



# High-level discussion on forced displacement and demographic engineering in Syria

**Wednesday 7 November 2018**

A conference report of the Geneva Academy of International Humanitarian Law and Human Rights and the International Bar Association's Human Rights Institute



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# About the International Bar Association's Human Rights Institute

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers and 190 bar associations and law societies spanning over 170 countries. The IBA's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

## About the event

In the context of the 2018 Geneva Peace Week, the IBAHRI, in partnership with the Geneva Academy, held a high-level discussion on forced displacement and demographic engineering in Syria. The discussion was moderated by Barbara McCallin, senior expert on forced displacement, housing, land and property.

This event was the first discussion on the crimes taking place in Syria within the context of demographic engineering and on the potential long-term consequences of not addressing such issues during the peace-building process.

The conference brought together representatives of more than seven state missions, various international organisations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), Office of the UN High Commissioner for Refugees (UNHCR), UN Environment Programme (UNEP) and International Committee of the Red Cross (ICRC), as well as non-governmental organisations (NGOs), practitioners and academics.

The event was recorded and the video is available on the IBAHRI's website at [www.ibanet.org/Conferences/Forced-displacement-and-demographic-engineering-in-Syria.aspx](http://www.ibanet.org/Conferences/Forced-displacement-and-demographic-engineering-in-Syria.aspx).

## About the report

This report aims to summarise the discussion and the main issues addressed.

During the first panel, the panellists focused on how demography has been altered and used as a strategy during the conflict in Syria, looking at both forced displacement and housing, land and property (HLP) rights issues. In the second part, the panellists focused on how demographic engineering should be taken into account in reconstruction efforts to avoid further violations and altering of the peace-building process.

In its conclusion, the report compiles recommendations for reconstruction efforts.

# Opening remarks

Natacha Bracq *IBAHRI Programme Lawyer*

The conference was opened by Natacha Bracq, who discussed the rationale behind this high-level discussion and why the IBAHRI has chosen to focus on demographic engineering.

The Syrian conflict has been characterised by mass displacement of civilians, the use of siege, starvation, widespread and systematic persecution of civilians, and evacuation agreements between the government and the armed opposition groups. By September 2018, an estimated 5.5 million Syrians had fled Syria to seek safety in neighbouring countries and beyond, and a further 6.5 million have been internally displaced, of which 2.98 million are in hard-to-reach and besieged areas.

Recently, further bureaucratic and legal obstacles have been put in place to impede individuals' return to the country. For example, the enactment of Law No 10 in April 2018 makes it easier for the present occupier of a dwelling legally to claim ownership of the property.

The concept of 'demographic engineering' has been used to describe these actions. For example, the UN Human Rights Council stated in July 2018 that it:

'Condemns the reported forced displacement of populations in the Syrian Arab Republic, expresses deep concern at reports of social and demographic engineering in areas throughout the Syrian Arab Republic, and calls upon all parties concerned to cease immediately all activities that cause these actions, including any activities that may amount to war crimes or crimes against humanity.'<sup>1</sup> (Resolution A/HRC/38/L20, 2 July 2018)

François Delattre, Permanent Representative of France to the UN, in a statement to the UN in New York, stated the following:

'Forced displacements are a part of a long-standing strategy of demographic engineering implemented by the regime, and aimed a) at changing the population of areas previously held by the opposition – that's very clear – and b) aimed at providing real estate opportunities to its allies and affiliates. This global strategy rests on acts that may constitute war crimes and crimes against humanity.'<sup>2</sup> (Permanent mission of France to the UN in New York press release, 'Forced Displacement in Syria and the Need for Gender Sensitive Accountability', 16 July 2018.)

There is no officially accepted definition of 'demographic engineering' and little has been written on the subject. Milica Bookman was the first to use the term in 1997 when she referred to the relationship between political and economic powers and the demographic size of an ethnic

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1 UN Human Rights Council, 38th Session 18 June–6 July 2018 'The Human Rights Situation in the Syrian Arab Republic' (2 July 2018) UN Doc A/HRC/38/L20, para 21.

