

تحديات حقوق الإسكان والأراضي والملكية للنساء السوريات النازحات والعائدات: إطار تحليلي

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الملخص

تتعلق حقوق الإسكان والأراضي والملكية بالحصول على منزل آمن بعيداً عن الخوف من الإخلاء القسري؛ أي مكان يوفر المأوى والأمان والقدرة على تأمين سبل العيش. لقد أدى النزوح الداخلي إلى زيادة نقاط الضعف الموجودة أصلاً لدى النساء من حيث تملك الأراضي وسواها. تبحث هذه المقالة في مدى تمتع النساء السوريات النازحات والعائدات بالحقوق في الإسكان والأراضي والملكية. كما تلقي الضوء على الأساس القانوني والمعياري الذي يدعم حقوق الإسكان والأراضي والملكية للنساء، على المستويين الوطني والدولي. تشير النتائج إلى تمتع النساء السوريات النازحات والعائدات بمجموعة واسعة من حقوق الإسكان والأراضي والملكية في ظل مزيج من الأوضاع القانونية والعرفية. لا توجد أيضاً قيود قانونية على وصول المرأة إلى الأرض. رغم ذلك، لا تزال ملكية المرأة للأراضي منخفضة للغاية، حيث يمتلك الرجال الغالبية العظمى من الأراضي. توصي المقالة العمل على ثلاثة مستويات: التعامل مع السلطات ذات الصلة، والمجتمع، وصانعي السياسات. وتختتم المقالة ببيان أن حقوق الإسكان والأراضي والملكية للنساء بالغة الأهمية، وأن مرحلة إعادة الإعمار تحتاج إلى منظور جنساني لدعم تمكين المرأة.

الكلمات المفتاحية:

النازحون داخلياً، النساء، عائدة، حقوق الإسكان والأراضي والملكية، النزوح الداخلي.

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Challenges to Housing, Land and Property Rights of Syrian Displaced and Returnee Women: Analytical Framework

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Abstract

Housing, land and property (HLP) rights are about having a home, free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood. Displacement has increased the existing vulnerabilities that women face in terms of land titling and ownership. This article examines the extent to which Syrian displaced and returnee women enjoy access to housing, land, and property (HLP) rights. It also highlights the legal and normative legal basis at the national and international levels which supports women's HLP rights. found that displaced and returnee Syrian women do have a range of HLP rights under the mix of statutory and customary situations. There are no legal restrictions on women's access to land. Though, women's land ownership remains very low, with the great majority of land owned by men. The article suggests working at three levels: engaging with the relevant authorities, the community and the policy makers. It concludes by saying that women's HLP rights are very critical, and the reconstruction phase needs to have such gender perspective to support women empowerment.

Key words: Internally displaced persons, IDPs, returnee, women, Housing, Land and Property rights, HLP, internal displacement.

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Introduction:

The impact of the prolonged crisis on people, services and access during the course of 2020 has led to a 21 per cent increase in the number of Syrians in need of humanitarian assistance, from 11 million in 2020 to 13.4 million in out of 17.5 million estimated to be the total population of Syria according to the Humanitarian Needs Overview (HNO) for 2021. Internally Displaced Persons (IDPs) constitute half of all people in humanitarian need in Syria in 2021 of whom women are over than 50 per cent ⁷

The right to Housing, Land and Property (HLP) refers to the totality of possible entitlements. This means women have legal rights in, access to and control over land, housing and property. “Legal rights in land, housing and property” broadly refers to security of tenure, that is, rights to own, lease, rent, mortgage or dwell on land, housing and property and the right not to be forcibly evicted.⁸ The challenges to HLP rights that women already faced in Syria prior to 2011 have been exacerbated by the crisis. Returnee and displaced women often lack the necessary documents to claim their rights, such as death certificates or marriage contracts needed for inheritance or engaging formal procedures to claim land or property rights. This may be the result of damage or loss of official documents.

In the context of this article, "women" refers to single, married, divorced, and widowed regardless of any race, class, ability, age, etc. This paper assumes that “women’s HLP rights” must be “independent” rights, that is, “rights that are formally untied to male ownership. On the other hand, the term "land" in this article refers

7- United Nations Office for the Coordination of Humanitarian Affairs. (2021). *Needs and Response Summary*. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/syria_2021_humanitarian_needs_overview.pdf (accessed 30 May 2021).

