

A Short Guide to Dealing with Property Rights Violations in Syria



Syrians for Truth and Justice (STJ) prepared this guide under the Beyti (My Home) Project, which documents property rights violations across Syria

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“Nothing is Left of My Home Except the Keys!”

Sa'doun Salman, one of the people forcibly displaced during
Operation “Peace Spring” in Ras al-Ayn/Serê Kaniyê area

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Introduction

Property rights remain an essential subject of discussion because they influence the lives of both individuals and groups, affecting all their modes of existence, including their social, cultural, political, and economy-related experiences.

Seen beyond the financial benefit they entail, property rights are the core foundations of individual and collective identities within human societies, underlying the concepts of individual freedom and independence.

Property rights also define notions as home or land, as well as the rights to own or return to a home or land. These rights thus are deeply associated with the concepts of homeland and political identity.

Notably, the right to property ownership has a direct impact on the other rights individuals are entitled to, as well as their ability to enjoy these rights. Therefore, denying individuals access to ownership arbitrarily would negatively, and as directly, hamper their access to remaining rights. Consequently, arbitrary deprivation of property rights is considered a violation in various national and international laws and customs. It is even considered a war crime within the context of armed conflicts, and becomes a crime against humanity when perpetrated against civilians in an extensive and systemic way in times of peace or war.

About STJ

Syrians for Truth and Justice (STJ) started as an idea in a co-founder's mind while attending the U.S. Middle-East Partnership Initiative's (MEPI) Leaders for Democracy Fellowship program (LDF) in 2015. The idea became a reality and flourished into an independent, non-profit, impartial, non-governmental human rights organization.

STJ's beginnings were more than humble; initially, it only reported stories of Syrians who experienced arbitrary arrest, enforced disappearance, or torture. Planted in fertile soil, the seed of this project grew into an established human rights organization licensed in the Middle East and the European Union. STJ today undertakes to detect and uncover violations of all types committed in all Syrian parts by the various parties to the conflict.

Convinced that Syria's diversity is a wealth, our researchers and volunteers serve with unflinching dedication to monitor, expose, and document human rights violations that continue unabated in Syria since 2011, regardless of the affiliation of the victims or perpetrators.

About Beyti

Beyti is one of STJ's core projects. It responds to the expanding geographical scope of property rights violations, which are perpetrated across Syria, and answers the need to invest additional and focused efforts in the documentation of the various patterns of violations targeting the property of Syrian citizens.

Beyti sheds light on the concept of property rights, and the local and international legal texts governing these rights. With this, it aims to provide Syrians with a referential frame and a tool to obtain vital information that would help them document related violations and protect their properties.

The project will complement the findings of partner organizations active in the same context. Additionally, it will work to bridge existing gaps by addressing both areas that have been subjected to systematic violations, and the different types of property violations, which have not yet been approached.

Through a dedicated platform, the project seeks to mainstream the knowledge about property rights in a simplified manner, using for this purpose videos and posters. Most importantly, the project will provide a mechanism through which Syrians can document property rights violations they suffered from.

Purpose of this Guide

This short guide first introduces the concept of property rights, providing a general and simplified definition.

Next, the guide puts the concept within its legal frames, which both define and regulate property rights locally and internationally, reviewing related international and regional treaties. The guide also sheds light on operative Syrian laws applicable to the subject matter.

Because there are diverse forms and patterns of property rights violations, multiple potential perpetrators, and various legal frames, the guide narrows down its scope of coverage by inscribing examples of practices labeled as property right violations under different legal bodies. However, the incorporated examples are uncomprehensive, limited to recurring activities which resonate closely with the Syrian context. In other words, the selected examples demonstrate potential forms of property violations, describe some of their common patterns in times of peace in general, elaborate on the divergent legal characters they take in the particular cases of international and non-international armed conflicts, and highlight the legal framework applied in cases of foreign occupation, as is the current situation in some Syrian territories.

Building from these ideas, the guide lists recommendations and measures that individuals, concerned organizations, and local initiatives can follow to protect and preserve property rights.

Additionally, the guide redefines some of the common property rights-related terms and concepts, and explains their exact legal implications to put the recommendations and measures in perspective for the victims, spare them misinterpretation of terminology, help them better document the violations, and guide them towards proper legal measures to protect or recover their rights in the future.

I. Definition of Property Rights

Broadly, property rights can be defined as constructs in economics, which determine the mechanisms of owning and the ways to use or dispose of an object, a commodity, or a resource.

Under local regulatory laws, property rights may give the owner the right and freedom to possess and use the thing or resource, the right to benefit from it, as well as the right to transfer, sell or assign it to individuals or other parties within the framework permissible by law.

II. Property Rights in International and Regional Laws

After two World Wars, and mid-way into the 21st century, there was a desire to relocate human rights, including property-related rights, from their narrow domestic frameworks to broader international ones. Human rights were being newly perceived as part of international law by way of several international human rights treaties, rather than as the internal affairs of States.