2 François Delattre, Permanent Representative of France to the UN, 'Statement on Forced Displacement in Syria and the Need for Gender Sensitive Accountability' (10 July 2018) <https://onu.delegfrance.org/Forced-displacement-in-Syria-and-the-need-for-gender-sensitive-accountability> accessed 5 July 2019.

population.<sup>3</sup> Recently, Paul Morland, taking into account existing papers, described demographic engineering as ‘the deployment of demographic strategies in ethnic conflict’.<sup>4</sup>

Bracq highlighted that although demographic engineering is not a legal concept, actions and acts used to fulfil demographic strategies can lead to serious violations of international humanitarian and human rights law, such as forced displacement or persecution.

In this context, Bracq explained that the question of whether demographic engineering was used in Syria must be put forward:

‘To address the crimes committed during the armed conflict requires to take into consideration the context in which these violations have been committed. Ignoring the context will only lead to injustice and frustrations among victims.’

Newly enacted policies and laws restricting the exercise of HLP rights further indicate that the Syrian government continues to use demographic strategies to crystallise the post-war demographic make-up of the country. Future vigilance against the use of such strategies is therefore of the utmost importance to ensure further rights violations do not occur.

## International legal framework of forced displacement

**Marco Sassòli** *Director, Geneva Academy; Professor of International Law, University of Geneva*

Professor Marco Sassòli introduced the international legal framework of forced displacement. Referring to Article 17 of Additional Protocol II to the Geneva Conventions, Sassòli explained that forced displacement is prohibited during armed conflict under international law. However, as Syria is not a party to the Additional Protocol, reference should be made to customary international law.

According to Rule 129 of the ICRC ‘Study on Customary International Humanitarian Law’ (the ‘ICRC Study’):

‘Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.’<sup>5</sup>

Sassòli added that forced displacement is a war crime in non-international armed conflict, as well as a crime against humanity. He further explained that the International Criminal Tribunal for the former Yugoslavia (ICTY) was very much concerned with forced displacement. Its jurisprudence clarified that forced displacement not only occurs when individuals are forced to leave their homes, but equally when they leave voluntarily if coerced.

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3 Milica Bookman, *The Demographic Struggle for Power: The Political Economy of Demographic Engineering in the Modern World* (Frank Cass 1997).

4 Paul Morland, *Demographic Engineering: Population Strategies in Ethnic Conflict* (Routledge 2014), preface.

5 Jean-Marie Henckaerts, ‘Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict’ (2005) 87/857 *International Review of the Red Cross*, 209 [www.icrc.org/en/doc/assets/files/other/irrc\\_857\\_henckaerts.pdf](http://www.icrc.org/en/doc/assets/files/other/irrc_857_henckaerts.pdf) accessed 5 July 2019.

With regard to the right of return of displaced persons, Sassòli outlined that there is a specific rule in international customary law, Rule 132 of the ICRC Study, which states that:

‘Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.’<sup>6</sup>

When the displacement is unlawful (ie, not carried out for the security of civilians involved or for imperative military reasons), the return should also take the form of a reparation for the violation.

In his remarks, Sassòli considered the legal framework governing the property rights of displaced persons, in particular Rule 133 of the ICRC Study, and the non-binding UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, the so-called ‘Pinheiro Principles’. He explained that under these principles, refugees and displaced persons are protected from discriminatory housing, land and restitution laws, and that these laws must be transparent and consistent. If refugees or displaced persons are unlawfully or arbitrarily denied their property, they are entitled to submit a claim for restitution to an independent and impartial body.

Referring to the ICTY, Sassòli further explained that any statements or declarations related to property rights made under duress are null and void. In the case of the former Yugoslavia, this practice was denounced by resolutions adopted by the UN Security Council, the UN General Assembly and the then UN Commission on Human Rights, as well as the agreement on refugees and displaced persons annexed to the Dayton Accord.

According to the agreement, all refugees and displaced persons shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991, and to be compensated for any property that cannot be restored. Following condemnation for failure to implement this provision, the federation of Bosnia and Herzegovina, and the Republika Srpska adopted new laws safeguarding the property rights of displaced persons. The agreement on refugees and displaced persons annexed to the Dayton Accords also created an independent commission in charge of receiving and deciding any claims on real property of displaced persons and refugees.