8- Bina Agarwal. (1994). *A Field of One’s Own: Gender and Land Rights in South Asia*. Cambridge: University of Cambridge. Available at: <https://genderandsecurity.org/projects-resources/research/field-ones-own-gender-and-land-rights-south-asia> (accessed 05 June 2021).

to all land whether it is agricultural, inherited, arable, leased, occupied, unoccupied, etc. The property” refers to immovable property. The term “housing” is used as it has been defined in international human rights law and refers to a physical structure in which people can reside, as well as the attributes required in order for housing to be adequate.⁹ This article begins with the legal framework that protects women’s HLP rights at the national and international level. It then examines the challenges women face in claiming their HLP rights. The article also reflects on the legal assistance provided for women to access HLP rights. Findings indicated that while Islamic jurisprudence and the legal system in Syria provide no barriers for women to access to, use of and control over land – and housing, social norms and traditions often stand as obstacles to the legal rights when it comes to women’s HLP rights.

Objective:

The objective of this article is to enhance the awareness and understanding of the Syrian HLP rights framework and regulation from the gender perspective, and help to identify main barriers and obstacles, and prospective solutions. Women’s HLP rights are the main conditions to guarantee the economic stability and protection as durable solution in the context of recovery.

Research questions:

The main research question consists to explore to which extent returnee and displaced women are having their HLP rights from a gender perspective in Syria. The following secondary questions are derived from the main question and will help to investigate and answer it:

- How multiple legal frameworks regulate women’s rights in access to HLP rights in Syria?

9- UN Committee on Economic, Social and Cultural Rights. (1991). *General Comment No. 4 on the Right to Adequate Housing*. UN Doc. EC/12/1991/41. Available at: <https://www.un.org/ruleoflaw/files/landandpropertypostconflict.pdf> (accessed 03 June 2021).

- What are the barriers which can be identified regarding the in accessing HLP rights by Syrian?
- What are main consequences of these barriers for women's land and property rights access in Syria?
- What need to be addressed to protect women's HLP rights in post-crisis situation?
- What are the best practices to promote and sustain women's access to HLP rights that can be used in Syrian context?

Methodology:

A qualitative process of research and data analysis is adopted. The available data was collected from the credible primary and secondary sources. Desk review is conducted to provide the overview of existing resources on HLP and gender alongside with analysis of existing Syrian laws and legal procedures.

Result and discussion:

Chapter One: Legal basis for women's HLP rights:

According to the Guiding Principles on Internal Displacement, (IDPs) are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border."¹⁰

Even though women's HLP rights are protected by international instruments and national laws, the legal protection doesn't treat women equally. International legal protection of HLP rights is based on key provisions within the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the

10- The UN High Commissioner for Refugees (UNHCR). (1998). *Guiding Principles on Internal Displacement*. Available at: <https://www.refworld.org/docid/3c3da07f7.html> [accessed 03 April 2021]

Elimination of all Forms of Discrimination Against Women (CEDAW). At the national level, the Syrian authorities have constitutionally promoted gender equality, but legal realities are often very different due to social, cultural, religious, and historical factors. The analysis of the contents of the personal status law (PSL), the nationality law, and the penal code indicate imbalanced enjoyment of rights by men and women in Syria.

Section One: International legal and normative framework

1. ICCPR, ICESCR, CERD and UDHR:

Syria is a party to several international instruments that require the State to protect and promote women's rights, including HLP rights, and to penalise persons who use violence or discrimination against them. These international legal frameworks cover the International Covenant on Economic, Social and Cultural Rights (ICESCR, accessed by Syrian Arab Republic on 21 April 1969) and the International Covenant on Civil and Political Rights (ICCPR, accessed by Syrian Arab Republic on 21 April 1969). Article 3 of the ICESCR calls on States parties to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” and prohibits discrimination based on gender. Security of tenure was asserted by Article 11(1) which protects the right to adequate housing, and Article 2(2) which provides for non-discrimination. Additionally, the right to tenure security cannot be subject to any form of discrimination, further underscored by the Convention on the Elimination of Racial Discrimination (CERD, accessed by Syrian Arab Republic on 21 April 1969). This protection applies to a broad spectrum of tenure forms, including ownership, rental, informal settlements, and customary usage. Article 3 of the ICCPR guarantees equality between women and men, and Article 4 prohibits discrimination based on gender, among other “grounds of race, colour, sex, language, religion or social origin”. Article 17 also protects persons from arbitrary or unlawful interference with their

home. In addition, Articles 3 and 26 provide for non-discrimination and equal protection before the law.