The majority of the assessed international and regional instruments, especially those concerned with human rights, underscore the vitality of property rights. These treaties approached the right of individuals to property ownership from different angles. However, they all had a common highlight, stressing that property rights are part and parcel of human rights. Thus, these treaties oblige States and local authorities not to violate or restrict arbitrarily any of these rights, and instead respect and protect them in a manner that guarantees that individuals effectively enjoy their property.

For instance, Article 17 of the [Universal Declaration of Human Rights](#), states that “Everyone has the right to own property alone as well as in association with others,” adding that “No one shall be arbitrarily deprived of his property.”

Also applied universally, Article 5 of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) obliges signatory States to “eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of” the rights to “own property” and to “inheritance”.

For its part, the [Convention on the Elimination of All Forms of Discrimination against Women](#) stresses gender equality in the legal capacity in Article 15, which states that women shall have “equal rights to conclude contracts and to administer property”.

In Article 16, the Convention also obliges States Parties to take all appropriate measures to ensure the equality of men and women, guaranteeing “The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property”.

Equally keen on property rights is [the Guiding Principles on Internal Displacement adopted at the fifty-fourth session of the Commission on Human Rights in 1998](#). The principles stress that the property and possessions of internally displaced persons (IDPs) shall in all circumstances be protected, in particular, against the acts of pillage; direct or indiscriminate attacks, or other acts of violence; being used to shield military operations or objectives; being made the object of reprisal; being destroyed or appropriated as a form of collective punishment.

The Guiding Principles also stress that the “property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”

Regionally, the [European Convention on Human Rights](#) dedicates Article 1 of Protocol No. 1 to ownership rights. The article states that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions.”

Similarly, Article 21 of the [American Convention on Human Rights](#) prescribes that “Everyone has the right to the use and enjoyment of his property”, emphasizing that “No one shall be

deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”

The same guarantees echo in the [African Charter on Human and Peoples' Rights \(Banjul Charter\)](#). In Article 14, the Charter stipulates that “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

Keeping this spirit, the [Arab Charter on Human Rights of 2004](#) includes Article 31, which states that “Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.”

Notably, the character of property rights provides some margins that can be manipulated and used to strip owners of their entitlements under the pretexts of public interest. Unlike fundamental and absolute rights and freedoms, which cannot be overridden or suspended under any circumstances, such as the right of an individual to a fair trial or not to be subjected to torture, property rights fall under limited rights and freedoms, which can be restricted in special cases that are permitted by the law. In this context, States may have the right to apply and enforce their own domestic laws, which in some cases warrant imposing restrictions on the property, or even depriving individuals of their property should public interest prescribe so.

However, the exceptional cases are conditioned, because restriction or deprivation has to be implemented only against fair compensation, or for the purposes of collecting unpaid taxes, or enforcing legal penalties.

Understanding property-related exceptions and the conditions regulating them is essential because even though property rights or the freedom to enjoy them are not absolute, States or authorities should not arbitrarily deprive any individual of his/her property and the right to enjoy it. Importantly, individuals must recognize that deprivation or restriction must be in accordance with a clear legal text, and in a manner that adheres to principles of the rule of law and non-discrimination, whether on the basis of race, sex, political opinion, or any other consideration.



III. Property Rights in the Syrian Law

Property rights are established in the successive Syrian constitutions and other operative legal codes, including civil ones. These texts all highlight the sanctity of the right to ownership, promise to preserve it, and prohibit any violations of it unless they are backed by the law.

The 2012 Constitution, which is a semi-copy of the 1973 Constitution, addresses the various dimensions of property rights. Article 15 provides that:

“Collective and individual private ownership shall be protected in accordance with the following basis:

- 1- General confiscation of funds shall be prohibited;
 - a. Private ownership shall not be removed except in the public interest by a decree and against fair compensation according to the law;
 - b. Confiscation of private property shall not be imposed without a final court ruling;
 - c. Private property may be confiscated for necessities of war and disasters by a law and against fair compensation;
- 2- Compensation shall be equivalent to the real value of the property.”

Both legal justification and compensation are also underscored by Article 771 of the Syrian Civil Code promulgated by Legislative Decree No. 84 of 1949. The article bans deprivation of property, except in the cases determined by the law and against fair compensation.

However, these texts largely remain ineffective on the ground. Over the past decades, successive Syrian regimes have passed laws that warrant the confiscation of private property, or pave the path for imposing restrictions on owners’ entitlements to these properties. These laws include but are not limited to:

- The Agrarian Reform Law No. 161 of 1958
- The Expropriation Law No. 20 of 1983
- The Urban Planning Law No. 9 of 1974
- Law No. 41 of 2004, and amendments, which regulate ownership in border areas
- The Real Estate Development and Investment Law No. 15 of 2008
- The Urban Planning and Urbanization Law No. 23 of 2015
- The Law No. 10 of 2018.

In the future, legal professionals might challenge the unconstitutionality of the aforementioned laws before the Supreme Constitutional Court, when it is independent and free from the domination of the executive authority represented by the head of State.

It is in the capacity of the Supreme Constitutional Court to repeal these unfair laws, which explicitly violate the Syrian constitution and the human right to property.

IV. Patterns of Property Rights Violations

Patterns of property rights violations, and their legal character, vary depending on multiple factors, including the circumstances underlying the violations, as well as the many potential perpetrators involved in the acts of abuse.