Similar commissions were set up in Croatia and Kosovo. Sassòli explained that Croatia was criticised by the UN Security Council in 1995 for establishing a restrictive time limit for people to submit their property claims, therefore preventing individuals from so doing.

He clarified that the prohibition against enforced displacement, the right of displaced persons and refugees to claim their property back are *jus cogens* obligations in international law. From a legal point of view, no state shall recognise as lawful a situation stemming from a serious breach nor render aid or assistance to perpetuate such. In other words, states shall not assist in maintaining a situation resulting from enforced displacement.

‘The humanitarian issue, in my opinion, is more complicated than the legal issue. In my experience in Bosnia and Herzegovina, one of the biggest problems was that those who were forcibly displaced left their houses and other people, who were often equally displaced, moved in. In such circumstances, it is difficult to resend everyone to the place where they were before, and this why such a housing and property commission is useful.’

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6 *Ibid*, 210.

## Panel 1: Demographic engineering in process

### The use of housing, land and property rights as a displacement tool by the Syrian government

Barbara McCallin introduced the first panel, which focused on forced displacement, HLP issues and to what extent they amount to demographic engineering.

**Ibrahim Olabi** *Executive Director, Syrian Legal Development Programme (SLDP)*

Ibrahim Olabi discussed why it is essential to address issues related to property rights, forced displacement and reconstruction at this stage of the conflict. According to Olabi, semantics are very important in order to understand the whole picture of the conflict in Syria. Certain words have different meanings and consequently different results.

For example, the use of the term ‘humanitarian evacuation’ makes someone look like a hero in the eyes of the international community, whereas the term ‘forced displacement’ refers to criminal activities. The various actors in the conflict have understood the power of words and have been careful in selecting them. Olabi explained that phraseology such as reconciliation and peace agreements, humanitarian evacuation and forced displacement describe the same things.

Referring to HLP rights, he highlighted that the legal infrastructure in Syria, weak in the past, became even more complex after the conflict began. Olabi explained that his presentation would focus on the government due to time constraints and not because it is the only perpetrator. He further justified his choice by stating that the state has the primary responsibility to protect citizens and will be in charge of reconstructing the country.

Olabi highlighted that the Syrian government has used forced displacement as a strategy and forcibly moved not only combatants but also civilians, considered by the government as political enemies and opponents. He believes it is essential to make a distinction between combatants, civilians who have taken an active part in hostilities, and political opponents, in order to understand the concept of forced displacement.

Olabi highlighted that the Syrian government added a special clause to the evacuation agreements which stated that everyone is free to stay or leave. Recalling ICTY jurisprudence, according to which such a choice must be genuine, Olabi highlighted that it is clear in the circumstances that Syrian civilians did not have a free choice; rather, those who chose to remain were forcibly conscripted.

Olabi noted that Law No 10, adopted during the conflict, creates obstacles for Syrians forced to leave. The law imposes a 30-day deadline for a property to be registered, thus making it very difficult, if not impossible, for those abroad to reclaim property. Many European countries criticised this law as preventing refugees from returning to Syria. Many NGOs also highlighted that this law violates basic and fundamental human rights norms.

Olabi drew attention to a statement by the President of the Syrian Arab Republic in which he declared that Syria was more homogenous and that the people who were against the regime had left



the country. For Olabi, this statement shows the regime's intent and establishes the *mens rea* element of the crime of forced displacement.

Olabi concluded that with regard to demographic engineering, it is important to look at the entire picture of the conflict.

“ *The laws in Syria look great but we must ask: are they just on paper or do they actually reflect the reality on the ground?* ”

## Patterns of forced displacement in Syria

Amr Shannan *Expert on Syria*

Amr Shannan spoke about forced displacement in Syria. He explained that since the beginning of the uprising in 2011, the Syrian government used forced displacement as a tool and strategy to oppose peaceful demonstrations and the creation of a dissidents' movement, whereby Syrian citizens left their homes in order to avoid torture and arrest. He further stated that forced displacement was referred to by the regime as 'humanitarian evacuation', while the other actors in the conflict referred to it as 'civilian security'. He further argued that the Four Towns Agreement was part of the Syrian government's strategy to alter the demographic make-up of certain cities.

Shannan stated that 6.2 million Syrians were internally displaced and 5.6 million are now refugees. This amounts to half of the Syrian population. In 2017 alone, 1.3 million Syrians were displaced, with the largest number being in Syria itself.

