85 (Arie Marcelo Kacowicz & Pawel Lutomski eds., 2007).
- ¹⁹⁴ *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at 17.
- ¹⁹⁵ *ILAC Rule of Law Assessment Report: Syria 2017*, at 150.
- ¹⁹⁶ *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at 9.
- ¹⁹⁷ According to a World Bank report in July 2017, seven percent of Syrian housing stock has been completely destroyed and 20 percent has been partially damaged. *The Toll of War: The Economic and Social Consequences of the Conflict in Syria*, WORLD BANK GROUP 17 (Jul. 10, 2017), <https://openknowledge.worldbank.org/bitstream/handle/10986/27541/The%20Toll%20of%20War.pdf>.
- ¹⁹⁸ In April 2018, the UN reported that 5.6 million Syrians have registered as refugees, with another 6.6 million estimated to be internally displaced. Syrian Emergency, UNHCR (Apr. 19, 2018), <http://www.unhcr.org/en-us/syria-emergency.html> (last visited Nov. 15, 2018).
- ¹⁹⁹ Pinheiro Principles, at 6, 14.
- ²⁰⁰ *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 14.
- ²⁰¹ Hungary and East Germany both utilized large-scale land redistribution after World War II in accordance with communist principles, confiscating sizeable land holdings from privileged social groups to be reallocated to the peasantry, Deborah S. Cornelius, HUNGARY IN WORLD WAR II: CAUGHT IN THE CAULDRON 388 (2011); Rainer Frank, *Privatization in Eastern Germany: A Comparative Study*, 27 VANDER. J. OF TRANSNAT'L L. 809, 813-14 (1994).
- ²⁰² Nigel Swain, *Getting Land in Central Europe*, in AFTER SOCIALISM: LAND REFORM AND SOCIAL CHANGE IN EASTERN EUROPE 214 (Ray Abrahams ed., 1996).
- ²⁰³ Post-apartheid South Africa used a politically contentious land redistribution program to influence the overall proportion of black landownership. *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at Executive Summary.
- ²⁰⁴ *Property Restitution and Compensation*, at 91.

- 205 *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at Executive Summary.
- 206 *Property Restitution and Compensation*, at 117-121.
- 207 For instance, the claims procedure of the UNCC only allowed for the correction of “computational, clerical, typographical or other errors” in its decisions. U.N. Security Council, *Decision taken by the Governing Council of the United Nations Compensation Commission at the 27th meeting, Sixth session held on 26 June 1992* (1992), at art. 41(1), U.N. Doc. S/AC.26/1992/10 (Jun. 26, 1992).
- 208 Section 19 of the German Foundation Act entrusted partner organizations to create appeals organs that are “independent and subject to no outside instruction.” Following this provision, the IOM Appeals Body was created to undertake a full and independent review of first instance decisions, according to the rule of *non-reformatio in peius* (which prohibits modifying the first instance decision in such a way as to make it less favorable to the claimant). Every claimant who received a first instance decision had the right to appeal. *Property Restitution and Compensation*, at 137-141.
- 209 Book of Regulations, at art. 62(e); *Property Restitution and Compensation*, at 121-124.
- 210 Book of Regulations, at art. 74.
- 211 Book of Regulations, at art. 82, art. 74.
- 212 After the violent conflict between Kosovo Albanian militant groups and Serbian government security forces in 1998 (as well as intervention from NATO forces in the following year), the United Nations Interim Administration Mission in Kosovo (UNMIK) was established to maintain peace and stability in the region. Following Security Council Resolution 1244 of 10 June 1999, the Special Representative of the Secretary General in Kosovo was given authority to establish institutions responsible for the restitution of property in the affected territory. Regulation 1999/23 of 15 November 1999 subsequently established the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC). S.C. Res. 1244 (Jun. 10, 1999); Regulation No. 1999/23 (On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission), U.N. Doc. UNMIK/REG/1999/23 (Nov. 15 1999), <http://www.unmikonline.org/regulations/1999/reg23-99.htm>; *Property Restitution and Compensation*, at 17-20.
- 213 Regulation No. 2000/60 (On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission), at art. 14.1, U.N. Doc. UNMIK/REG/2000/60 (Oct. 31, 2000), <https://pca-cpa.org/wp-content/uploads/sites/175/2016/01/UNMIK-Regulation-2000-60.pdf>.
- 214 *Property Restitution and Compensation*, at 120.
- 215 Megan J. Ballard, *Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations*, 28 BERKELEY JOURNAL OF INTERNATIONAL LAW 478 (2010).
- 216 Statute of the Commission for the Resolution of Real Property Disputes, at art. 24(I); *Property Restitution and Compensation*, at 57.
- 217 Statute of the Commission for the Resolution of Real Property Disputes, at art. 3(I), 4.
- 218 *Property Restitution and Compensation*, at 57.
- 219 Annex 7, at art. 8.
- 220 *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 12-13.
- 221 Lynn Hastings, *Implementation of the Property Legislation in Bosnia Herzegovina*, 37 STANFORD J. INT’L L. 221 (2001).
- 222 Law of 1999 on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees of 28 October 1999 (Bosn. & Herz.), <http://www.ohr.int/?p=67542>.
- 223 Peter Van der Auweraert, *Policy Challenges for Property Restitution in Transition – Iraq*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 478-479 (Carla Ferstman, Mariana Goetz, & Alen Stephens eds., 2009).
- 224 *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 12-13.
- 225 *Property Restitution and the Rule of Law in Peacebuilding*, at 11.
- 226 *Property Restitution and Compensation*, at 122-128.
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- ²³⁴ *The Toll of War: The Economic and Social Consequences of the Conflict in Syria*, THE WORLD BANK GROUP 27 (2017), <http://www.worldbank.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria> (last visited Jun. 28, 2018).
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- ²³⁶ See Ruth Hall, *Land Restitution in South Africa: Rights, Development, and the Restrained State*, CANADIAN J. OF AFR. STUD. 654, 657 (2004) (stating claimants in South Africa were initially slow to lodge their claims, leading to concern that many were unaware of the process. The “Stake your Claim” campaign then successfully informed a large number of people of their right to claim); Sibrino Barnaba Forojalla & Kennedy Crispo Galla, *Land Tenure Issues in Southern Sudan: Key Findings and Recommendations for Southern Sudan Land Policy*, USAID A12 (2010), http://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Southern_Sudan_Findings_and_Recommendations.pdf (last visited Jun. 25, 2018).
- ²³⁷ *Property Restitution and Compensation*, at 14-41.
- ²³⁸ The Commission for Displaced Persons and Refugees, later named the Commission for Real Property Claims (CRPC), was established by Chapter II Article VII of the Dayton Peace Accords to receive and decide claims for real property in Bosnia. See *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 11; *Property Restitution and Compensation*, at 44.
- ²³⁹ Rhodri C. Williams, *Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice*, NYU J. OF INT’L L. & POL. 441, 443 (2005); *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 4-5.
- ²⁴⁰ *Property Restitution and the Rule of Law in Peacebuilding*, at 17; *The Right to Housing and Property Restitution in Bosnia and Herzegovina*, at 17; *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, at 17.
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