On the one hand, violations might be individual practices, whereby they are not linked to one another, or are not committed under a systematic or deliberate policy. Violations of this kind happen due to security chaos and the inefficacy, or altogether absence, of institutions run by the ruling authorities.

On the other, violations might be of large-scale or systematic, targeting specific groups of the civilian population and their properties for different purposes.

In addition to the type, perpetrators, scale of, and planning invested, other factors influence the patterns of property rights violations, notably the legal frames, international or local, applied to these violations. Such frames vary depending on the circumstances under which the violations were committed. Some frames are applicable during peace, and others are enforced during armed conflicts, both international and non-international.

Even though property rights violations, as acts and as repercussions, might have similar patterns in the situations of peace and armed conflict, these situational contexts entail essential differences in relation to the categorization of certain acts as violations.

In Peacetime

There are many ways in which the State, local authorities, or even some individuals in their personal or public capacity can violate the property rights of other individuals or groups. These violations might be a blatant breach of the law or disguised and systematized under the cover of the law.

Certainly, local laws, used for coverage, do not per se justify, nor do they necessarily warrant the justification or the legalization of violations, especially since some local legislations are inherently illegal, particularly laws that are discriminatory, unfair, and incompatible with the general principles of the rule of law or with the basic human rights and freedoms. Such laws operate against local constitutions or international human rights laws.

In the modern history of Syria, Agrarian Reform Law No. 161 of 1958 remains a key example of the government's manipulation of legal frames as a cover for violations. The law dates back to the period of the Syria-Egypt Unity. It regulates agricultural ownership in Syria, the distribution of land to farmers and the poor, and the seizure of lands that exceed the top ownership limit it defines.

Notably, when the law was enforced, the grand ownership (feudal) system was in trend across the region, being effective since the reign of the Ottoman Empire at least. Under this system, vast properties were concentrated in the hands of a few people, such as notables, clan heads,

and princes, who enjoyed wide influence within those regions or fiefs. Up to 1947, this system applied to over 52% of the total agricultural area in the Jazira region (al-Hasakah province).¹

Even though the owners were ethnically diverse, the reform law in al-Hasakah had a political nature. It systematically and specifically targeted the properties of the Kurds, who make up the majority of the region's population.

After large pieces of land were seized from Kurdish owners, the plots were distributed to members of some of the Arab tribes in the neighboring regions or to Arabs who the government brought from other Syrian areas and resettled in the region. Besides the unfair land confiscations, the law also changed the demographic map of the region.²

Within the context of unfair ownership legal frames, it is necessary to also address Law No. 41 of 2004 and its amendments, which continued the series of property rights violations heralded by the reform law.

Law No. 41 regulates ownership in border areas, imposing major restrictions on sale/purchase transactions involving property in these areas. The law mandates that the buyer obtains security approval from government-affiliated security services unless the property (a piece of land) is located or built within the Plot Plan of the town. This applied to all towns within al-Hasakah province, which was entirely labeled as a border area.

Therefore, the law paved the path for depriving Kurds of their properties on another pretext. It was impossible for Kurdish citizens to obtain the required security approval. Lack of access to the approval hampered subsequent legal proceedings. To corroborate the sale/purchase transaction contracting parties had to obtain a court ruling. However, access to the court ruling was insufficient. Without the security approval attached to the ruling document, the contracting parties would not be able to execute the ruling and transfer the property ownership.

In 2008, the Syrian government issued Decree 49 amending Law 41. The amendments prohibited buying and selling operations in border areas, whether the property is inside or outside the zoning scheme, built or not. They even prevented filing registration lawsuits related to those properties, unless contracted parties obtained the required security approvals.

These prohibitions almost completely paralyzed the buying, selling, and construction operations in the region. Along with the drought that hit the area, affecting the residents' livelihoods mainly based on farming, the decree prompted tens of thousands of locals, Kurds and Arabs, to relocate to big cities, especially the capital Damascus and the city of Aleppo.

In 2011, following the anti-regime protests, the Syrian government issued Decree 43, lifting the security approval condition that governed property transactions in areas within the zoning schemes.

Notably, the two discussed laws and relevant decrees all constituted a serious violation of the principle of the rule of law, as well as the principle of separation of powers, and blatant

¹ Habib, Alexander. *Economic Progress in Syria* (in Arabic). Damascus, 1947: p. 36.

² For further information, see: "Deprivation of Existence: The Use of Disguised Legalization as a Policy to Seize Property by Successive Governments of Syria", STJ, 9 October 2020 (Last visited: 17 September 2022). <https://stj-sy.org/en/deprivation-of-existence-the-use-of-disguised-legalization-as-a-policy-to-seize-property-by-successive-governments-of-syria/>

interference in the work of the judiciary, which is purportedly guaranteed the independence of its operations.