“ *In Europe, we only see the tip of the iceberg.* ”

In reality, the humanitarian evacuation took the following forms: bombing of hospitals, use of chemical weapons, and siege and starvation of women and children. In 2015, the regime used green buses to forcibly transfer citizens – now symbolic in Syria because they played a critical role in the forced displacement of civilians.

Shannan highlighted that forced displacement is taking place in the whole country. He argued that the goal of the Syrian government is to change the economic patterns of the country, in order to 'mobilise them' in favour of the family of the President and its supporters. Shannan commented that the regime, with the help of Iran and Russia, is trying to create demographic shifts in the cities of Damascus and Homs.

## Panel 2: What's next? HLP in post-conflict Syria: risk and opportunities for peace-building

Barbara McCallin opened the second panel by explaining that the discussion would focus on how demolition, post-war reconstruction and urban renewal projects can also consolidate the displacement that has already taken place. As a result, those who wish to engage in reconstruction must exercise due diligence to avoid creating further harm.

### HLP, displacement, war economy and the reconstruction of Syria

**Emma Beals** *Independent journalist and analyst, European Institute of Peace*

Emma Beals spoke of HLP, displacement, war economy and the reconstruction of Syria. She argued that even before the conflict, a whole range of problems already existed in the country, including:

- disputed titles;
- problematic zoning and urban planning;
- lack of formal property records; and
- migration from rural to urban areas consolidated principally in informal housing settlements.

Beals highlighted that the 35 to 50 per cent of the Syrian urban population living in informal housing areas faced a greater risk of forced displacement. She explained that a plethora of inefficient government policy worsened the situation, including the adoption of hundreds of laws, widespread corruption, and the distribution and allocation of homes through patronage networks and areas of development zones in which residents lived in fear of property confiscation at any moment.

Beals stated that due to socio-economic challenges, a measurable correlation exists between opposition support and informal housing. In 2017 alone, for example, 40,000 properties, principally owned by opposition supporters, were taken and expropriated under counterterrorism laws. Further laws permit the expropriation (Law No 15) and demolition (Law No 3) of damaged properties and, as noted previously, render easier the present occupier of a dwelling to legally claim the ownership of the property (Law No 10). Beals noted that even if this latter law was abrogated, there would be no impact as properties are currently being expropriated.

Beals argued that the lack of records worsened the situation, in that when Syrian civilians left the country, they did not take their housing documentation with them or the housing documentation had been destroyed or never existed. In 2016, the government made illegal any transfers of property to areas outside government control. It became illegal to sell, buy or even rent a property in any zone that was not under the regulatory power of the government.

Beals added that individuals who received housing documents from a local council run by the opposition might face jail if they presented it to the Syrian Civil Documentation Office.

Legal and administrative requirements can easily become 'bear traps', as Beals noted. For example, if an individual decides to sell, buy or rent a property, security permission is required. Security checks

involve looking at whether there is no standing arrest warrant against him or her (noting that three million Syrians face arrest warrants) and whether the claimant has completed mandatory military service. Lack of the appropriate exit stamp on one's passport when travelling abroad could be used, for example, as a pretext to prevent property transfer.

According to Beals, 75 per cent of the Syrian population misses at least one critical piece of documentation to claim their property back. Even in cases where individuals have the appropriate documentation, they must pay taxes, as well as overdue electricity and water bills. If the individual manages to complete this stage, access to the property can always be denied by a militia due to military reasons.

Beals concluded that the situation is a high-level structural problem requiring the adoption of measures that include a significant revision of national laws.

*“ There is a massive labyrinth, huge amount of bureaucracy and risks to re-claim your property and you are not even sure if your property is still standing.*

## **Post-war reconstruction, human rights and return**

**Toby Cadman** *Barrister; Co-Founder, Guernica 37 International Justice Chambers, London*

Toby Cadman started the discussion with a series of questions:

- Considering that whole neighbourhoods in Syria have been destroyed, how can one identify what individuals will return to and where their property is?
- Who will carry out the reconstruction? and
- Who will ensure that the reconstruction is properly monitored and not further contributing to the commission of international crimes and additional forced displacement?