The Universal Declaration of Human Rights (UDHR) also has many relevant provisions regarding gender equality and HLP rights protection, which are the basis of the ICCPR, ICESCR and CERD, but as a Declaration, it is not subject to ratification. Article 2 sets the principle of non-discrimination, including based on gender, in the enjoyment of rights guaranteed in the Declaration. Among many other rights, the Declaration recognizes the rights to property, food, housing and education. Article 25(1) also states that everyone has the right to an adequate standard of living including housing, and Article 17 provides that everyone has the right to own property without arbitrary interference.

2. CEDAW:

The Convention Against Elimination of Discrimination Against Women (CEDAW) is another important international legal instrument to promote the protection of women's rights at national level.¹¹ CEDAW calls on States parties to end discrimination against women in laws, policies and practices, including through the adoption of temporary special measures some of which concern HLP rights. For example, Article 14(2) (h) obliges states parties to eliminate discrimination against women in respect of women in rural areas to ensure they enjoy adequate housing. Articles 15 and 16 provide for gender equality and for equal rights regarding in property during and after marriage. On 28 March 2003, Syria acceded to CEDAW, but many reservations have been made referring to *sharia*.¹² The reservations made by Syrian Arab

11- On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981. Available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (accessed 20 May 2021).

There are 189 country parties to CEDAW. Available at: <https://indicators.ohchr.org/> (accessed 20 May 2021)

12- Syria made reservations to article 2; article 9(2); article 15(4); article 16(1 sub c, d, f, g); article 16(2); and article 29(1) CEDAW. " subject to reservations to article 2; article 9, paragraph

Republic exclude the application of certain CEDAW provisions, most notably those that guarantee equal rights of men and women in matters pertaining to marriage and family life.

3. The Pinheiro Principles:

The 2005 Pinheiro Principles on housing and property restitution for refugees and displaced persons are endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights.¹³ These principles are highly relevant in the context of Syria due to the large numbers of internally displaced people, most of whom are women and children. They underscore the importance to consider women and their rights in the process. The Principle 4 hones on ensuring gender equality by States in the process of management of housing, land and property restitution programmes, land policies and practices, and avoid to disadvantage or discriminate women and girls: “This provision is meant to combat gender discrimination which may occur when only male ‘heads of households’ are informally recognised as rights holders or when they are provided with formal title to housing or other property ownership rights, leaving women without legal control over what should also be treated as their property. This bias is often most visible when women are regarded as the ‘head of the household’ only if they are single or otherwise unaccompanied by a man.”¹⁴

2, concerning the grant of a woman's nationality to her children; article 15, paragraph 4, concerning freedom of movement and of residence and domicile; article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child, inasmuch as this provision is incompatible with the provisions of the Islamic Shariah; and article 29, paragraph 1, concerning arbitration between States in the event of a dispute.” See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#EndDec (accessed 01 May 2021)

13- UN Sub-Commission on the Promotion and Protection of Human Rights. (2005). *Principles on Housing and Property Restitution for Refugees and Displaced Persons*. Available at: <https://www.refworld.org/docid/41640c874.html> (accessed 20 May 2021)

14- Inter-Agency. (2007). *Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the 'Pinheiro Principles*. p.36. Available at: <https://www.refworld.org/docid/4693432c2.html> (accessed 20 May 2021)

4. Guidance Note of The Secretary-General on the UN and Land and Conflict:

On 15 March 2019 the Secretary-General endorsed the Guidance Note of the Secretary General on “The United Nations and Land and Conflict”. This note supports human-rights based and gender-sensitive approach to promote women’s rights to access, own, control and inherit land in the context of the post-conflict assistance.¹⁵

5. Guiding Principles on Internal Displacement (GPID):

The Guiding Principles on Internal Displacement (GPID) of UNCHR adopted in 1998 set out the rights and guarantees relevant to the protection of internal displaced persons (IDPs) in all phases of displacement, in the context of equal access to rights and prevention of discrimination.¹⁶ The GPID compiles human rights and humanitarian law relevant to internally displaced persons. Those principles include a statement about equal access of women to shelter and housing: “Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.”¹⁷

Section Two: National legal framework

Syria is a multi-religious country and has a mixed juridical system, which was historically developed based on French, Ottoman and Islamic Law.

1. The Syrian constitution:

Several articles of the Syrian Constitution of 2012¹⁸ confirm the religious pluralism, which is also reflected in the Personal Status

15- The Guidance Note is available at <https://unhabitat.org/node/142477> (accessed 09 May 2021)

16- While the UN Guiding Principles on Internal Displacement are not legally binding, their authority has been recognized globally, particularly as they draw from international humanitarian and human rights law.