In 2012, the SG issued Legislative Decree No. 66. The decree framed plans for the construction of “two zoned areas” as part of the master urban plan of Damascus city. The zoning was justified by the aim of “developing informal and squatter settlements” in accordance with the prepared detailed urban planning studies. The zoning is aimed at the areas southeast Mazzeh and south the al-Mutahlaq al-Janoubi (Southern Highway).³

The decree framed the intended zoning plans with a set of regulations that differed from the relative and applicable zoning provisions of the Syrian Law, established in Law No. 9 of 1974. The law facilitated free confiscations of a third of the total area allotted for the construction of public structures. Additionally, in case the confiscations stretched to half of the designated area, the law if concerned administrative entities pay compensation for the excesses. The compensation was to be defined according to the terms of the applied confiscation law.

The decree was likely enforced to enable the SG to confiscate the largest number possible of *maqasims* (sections of land and areas on which construction work has been done or will be done) and warrant the Damascus Provincial Council (PDC) to invest in the annexed areas “for free”, without clear confiscation criteria, top confiscation ceiling, or censorship. Consequently, the SG could confiscate the citizens’ property without providing fair compensation or alternative housing.

The discussed laws, and other decrees issued after the Syrian revolution, exhibit the authorities’ ability to enact local laws that warrant countless property rights violations even though they seemingly observe all procedural laws regulating the formal process of legislation. While formally intact, such laws remain practically politicized and thus are designed to be merely legal covers, under which systemic and large-scale violations are committed. Other laws might not be politicized by design. However, they still might be rendered potential frames of violation. Such potentials arise from the unfair and discriminatory application of their provisions.⁴

In times of peace, various patterns and forms of property rights violations might be committed, including:

- The arbitrary confiscation or expropriation of private property.
- The expropriation of private property outside the law and without fair compensation.
- The seizure of property without any legal reason.
- The failure to provide or facilitate the issuance of ownership documents.
- The failure to provide effective solutions, whether administrative, executive or judicial, to protect or redress individuals or groups whose property rights have been violated.
- Depriving individuals of inheritance rights or obstructing inheritance-related legal or administrative procedures.

³ For more details about post-2011 decrees and laws, which target civilian property, particularly those located in areas labeled as “anti-SG” because they incubated non-governmental armed groups, refer to STJ’s website: <https://stj-sy.org/en/?s=HLP>

⁴ “Syria: Qaboun and Harasta Zoning Decree No. 237 Hails New Series of Property Confiscations near Damascus”, STJ, 1 November 2021 (Last visited: 17 September 2022). <https://stj-sy.org/en/syria-qaboun-and-harasta-zoning-decree-no-237-hails-new-series-of-property-confiscations-near-damascus/>

- Denying individuals access or facilitations to obtain death certificates or documents necessary for inheritance procedures.
- Denying individuals or groups the right to effectively run or follow up on administrative transactions related to their property or their right to enjoy it in an unfair and discriminatory manner.

In Wartime

Even though the majority of the types of property rights violations, as both acts and as repercussions, are largely the same during peace and war times, peace and war as situational contexts pose some essential categorization differences in terms of labeling certain acts as violations. The categorization issue arises from the different legal frames applicable to each context. For instance, targeting and destroying a structure is a blatant violation in peacetime. However, the same acts might not necessarily be considered violations during an armed conflict if the military interest so requires and the conditions set out in international humanitarian law (IHL) applicable in armed conflict are fulfilled.

Even in the context of an armed conflict, various information or elements play into the decision as to which legal frame to enforce. The frame is dependent on the nature of the conflict, whether it is international or non-international. This in turn influences the legal categorization of a violation and determines the type of responsibility attributed to the perpetrators, whether it is a State responsibility or an individual criminal responsibility. In this case, a key starting point would be identifying the classification of the ongoing armed conflict under IHL.

The precise categorization of an act as a violation, and the determination of its exact legal character, is a subtle process that involves the identification of a variety of interconnected elements and information. The elements, including the nature of the armed conflict, the identities of the parties in the conflict, the identity of the party that committed the act, and the circumstances in which the act was committed, are all essential to accurately labeling an act as a violation within the framework of the applicable law. This categorization affects the type of responsibility the perpetrator assumes, for example whether the violation is found to be a war crime raises the issue of whether there should be State or individual criminal responsibility.

Under Foreign Occupation

Violations of civilian property rights remain among the most common practices committed in north and northeastern Syria, which are occupied by Turkey and armed groups operating under its control.

Under the Geneva Convention (IV) of 1949, civilians in north and northeastern Syria fall within the scope of protected groups in occupied territories. Therefore, the violations perpetrated against them constitute clear breaches of the IHL, and, in most cases, grave breaches of all Geneva Conventions, and, thus, are war crimes.

Article 49 of the Geneva Convention (IV) obliges the occupying power to ensure the security and safety of civilians in the occupied territories, while⁵ Article 147 considers grave violations of all Geneva Conventions the “unlawful deportation or transfer or unlawful confinement of a protected person” or the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”⁶ Additionally, Article 146 of the Convention attributes the responsibility of these violations to the State and stipulates effective penal sanctions.⁷

For its part, the Statute of the International Criminal Court (Rome Convention of 1998) addresses the arbitrary destruction and seizure of civilian property in Article 8(2)(b)(xiii). The article classifies these acts as war crimes.⁸

In a similar vein, Rule 50 of customary IHL affirms the ban on such acts, which is binding to all States, groups and individuals during international as well as non-international armed conflicts.⁹

Approaching another type of property rights violations, Article 33 of the Geneva Convention (IV) of 1949 establishes that pillage is a violation of IHL. The article prohibits pillage, as well as reprisals against persons and their property, protected under the Convention.