Cadman reiterated the announcement that reconstruction contracts will be awarded to individuals and foreign governments close to Damascus, and that it is unlikely that Syria will in future adhere to the UN Guiding Principles with respect to post-conflict reconstruction in light of its total disregard thus far. It will be difficult, he surmised, to assess how reconstruction in Syria could be done properly.

On the issue of return, Cadman highlighted the danger facing Syrians considering returning to their country in light of approximately three million outstanding arrest warrants in place. Beyond this environment, two fundamental issues must be addressed to enable return and reconstruction: accountability and institution building.

First, accountability must be at the core of any reconstruction efforts. Second, while acknowledging that infrastructure development will be a critical part of the reconstruction process, the term

‘reconstruction’ should encompass not only physical building of structures but also institution building, including those previously absent in Syria; for example, justice and trust.

On forced displacement, while it is unlikely that accountability can be sought or found in Syria, recent developments elsewhere could address this lacuna. For example, the International Criminal Court (ICC) has recently used Bangladeshi jurisdiction to address crimes committed against the Rohingya people by the Myanmar government, with the nexus being that citizens are forcibly displaced from a non-state party to a state party of the ICC (ie, from Myanmar to Bangladesh). Following this logic, Cadman highlighted that a similar argument could be made with respect to Syrian citizens being forcibly displaced to Jordan and feels that it will be difficult for the ICC to take a contrary position to that in the Rohingya case.

Finally, Cadman spoke of the role of companies and questioned to what extent they contribute to the commission of war crimes; for example, French construction company Lafarge, accused of monetarily supporting the Islamic State of Iraq and Syria (ISIS), or a French bank being prosecuted for contributing to and financing the genocide in Rwanda. He concluded that based on existing frameworks, companies can and should be held accountable, but significant oversight of corporate activities is required to establish accountability.

## **Redress mechanisms in post-conflict Syria: challenges and opportunities compared to lessons learned from other countries**

Rhodri Williams<sup>7</sup> *Senior Legal Expert, International Legal Assistance Consortium*

Much has been written on the extent of the challenges facing the hundreds of thousands of Syrians forcibly displaced from their homes and facing the prospect of permanent loss of their property rights. In this context, a central question hovering over the issue of HLP rights in Syria’s reconstruction is ‘what can be done?’ Many of the discussions during this event sought to answer this question within the tight constraints imposed by the physical devastation of Syria’s cities, the complex web of laws seemingly calculated to dispossess holders of less formalised rights, and the lack of political will to take meaningful steps that would facilitate the safe and voluntary return of the displaced.

However, this discussion approached the question of what can be done at a more abstract level, based on the best results that could be hoped for based on the international norms and comparative practice on HLP restitution that have accrued since the end of the Cold War. Rather than approaching the series of detailed technical issues that would have to be dealt with in any meaningful resolution of the Syrian HLP issues, it stepped back to look at the broad principles that would need to be reflected in such a resolution. These can be broken down into two sets of undertakings. The first is the need to recognise both the spectrum of property rights that ordinary Syrians depended on to meet their residential and livelihood needs, as well as the violations of those rights that subsequently occurred. The second is the need to provide an effective legal remedy for those violations, including both a procedural element and concrete substantive measures of restitution and compensation.

Effective remedies, including restitution-based ones, should be seen in distinction to reconstruction. While reconstruction should benefit all of society by recreating the conditions for normal life,

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<sup>7</sup> This summary has been prepared by Rhodri Williams.

restitution is a direct response to violations of rights held by individuals. Thus, while states are generally responsible for ensuring that reconstruction programmes are undertaken effectively and equitably, they are obligated, as human rights duty bearers, to ensure that remedies are provided for violations of human rights. At the same time, there is no contradiction between reconstruction and legal remedies. For instance, prioritising reconstruction or new construction of housing for communities displaced from destroyed areas can constitute a substantive legal remedy in the form of in-kind compensation, where it is properly carried out.

### *Recognition of HLP rights*

In order to determine that HLP violations have occurred, it is crucial to define the HLP rights that apply in any given setting. These rights are defined in the first instance in national law, encompassing the range of ownership, access and tenure rights individuals and communities may hold to properties they depend on for residential and livelihood needs. However, where significant *de facto* rights are not given *de jure* recognition at the national level, international law understandings can provide a crucial backstop, ensuring that the most marginalised individuals and communities are not doubly discriminated against by being left out of remedial programmes for loss of *de facto* rights not previously recognised in law.