17- Idem, Principle 7 (d), p.7 and Principle 18. p. 11.

18- Syria’s Constitution was approved by constitutional referendum on 26 February 2012, and came into effect on 27 February 2012, by order of Presidential Decree no. 94. An informal

Law regarding rights, status and position of women. First of all, the Constitution stipulates: “the state shall respect all religions and ensure the freedom to perform all the rituals that do not prejudice public order.”¹⁹ The following paragraph of the same article states: “the personal status of religious communities shall be protected and respected.”²⁰ In addition to religion and personal status, special mention is made to “the family,” with definition of “the family” in the Constitution as “the nucleus of society” and guarantee that “the law maintain its existence and strengthens its ties.”²¹

With regard to the position of women before the law and in society, the Constitution grants equality to all its citizens in article 33(3), expressed in following terms: “citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.” Furthermore, it stipulate: “[t]he state shall provide women with all opportunities enabling them to effectively and fully contribute to the political, economic, social and cultural life, and the state shall work on removing the restrictions that prevent their development and participation in building society.”²² Regarding this statement, the Article 33 of the constitution commits Syria to promote and sustain gender equality and non-discrimination. Combined with Article 15 that define the protection of private property, and Article 17, that states the maintain of the right to in accordance with the law, those legal dispositions formally provide a solid basis to insure the respect of the women’s HLP rights.

translation is available at <http://extwprlegs1.fao.org/docs/pdf/syr152123E.pdf> (accessed 20 May 2021).

19- Article 3(3) Syrian Constitution 2012.

20- Article 3(4) Syrian Constitution 2012.

21- Article 20(1) Syrian Constitution 2012.

22- Article 23 Syrian Constitution 2012.

2. Personal status law:

As mentioned above the main law that regulates family relations is the Syrian Personal Status Law (PSL).²³ It was promulgated on 17 September 1953 as Law no. 59 and amended in 1975, 2000, 2003, 2010 and most recently through two amendments in 2019: Law No. 4 on 7 February 2019 and Law No. 20 on 27 June 2019 which introduced major amendments that can be considered as more favorable to women.²⁴

Notably, main Islamic legal materials generally support women's right to acquire, hold, use, administer, and dispose of property. explains: "Muslim women—unmarried, married, divorced, or widowed—have extensive independent rights to property under Islamic law and human rights. There is explicit recognition in the Quran of women's rights to property acquired through purchase, inheritance, *mahr*, and other transactions. There are no restrictions on the property a Muslim woman can purchase out of her earnings, on the gifts she may receive from her natal family or her husband's family, or on the she may enjoy as a beneficiary of a waqf. In all these respects, she is entitled to equal treatment with male members of the family."²⁵

2.1 Inheritance:

Inheritance rights are defined in Articles 260-304 of the 2019 Syrian Law on Personal Status. A woman may inherit from her father, mother, husband or children, and under certain conditions, from other family members.²⁶ Traditionally, the application of Islamic inheritance laws would allow women to inherit half the share of their male counterparts. This applies to all forms of property except

23- The PSL consists of 308 articles, divided into six books.

24- Law 34 of 1975, Law 19 of 2000, Law 18 of 2003, Decree 76 of 2010.

25- Sait and Lim. (2006). *Land Law and Islam: Property and Human Rights in the Muslim World*, UN Habitat and Zed Books, New York, p.108.

26- For more information about calculations of inheritance shares see PSL Art.596-616.

amiri lands which is inherited in equal shares.²⁷ Moreover, *Sharia* law provides significant protections for women's inheritance rights: it provides inheritance rules, which are supposed to cover needs of women within the family of the deceased husband with their own specific shares, and support women's rights under Islamic law to access, retain and manage their own land and wealth. Women's rights in relation to inheritance under the Shari'a signified an improvement upon their pre-Islamic position and historically stood in marked contrast to the less privileged position of women in Western societies, during the last century.

2.2 Dower/ Mahr:

The stipulation of a dower (*mahr*) is a vital condition for a valid marriage in Syria. The dower is a wife's prerogative and a husband's obligation, meaning that the husband has to pay or promise to pay the wife a sum of money (art. 54 of Personal Status Law).²⁸ According to this custom, the dower is typically divided into two parts, namely a prompt and a deferred dower. The husband pays the prompt dower to the bride upon the conclusion of the marriage contract. Meanwhile, payment of the other part of the dower is deferred without a specific payment date but should be paid if the marriage contract ends by divorce or death.