This categorical prohibition of pillage is also hinged on Articles 28 and 47 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex.¹⁰

Pillage and reprisals are also established as war crimes in Article 6 (b) of The Charter of the International Military Tribunal,¹¹ and Article. 8 (2)(b)(xvi) of the Rome Statute of 1988.¹²

Rule 52 of the customary IHL underscores the ban on pillage and looting.¹³ The rule is binding to all States, groups and individuals in international as well as non-international armed conflicts.

Dedicated to IDPs property rights, Article 46 of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex states that “Family honour and rights, the lives of

⁵ The Geneva Convention (IV) of 1949, Art. 49.

⁶ Ibid., Art. 147.

⁷ Ibid., Art. 146.

⁸ The Rome Statute of 1988, Art. 8 (2)(b)(xiii).

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

⁹ ICRC, Customary IHL Database, Rule 50.

https://ihl-databases.icrc.org/customary-ihl/ara/docs/v1_rul_rule50

¹⁰ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Art. 28 and 47.

[https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788)

[databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788)

¹¹ Charter of the International Military Tribunal (Nuremberg), Art. 6 (b).

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf

¹² The Rome Statute of 1988, Art. 8 (2)(b)(xvi).

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

¹³ ICRC, Customary IHL Database, Rule 52.

https://ihl-databases.icrc.org/customary-ihl/ara/docs/v1_rul_rule52

persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.”¹⁴

Respect for the IDPs' property rights has been similarly recognized by Rule 133 of customary IHL, which is binding to all states, groups and individuals during international as well as non-international armed conflicts.¹⁵

Notably, the property rights of IDPs, who are forced to flee their original places of residence due to conflicts, have recently become the focus of international attention. IDPs' property rights are closely related to and have a great impact on the affected persons' enjoyment of the majority of other human rights, which most of the existing international treaties seek to protect and guarantee.

IDPs property rights were at the heart of issues raised and discussed in the context of armed conflicts and peace processes in the former Yugoslavia, Afghanistan, Colombia, Cyprus, Georgia and Mozambique, which mostly affirmed that property rights are fundamental, must be respected, and violation against them condemned.¹⁶

The recent attention ascribed to property rights can also be traced in the Guiding Principles on Internal Displacement, which stress that “property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”¹⁷

Importantly, the protection of the property rights of victims of armed conflicts and wars, including refugees and IDPs, is one of the key foundations for ensuring their right to safe and voluntary return to their homes or original places of residence. The right to return is established in Rule 132 of customary IHL.¹⁸

The right to return is also addressed in Article 49 of the Geneva Convention (IV), Article 13(2) of the Universal Declaration of Human Rights,¹⁹ and Article 12(4) of the 1966 International Covenant on Civil and Political Rights.²⁰

This stress on the right to return and on the necessity to ensure it as a basic human right, specifically in the contexts of war and armed conflict, derives its importance from the impact returns have on setting into motion and contributing to the success of sustainable peace and

¹⁴ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Art. 28 and 47.

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788>

¹⁵ ICRC, Customary IHL Database, Rule 133.

https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133

¹⁶ Ibid.

¹⁷ Guiding Principles on Internal Displacement, Principle 21(3).

<https://www.unhcr.org/43ce1cff2.pdf>

¹⁸ ICRC, Customary IHL Database, Rule 132.

https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule132

¹⁹ Universal Declaration of Human Rights, Art. 13 (2).

<https://www.un.org/en/universal-declaration-human-rights/>

²⁰ International Covenant on Civil and Political Rights of 1966, Art. 12 (4).

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

transitional justice processes. The effect of hampered returns on these processes is evident in the case of the Palestinian people.

While violations inherently have dire impacts on affected persons, the consequences of pillage, destruction of property, as well as other arbitrary practices have a direct effect on the victims, including forced displacement, particularly in the occupied territories. Displacement is a violation of IHL under Article 49 of the Geneva Convention (IV).²¹

Additionally, the displacement of civilians, by an occupying power, is considered a war crime under Article 6(b) of the Charter of the International Military Tribunal (Nuremberg),²² as well as Article 8(2)(b) (viii) of the Rome Statute.²³

It is worth noting that the recurrence of violation patterns and their methodology also influence their categorization as international crimes. When certain violations are committed against civilians systematically or at a large scale, they then are brought under the category of crimes against humanity as Article 6 (c) of the Charter of the International Military Tribunal (Nuremberg),²⁴ and Article 7 of the 1998 Rome Statute entail²⁵.

Targeted violations, aiming at ethnic or religious groups, are another factor that plays into the categorization of a violation. When abuses are perpetrated against some, but not other communities, within the occupied territories, the acts are classified as a violation of IHL, under Article 27 of the Geneva Convention (IV).²⁶ The article stresses that “all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.”