2.3 Maintenance/ alimony:

This maintenance obligation includes a marital home, clothing, food and medical care. If a husband fails to provide maintenance to his wife, she can go to court and file a *nafaqa*-claim against him, forcing him to fulfil his obligations.²⁹ A particular note for the protection of married women's property was made to Article 80, which addresses the maintenance in case when a husband is unable to pay. Under Article 80 (3), if a husband becomes insolvent, the

27- The Syrian Civil Code, as carried in Legislative Decree No. 84 of 1949, defines Amiri lands as the state-owned real estate, for which there may be right of disposal.

28- Article 54 PSL No. 04 of 2019.

29- Article 71 PSL No. 04 of 2019.

wife can seek endorsement from a judge, setting a fixed rate at which she will lend money to her husband to cover the maintenance, providing that this maintenance be repaid to the wife once the husband becomes solvent again. Article 75 of PSL provides that during the waiting period (*idda*) following the death of her husband, a widow shall have the right to live in the marital home.³⁰

Chapter Two: Barriers to rights and justice for displaced women's HLP rights in Syria

The present section proposes to overview main barriers that arise regarding to women's HLP rights in actual Syrian context, especially regarding displaced women. Some of them are gender-specific, such as the denial of inheritance rights and difficulties over security of tenure faced by divorced or widowed women, as result from the discussion about provisions stipulated in national legal framework. Others are crisis-related and impact-specific, usually resulting from internally displacement situation or resettlement. Case studies documented and analysed during this research provide an evidence-based demonstration that often, these issues are multi-layered and multi-faceted.

Section One: Gender-specific challenges:

The Syrian crises have reinforced gendered social norms that were already dominant in traditional patriarchal society. Widespread ideas of men as “head of family” and as protectors of the ‘weaker’ women and children strengthen gender unequal norms. It resulted in widespread social presumptions about different status of women and men inside of family, women's subordination and create presumption, that men should control women. Gender based stereotypes resulted in assumption that men are naturally prepared

30- Following a death, repudiation or other form of divorce, a woman enters a waiting period, the general principles of which are set out in Articles 120-127 of the PSL. The waiting period – during which a woman cannot re-marry, and a repudiation can be retracted – usually lasts several months, although it can be longer in special cases.

to use violence, and it was their duty to use it on behalf of their community.

1. Registration and ownership of land under male's name:

In 2006, only 5.3% of agricultural land was owned by women, and land holdings owned by women were on average smaller than those owned by men.³¹ For example, the results of the 1994 agricultural census show that the number of landowners in Syria reached 610,000 holders, among whom the percentage of male landowners was 94.7%, while the percentage of women landowners was only 5.3%. The data provided for 2002 demonstrate similar trend: 95% male farmers and only 5% of female farmers. The rate of assets related to agricultural resources was 82.5% for men and 57.4% for women, although women's general contribution to agriculture was estimated at 40%.³²

Usually, the only male name is recorded on documentation relating to ownership of a house. This practice can have extremely negative consequences for women in case of divorce, or death of their husbands. The absence of female name on the ownership documents can compromise her rights to claim the property rights. In reality, it implies for woman to lose her home and housing rights because there is no law on the splitting of assets accumulated during marriage.³³ Upon divorce, women are awarded property according to what is written in the marriage contract. In most of cases, the marital contract didn't refer to the assets accumulated during the

31- Japan International Cooperation Agency. (2006). *Gender Profile of the Syrian Arab Republic, Damascus*. p.32. Available at https://www.jica.go.jp/activities/issues/gender/reports/ku57pq00002hdw51-att/syr_2006_en.pdf (accessed 17 May 2021)

32- Samira Soubh, (2006). *The Role of Women in Agriculture and Gender Issues in Syria*, National Center for Agricultural Policies (NAPC), Working Paper, Ministry of Agriculture and Agrarian Reform, page 24, available at: http://agriportal.gov.sy/public/dwnld-files/working_papers/ar/18_womenrole_ss_ar.pdf (accessed 17 May 2021)

33- NRC. (2017). *Displacement, housing, land and property and access to civil documentation*. p.21. Available at https://www.ecoi.net/en/file/local/1405606/1930_1503398808_final-nrc-displacement-hlp-and-civil-doc-s-syria-23-07-2017-en.pdf (accessed 19 May 2021)

marriage. Under the property rights legal system that was in place in Syria before 2011, women had comparatively weaker rights than men regarding access to HLP rights. Women's names were not registered to HLP documents related to their primary residence and as mentioned above, there were no provision in marriage contracts regarding housing, land and property accumulated during marriage. Gender unequal access to property registration as consequence of cultural and social attitudes regarding property and assets registration was also highlighted by interviewed Islamic scholar who also confirmed the absence of formal legal barriers. It means that property is rarely registered in women's names and they didn't ask for joint ownership registration including in case when property or land is bought with women's substantial financial contributions. The importance to have HLP rights recognition and the land registration of the property on women's name is an important condition to empower women.