Targeted violations also breach the provisions of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.²⁷

In addition to this intricate pattern of violations and categorization, which focuses on acts exacted directly on civilians and their properties, other violations stem from the occupying powers' failure to adhere to their obligations. An occupying power is legally bound to respect all its international contractual and customary obligations, not only those applicable to armed conflicts, but also all treaties of international human rights law, which remain in force and applicable in all situations, including armed conflicts—even though these treaties are deeply

²¹ The Fourth Geneva Convention of 1949, Art. 49.

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

²² Charter of the International Military Tribunal (Nuremberg), Art. 6 (b).

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf

²³ The Rome statute of 1988, Art. 8 (2)(b)(viii).

<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

²⁴ Charter of the International Military Tribunal (Nuremberg), Art. 6 (c).

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf

²⁵ The Rome statute of 1998, Art. 7.

<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

²⁶ The Fourth Geneva Convention of 1949, Art. 27.

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

²⁷ International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

associated with peacetimes, as well as beyond its borders, particularly in relation to the treatment of civilians or their property, who are under its *de facto* authority.

By virtue of these obligations, the occupying country is directly responsible for all the aforementioned violations and crimes that occur within its areas of control. Consequently, it must put an end to these practices and crimes committed against civilians, protected persons, and their property in the occupied territories.

In addition, the occupying power, as a High Contracting Party, according to Article 146 of the Geneva Convention (IV), is obligated to “search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”²⁸ It must also assume its full responsibilities in protecting civilians and their property, respecting their dignity and rights, including the rights to individual property and to return to their homes and restore their property. Additionally, it must compensate civilians for all violations committed against them by its forces or militia members affiliated with it in the territories it occupies.

²⁸ The Fourth Geneva Convention of 1949, Art. 146.

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

V. How to Protect Property Rights?

In this section, we provide property rights protection measures, which Syrian owners can refer to regardless of their locations or the military group in control of their locations. Notably, these measures take into account the intersectional nature of violations committed in various Syrian areas, whereby several factors simultaneously facilitate or enforce the denial of local owners of their property rights. Such factors include displacement and/or the presence of an occupying power in the target area, as well as property confiscation and seizure..

Protection measures are based on the status of the target property:

- a. **The property is physically and legally intact**— it has not been destroyed, confiscated, usurped, or illegally seized by any party in the conflict.

Owners must protect and preserve ownership documents they have, make copies of these documents, and keep them with people they trust. They must also immediately address any legal gaps in these documents and refrain from being over-trusting or dependent on luck.

Such documents include permanent ownership titles (green *tapo*), real estate register extracts, court rulings, notary-initiated powers of attorney, residential compound subscription booklets, and sales-purchase contracts, among others.

Additionally, owners, when possible, must complete ownership transfer proceedings with the cadaster, the court, or the notary, resorting to the entity relevant to the property concerned. Owners are encouraged to hire lawyers to complete these proceedings to avoid any mistakes that might be difficult to manage in the future.

- b. **The property is physically affected**—it has been subjected to arbitrary and systematic destruction, whether partial or complete:

Owners must preserve and protect the prior-listed documents, as well as file an urgent application before the court to report the current state of the property and the extent of the destruction. Notably, owners should resort to the court only if this measure does not risk their lives, or the lives of others, especially in areas where the rule of law is undermined. If the owner does not reside where the property is located, being an IDP or a refugee, he/she can hire a lawyer to oversee the case filing.

This measure provides owners with an additional document, a court ruling. The ruling can be used to initiate compensation or restoration procedures.

- c. **The property was confiscated or seized** for whatever pretexts, and whether by force of arms, forgery, fraud, or in retaliation against those who oppose *de facto* authorities.

Lawful owners must preserve and protect the above-listed mentioned documents, adding to them the confiscation or seizure order, if any.

Additionally, owners must document ownership of the property with concerned local and international human rights organizations. They must keep certified copies of the above-mentioned documents with these organizations, and back them with witness testimonies and

photographs of the property if any. Owners can also use the help of experts to obtain Google map images.

Owners can use these documents in the future and submit them to the parties that will oversee real estate lawsuits.

Owners are advised against filing petitory suits with courts established in areas outside the control of the SG, because some of these courts' staffers are found to be legally ineligible and lack needed expertise.

If the property seizure was done under coercion, including forcing the owner to either give up on their property, sell them for cheap or nominal prices, or even sign sale or assignment contracts, owners can benefit from witness-based measures.

Should the owner have one or more witnesses who are able to testify to prove the case of the illegal seizure, the owner can file an urgent application with the court in the area where the witness(es) are based.²⁹ The owner can file the request under a claim called "request to hear a witness, with concerns over missing the opportunity to hear their testimony in the future" (Article 86 of the Syrian Evidence Law). There are many reasons for missing this opportunity, especially with the protracted Syrian conflict, such as fear of travel, the death, arrest, or disappearance of the witness.

The court ruling with testimony(s) constitutes a piece of strong evidence in the hands of the owner. Owners can use the ruling upon filing petitory suits in the future when circumstances permit.

For both the witness- and document-based measures, owners would not have to wait for a political agreement and transitional justice procedures.

Additionally, the listed measures can be followed by owners, who are in the country or abroad, considering that challenges would vary, based on the circumstances surrounding each case separately.

²⁹ Notably, owners can resort to witness-based measures, only when the witnesses are based in areas outside the control of the SNA militias, because it is impossible to file such lawsuits in SNA-held areas.

VI. Glossary of Property-Related Terms

Several legal terms and concepts are used to refer to property-related documents and titles, which are key pieces of evidence of ownership over land, real estate, a house, etc. These documents include the ownership title, cadastral extract, and court ruling.

Besides their role as ownership evidence, these documents can be used to confirm violations perpetrated against property and protect the rights of lawful owners, from potential violations or when already violated, as well as help them to recover their property in the future. Therefore, it is necessary to provide the precise legal definitions of these terms, against the mainstream denotations attributed to them, to ensure they are not misinterpreted and, thus, are properly used.

Owners must ensure they have the following documents, to prove their ownership rights in the future:

1. Permanent Ownership Title (Green *Tapo*)

It is an official document that proves an individual's ownership of a property. It is issued and sealed by the cadaster in cadastral areas, where boundaries are marked and registered. It includes the property's number, the name of the area where the property lies, the property's space and size, the property's description, the property's legal characterization, the name of the property owner, the property's ownership shares, and all other relevant rights and obligations.

The title also highlights all types of lien against the property, including equity encumbrance, seizure, insurance, or mortgage.

The title— made of bluish green cardboard, is considered the most powerful ownership document. Therefore, the cadaster grants the title to the property owner or to his/her legal agent exclusively. The document is granted once. If lost, the owner has access to a replacement by following the cadaster's due procedures.

The title is as important as an identity document (ID). For this reason, owners must preserve titles, whether their property was subjected to violations or not. They also must make sure to obtain replacement when originals are lost, themselves or their agents by resorting to the cadaster their property falls under.

(توثيق الكتيب بالعدل)

رقم الكتيب		الرقم	التاريخ
من شهر	في	من شهر	في
من شهر	في	من شهر	في
من شهر	في	من شهر	في
من شهر	في	من شهر	في



2. Cadastral Extract

The cadastral extract names the owner[s], and lists the property specifications, including the type of the property, whether *Mulk* (owned) or *Amiri* (state-owned), the name of the area where the property lies, space of the property, and liens against it, which are placed upon its cadastral certificate.

The extract is issued by the cadaster in the area where the property is located, and at the request of the owner/s, or people granted powers of attorney.

In its function, the extract resembles the individual civil status extract. Therefore, property owners or their agents must resort to the cadaster to obtain an extract for the property they claim ownership over.

Notably, the cadastral affairs in Afrin were relocated to Aleppo city, along with the headquarters after the Turkish military and affiliated militias controlled the region.

In addition to displaying property specifications, the extract functions as evidence of ownership in cases where owners had not yet fully registered their property with the cadaster. In this

context, the extract confirms that the person had filed a suit to establish a sales transaction involving their property or parts of it (shares).

In most scenarios, owners would resort to court to obtain a final ruling to prove their right to ownership.

3. Court Ruling

A court ruling is a document issued by the competent court in the area to which the property is affiliated. It corroborates that the plaintiff (buyer) has purchased the property or part of it (a share).

For this ruling to be an overwhelming piece of evidence, it has to be final. The status of the court decision is often indicated in writing on the back of the ruling's paper, accompanied by the official seal of the court that issued the ruling.

The ruling document contains the case number, the ruling number and date, the name of the court that issued the ruling, the names of the parties in the case, the number of the property, the area where the property is located, the documents presented over the course of the case, and the claims forwarded by the concerned parties.

Therefore, people who purchased a property and had not yet registered it by legal means must file a lawsuit, if possible, with the Civil Court of First Instance in Aleppo, which looks into real estate cases in the Afrin region with the aim of obtaining a court ruling proving ownership of the property.

In the event that there is a specific legal reason that prevents the owners from obtaining a ruling confirming the sale, owners can file a lawsuit called *Tathbit Iqrar* (Acknowledging a claim). In this case, the defendant or his/her agent appears before the court and acknowledges the validity of the plaintiff's claim "that they purchased the property and paid its full price". This acknowledgment can be used in the future to file a lawsuit to register the sale of the property.

4. Power of Attorney (POA)

The Power of Attorney (POA) is a contract whereby an agent commits to act legally in favor of a grantor. People often create special POAs with the notary to entitle an agent with the rights to act on a property on their behalf, to save time, effort, and money. Notably, a special POA can be created in hours or minutes, unlike a lawsuit which may take months or even years..

A special POA may be created in favor of the agent themselves, which is the most prevailing case in special POA to sell a property, where the agent is given the right to sell the property to themselves, or in favor of another person. In these types of POAs, the grantor may not end the POA or restrict it, therefore it is called the "irrevocable POA". In contrast, the agent may waive his/her power at any time by informing the grantor. It should be noted that what is meant by

POA, in this case, is the one that is organized by the notary who is competent in that locale and in the presence of the two parties.