2. Depriving women from inheritance:

Inheritance is the main way for women to own a land. As consequence, the lack of women access to land ownership, usually acquired through inheritance, as a shared part of estate "is a crucial concern because without their own resources, women remain dependent and particularly if they are in an abusive relationship under marriage, it makes it very difficult to leave." This statement is confirmed by results of a field study, which was conducted on violence against women in 2005 by the General Union for Women, the Syrian Commission for Family Affairs, the Central Bureau of Statistics and the United Nations Housing Fund. The study covered 1,891 households from urban and rural areas in fourteen provinces and indicate that 17.4% of women did not receive any legal inheritance (among which 14.7% women in urban areas and 20.2% in rural areas), and only 24% of women received

compensation for part of their inheritance.³⁴ The following strategies are the common way to deprive women of their HLP rights.

2.1 Takharuj/ Renunciation:

Takharuj is a court-endorsed procedure by which one of the heirs renounce to his/ her share of inheritance in favour of other heirs with compensation in monetary form or assets.³⁵ Customarily in Syria, women waive their inheritance rights to land in exchange for money. The process is undertaken under the court and it is regulated under the law and the specific legal procedures (formulas) provided by *shari'a*. Perhaps, in practice there are various ways both outside and inside of the court procedures when women are subjected to treats, social ostracism and prejudices that pressure them to waive inheritance rights or to accept a smaller share. Usually, if renunciation regarding women's inheritance rights was carried out by means of using coercion, deception, shyness, exploitation, or fraud this give women an opportunity and right to challenge the renunciation that was not done legally.

2.2 Donations to male heirs prior to death:

Donations to sons while the owner (mother or father) is still alive are very common in Syria. This practice is specifically used in case when parents have only daughters and they wish to avoid the inheritance going to their brothers or relatives in deprivation of their own offspring's. In such a case, registration tax of 1% will be applied to sales within family members.³⁶ Unfortunately, the land registry database did not provide sufficient indications regarding the gender of the buyer to determine the number or rate of women who

34- European Union. (2010). *Report on the analysis of the national situation - Women's human rights and gender equality - Syria* Report, "Promoting equality between women and men in the Euro-Mediterranean region". P. 48. Available at: https://docs.euromedwomen.foundation/files/ermwf-documents/5668_2.139.nationalsituationanalysis-syria.pdf (accessed 20 May 2021)

35- Article 304 (1) PSL.

36- Article 05, Law of Real-Estate Sales Tax No. 15 of 29/03/2021.

access property by this was. This kind of property or land sale to family members prior to death is widespread regarding male heirs. The commonly asserted justification consists in considering this way as a guarantee to preserve and keep the family property in hands of male heirs and preventing it from being transferred to the husbands of the female relatives. By this way, many fathers transfer their properties to their sons while still alive either by donating the property or selling.

3. Difficulties over security of tenure faced by divorced or widowed women:

The concept of shared matrimonial property does not exist in the Syrian law. This can, in practice, compromise any legal claim of women regarding the housing. This also means that women are usually unable to stay in their marital homes in case of divorce or their husband's death.

The women face higher barriers than men in claiming property especially after divorce. The fact that women's names regularly do not appear on property documents limits their rights to claim for marital property subdivision, particularly given the other related provisions of the law. Upon divorce, women are customarily awarded property according to what is written in the marriage contract, and it usually do not cover any property accumulated during the course of the marriage. Another barrier concerns the difficulty of women to claim their share in marital property in the court, as well in front of customary authorities or within the statutory court system.³⁷ This will also undermine any future HLP restitution and compensation processes. Regarding widows, the interviewed lawyers and women consider that they should have a right to remain in their marital homes after the death of their

37- Laura Cunial, Kirstie Farmer and Rachel Sider. (2018), *Preparing the Ground for Property Restitution in the Syrian Arab Republic*, Paper prepared for presentation at the "2018 World Bank Conference on Land and Poverty", the World Bank - Washington DC, March 19-23. Available at: <https://www.oicrf.org/-/preparing-the-ground-for-property-restitution-in-the-syrian-arab-republic> (accessed 25 May 2021).

spouses. However, some women specify that the situation depends also on the age of widow and presence of children born during the marriage.