However, if a special POA is created to sell a property, no encumbrance of equitable lien is placed on the certificate of the property. Consequently, the right of the agent or the third party is in jeopardy because the owner, after creating a special POA, can decide to sell the property to another in good faith. Unlike the POA agent, the new owner can file for an encumbrance of equitable lien in their favor. As a result, the POA agent will lose his/her right to claim the real property, and his/her right will be limited to an appeal of the owner to reclaim the property price, in addition to the harm resulting from what the owner did.

Therefore, individuals who have resorted to a special POA must immediately file a lawsuit to obtain a court ruling. If they cannot opt for obtaining a court ruling, they must at least preserve the POA, and must obtain a replacement from the Notary Public when it is lost.

مطبوعات صندوق التعاون
 في
 وزارة العدل
 المكتب بالعدل في

رقم التعديل: _____
 رقم التعديل: _____
 السجل: _____

(وكالة تبيع عقار)

الملك: _____
 الموقوف: _____
 رقم: _____
 مسجل بالعدل رقم: _____

تاريخ: ١٩ / ١ / ١٩٩٩

في يوم وتاريخه وذلك و بالمثل الأعلى القانوني السيد

المذنب: _____ في بيع وقراخ وتسجيل كامل

لأن نداء ورثته وتلقاه بأمره وبالمثل الذي يورثه ممن حايجه إلى حضوره وفي التملك. لأن وكالة التوفيق ذات العلاقة والإقرار بالبيع والقراخ وتعيين المثل والقبض والتصرف والإجراء وفي إجراء المعاملات اللازمة لتكديس والتوقيع عليها وفي استلام وتسليم مستندات التملك والقراخ من ابن شافع وفي الإقرار بعدم شموله. بالتقنين الإصلاحي رقم ١٦١ لعام ١٩٨٦ مع كافة تعديلاته والتوكيد على توكيد الغير بأن لا يعطى ما وقل به وفي إجراء معاملات حصر الإرث والتكفل وفي وضع الشركة التي التوقت على صحيفة العقار المبيع الشركة التي الشركة وادفع الرسوم والتأمينات واستردادها وبيع هذا المبيع بثلثه واحدة أو على ثلثها وطلب بعض البعض واستلامها وإجراء معاملات تصحيح الأوصاف والإقرار والالتصاف ووزارة الشيوخ والتمسح والتوجيه وإجراء أية معاملة قانونية أو مالية بالقضية وفقا لمضمون هذا التوكيل وعليه جرى.

الموافق في ١ / ١ / ١٩٩٩

(توثيق الكاتب بالعدل)

المرسم

المرسم
 من الشهر
 من الشهر
 في السيد
 وأبرز هذا التصديق المنظم خارج هذه الإدارة على أن في توكيله ورثه لثلاثة أطراف وتكليفه مائة ومائة ثم بحضورنا وجرى توكيله بعد استيفاء رسمه القانوني والتصديق عليه بالكتابة.

المصدق
 الكاتب بالعدل

٣٠٢٣٣٤٩

السعر خمسة عشر ليرة سورية لتصلح صندوق التعاون

5. Sales Contract

The Syrian Civil Code defines the sales contract as “a contract whereby the seller complies to transfer the ownership of something or another financial right to the buyer in return of cash price.”

What is important here is that a real property sales contract is a document whereby the property owner or their agent agree to sell the property or part of it to the buyer. It is a binding contract for both parties, where the seller is obliged to transfer the ownership of the (sold) property to the buyer, and the seller is obliged to pay the agreed-upon price. The contract is valid with the occurrence of an accord, offer, and acceptance.

Traditionally, the contract is created in writing between two parties, and is informally called an “outright sale contract”. Notably, the contract may not always be written but can be verbal. However, most contracting parties prefer written contracts because they are clearer and more secure. This contract is usually called an “outright or final selling contract”. In order to ensure his/her right to the property, the buyer has to register their ownership of the property in the cadaster, or file a lawsuit with the locally concerned court to obtain a final ruling.

Other key documents that owners should preserve and obtain replacements for when lost are residential compound subscription booklets, records issued by the temporary cadaster, or the General Establishment of Housing.

Additionally, owners, whose property is located in slums (illegal housing areas), must preserve final sales contracts, electricity and water bills, and other documents that corroborate their ownership or occupancy of the property.



About Beyti:

Beyti is one of STJ's core projects. It responds to the expanding geographical scope of property rights violations, which are perpetrated across Syria, and answers the need to invest additional and focused efforts in the documentation of the various patterns of violations targeting the property of Syrian citizens.

Beyti sheds light on the concept of property rights, and the local and international legal texts governing these rights. With this, it aims to provide Syrians with a referential frame and a tool to obtain vital information that would help them document related violations and protect their properties.

The project will complement the findings of partner organizations active in the same context. Additionally, it will work to bridge existing gaps by addressing both areas that have been subjected to systematic violations, and the different types of property violations, which have not yet been approached.

Through a dedicated platform, the project seeks to mainstream the knowledge about property rights in a simplified manner, using for this purpose videos and posters. Most importantly, the project will provide a mechanism through which Syrians can document property rights violations they suffered from.