During the years of Syrian crisis, different trends emerged: several women faced unclear legal situations with husbands and fathers missing for years, and without formal confirmation of death or absence. They were unable to sell or inherit property or remarry.³⁸ Many of women who lost their husbands and/or fathers during the crisis, the lack of evidentiary documents, including death certificates, constitute one of main barriers to address potential HLP claims. Most of female-headed households, including war widows, are in particular need of legal assistance to claim for inheritance, custody and other family related issues³⁹. This underscores the importance of local authorities support to ensure the issue of personal documents, especially for women who experienced internally displaced situations.

Section Two: Crisis-related and socio-economic specific challenges:

The analysis of collected data also reveal a range of practical barriers that limit Syrian women's access to land.

1. Lack of civil and property documents:

Lack of civil documentation continued to be a key concern regarding HLP rights protection. In most cases, to receive legal assistance delivered by NGOs requires that an internally displaced person present an identity card, family booklet, and a lease contract. Perhaps, many persons left their basic documentation behind them, when they were leaving their homes in emergencies, or lost it in

38- UN Human Rights Council. (2016). *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, Available at: <https://www.ohchr.org/en/hrbodies/hrc/iicisyria/pages/documentation.aspx> (accessed 30 May 2021).

39- UNOCHA. (2017). *Syria Humanitarian Response Plan*. Available at: <https://www.humanitarianresponse.info/en/operations/whole-of-syria/document/2017-syrian-arab-republic-humanitarian-response-plan> (accessed 30 May 2021).

confusion of multiple displacements, or had it confiscated or damaged. Several internally displaced women often lack the main documents requested to claim their inheritance rights before the courts, such as death certificates or marriage contracts. On the other hand, many administrative procedures are often costly and unsuccessful without paying bribes. Women forcibly displaced from formerly besieged areas are especially vulnerable. Most of them have no recognised marriage contract or birth certificates for their children, and in many cases their husbands were killed, missing or detained. For example, women who do not possess family booklets or marriage certificates are unable to address courts to claim their rights to marital property, or inheritance for her children.

2. Illiteracy and lack of awareness of HLP rights:

Low literacy level impedes women's understanding of the law and their ability to claim HLP rights, address the court or acquire land or other property. In rural areas the rate of female illiteracy rate is high because of limited access to education and low income. The burden of domestic and agricultural work leaves little time for rural women to learn to read, write and calculate. Tradition and poverty create disadvantage that reinforce gender-based inequality: regarding education the preference is usually given to boys.

2. Poverty and lengthy of judicial procedures:

The World Food Programme (WFP) reports that a record 12.4 million people- 60% of the Syrian population- are food insecure, according to the results of the nation assessment conducted in late 2020. This is by far the highest number ever recorded in Syria that can contribute further to the risks of gender-based violence and harmful practices.⁴⁰

40- World Food Program. (2021), *News release*. Available at: <https://www.wfp.org/news/twelve-million-syrians-now-grip-hunger-worn-down-conflict-and-soaring-food-prices> (accessed 27 May 2021)

To elaborate on HLP cases, the issue is also related to the complex procedures mentioned by lawyers, starting with the case that requires notifications to the heirs and take a long time, and it is a problem. The huge number of cases before the judges force them to give long deadlines that may usually bypass two months. When the notifications of the heirs are complete, there are other procedures that do not come in favor of the woman by the heirs who rely on procrastination in the case. It leads the woman to boredom and forfeit her right. At the least point the executive procedures that follow the issuance of the ruling of inheritance are very complicated, especially if the property is not cleared. Once again, this requires the woman to resort to the judiciary, to sort her share as little as possible, because the property is not divisible. In addition, the costs of the cases represent an important aspect for the woman, who are often unable to cover them, what can result in withdraw from filing the case, especially when woman considers that she win a little and need pay a lot.

The majority of displaced women cannot afford to pay costs to bring cases before the judiciary which may cost up to SP 300,000 up to 800,000 (120\$- 320\$) including the fees of lawyers. In response to this observation, the UNHCR obtained the official approval from the Syrian authorities to conduct HLP legal aid activities through implementing partners of SARC and Syria Trust for Development NGOs starting from October 2020. The UNHCR responsible staff member of the Legal Aid Support in Damascus developed participative strategies to provide free of charge legal services. Legal support and assistance are provided to the most vulnerable groups with focus on women and children. The legal services help them to register their main personal events and issue civil documentation including HLP documents before the Land Registry and courts. Legal issues concern property registration, lease agreements, damages claim, squatting and the procedures to issue alternative HLP documents. Around 300 lawyers are involved under Legal Aid program in Syrian governorates including 54 lawyers in Damascus and Rural Damascus District. The program is designed to reach beneficiaries, women and men, in local communities via

partners. During 2020, 8,883 individuals most of whom were IDPs, and returnee women attended legal awareness sessions on HLP related matters. There were also 947 related legal consultations on HLP related matters provided mainly to women in Damascus and Rural Damascus. As result of legal assistance provision and according to the Head of Syrian Arab Red Crescent (SARC) Legal Team, lawyers brought three cases on behalf of displaced women in rural Damascus in property registration and authentication issues. Lawyers also assisted in the issuance of 13 ownership documents for women during March 2021 which empowered women to claim their HLP rights, especially following their return to areas of habitual residence. Lawyers also provided free-of-charge 328 HLP/ cadastral legal services at request of displaced women who have returned back to their areas of origin late 2020 in Damascus and Rural Damascus.⁴¹

Conclusion:

The results of the analysis have implications both for policy and for research approaches to assessing how women's HLP rights are secured in the Syrian context of displacement. The article concluded that social norms and traditions stand as obstacles to women's HLP rights despite the fact that the Islamic jurisprudence and the national legal system in Syria provide no barriers for women to access to, use of and control over land. The research also found that excluding women from the benefits of property, including land and housing, is one of the most common forms of gender discrimination. According to the 4.2 Pinheiro Principle, States should ensure that HLP restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of households as an explicit component of the restitution process.⁴² This provision is designed to eliminate gender discrimination that occurs when only male heads of households are recognised as rights holders, leaving women without legal recognition of their legal property rights.

41- UNHCR. (2020). *Syria: fact Sheet*. Available at: <https://reliefweb.int/report/syrian-arab-republic/unhcr-syria-fact-sheet-september-2020> (accessed 06 June 2021).

42- Idem, Handbook on Housing and Property Restitution for Refugees and Displaced Persons: p.36.

Despite the heavy cultural constraints, post-crisis recovery offers Syria an opportunity to re-imagine the ways rural men and women share and manage natural resources and to build sustainable HLP rights. Research shows women's rights to housing, land and property are catalyst to ensure the social and economic development of local communities and increase food security. They contribute to the realization and enjoyment of a wide range of human rights such as the rights to an adequate standard of living, adequate housing, health, work and education. HLP rights increase women's empowerment and participation in decision-making within the household and in public life. It helps protect women from gender-based violence and other health risks and enables women to contribute to peace and stability in crisis-affected contexts and to the overall improvement of women's conditions.

It is recommended for the targeted humanitarian interventions to support women to overcome disadvantages in HLP and civil documentation. Failure to identify these issues and seek integrated solutions increases the long-term costs of crisis and undermines progress towards gender equity in the enjoyment of rights. The lawyers concentrated on the importance of women's awareness of obtaining death documents for their husbands after the legal period has passed. There need to be flexible arrangements without requirements of formal ownership, with the removal or tolling of statutes of limitations for initiating HLP claims.⁴³ The restitution process should also be gender-sensitive; addressing women's differing challenges vis-à-vis HLP rights and civil documentation.⁴⁴

The national authorities shall also develop and share national statistic that is disaggregated by gender, age and other factors so that humanitarian actors build their programming on a more solid basis. It is also recommended to amend all laws that may

43- Martin Clutterbuck. (2019). *Property Restitution in Post-Conflict Syria*. Forced Migration Review 57, Geneva. Available at: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria2018/clutterbuck.pdf> (accessed 01 June 2021)

44- NRC. (2017). *Reflections on Future Challenges to Housing, Land and Property Restitution for Syrian Refugees*. <https://www.nrc.no/globalassets/pdf/briefing-notes/icla/final-hlp-syrian-refugees-briefing-note-21-12-2016.pdf> (accessed 01 June 2021)

discriminate against women and girls and enact a law imposing strict sanctions on those who disinherit members of a family, particularly women, from receiving their rightful shares. An integrated policy shall also be developed to deal with both past and present HLP issues in the areas affected by the latest displacement crisis, possibly as part of a broader recovery plan for those areas. Innovative information campaign shall include women, religious leaders, and community leaders along with the national authorities and local communities.

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