In displacement settings, states should, in principle, recognise the continuity of all *de jure* property rights, as well as *de facto* rights to land and property necessary to meet the fundamental needs of their holders. The international law basis for recognition of this range of rights follows from the distinction between the right of property and rights to adequate housing and privacy in the home. The right of property protects holders of formal property rights regardless of how they use the property (including whether they use it to meet their own needs or not). By contrast, the rights to adequate housing and privacy in the home protect continued use of property to meet crucial residential and livelihood needs, regardless of the formal rights held by the occupants.

Restitution claims can rest on either category of right, but are generally seen as strongest when they are based on both simultaneously, for example, where claimants had recognised legal rights and depended on the claimed properties for their own needs. This means that claims to property held in full *de jure* ownership tend to be most straightforward. However, even these claims can be difficult to substantiate where documentation and property records have been destroyed, lost or manipulated. In addition, even the strongest private property rights are subject to some degree of legitimate interference by governments. In conflict settings, property can be subjected to arbitrary government confiscation, expropriation or declaration as abandoned, and allocation (temporarily or permanently) to others. Finally, private owners may feel compelled to exchange or sell their properties under wartime conditions constituting coercion – and then see their properties sold on to ostensibly good faith third-party purchasers.

Where tenancy or use rights short of ownership are recognised in law, they are usually given less protection and their continued enjoyment may be more strongly based on conditions of ongoing residence or use that cannot be fulfilled by displaced right holders. In fact, the strict application of peacetime occupancy or use requirements is frequently used to cancel the rights of the displaced and allocate them to others based on either humanitarian or patronage grounds. In other cases, such

properties may simply be spontaneously occupied. Particular issues arise in cases where local laws allow sustained occupation of such properties to result in the acquisition of legal ownership, or where such properties are in the midst of general privatisation or titling processes when displacement occurs.

Where displaced persons only held *de facto* rights to property that they considered themselves to own or legitimately occupy, particular challenges arise. In many cases, the lack of definition or protection for such rights in national law reflects patterns of discrimination, marginalisation and inequality in society. Indeed, denial of property rights protection to marginalised groups can be a source of grievance giving rise to conflict. In such situations, legal remedies will not be capable of redressing grievance if they do not extend to *de facto* as well as *de jure* property rights. These factors, as well as international recognition of human rights to housing and privacy in the home, argue for inclusion of *de jure* rights in restitution programmes where they involve homes and lands that are used by claimants to meet their own and their families' residential and subsistence needs.

Other factors that can argue in favour of inclusion of such rights include the following:

- evidence linking lack of past recognition to historical patterns of discrimination or other human rights violations;
- availability of informal evidence within communities attesting to the existence of such rights (these can range from attribution by members of the community to documentation such as sales contracts or utilities bills addressed to claimants at their former addresses);
- the lack of actively asserted conflicting claims to the land and housing in question prior to the conflict; and
- evidence of official toleration or partial recognition of the rights in question, such as the extension of public services or utilities to such areas.

A final form of recognition that is necessary for successful restitution programmes involves acknowledgment of the patterns of HLP rights violations that took place in relation to the conflict. Because restitution is a legal remedy for human rights violations involving HLP, it must be based on the establishment of the nature and scope of the violations that took place in each individual case. Here it is important to point out that some conflict-related interferences in HLP rights may not necessarily be violations, but only in cases where they did not arbitrarily extinguish the rights of claimants. Examples include:

- cases in which properties are temporarily allocated to conflict-affected civilians based on humanitarian need, subject to guarantees for the post-crisis protection of the rights of the original occupants and owners; and
- cases in which damaged buildings constituting an imminent public danger due to risk of collapse are pulled down, subject to recognition of the rights of the prior occupants and owners and intent to provide them just compensation.

Recognition of patterns of HLP violations is not only necessary to justify the provision of a remedy but also to facilitate its rapid and effective implementation. This point will be elaborated on in the next section, but it is important to emphasise here that a general recognition that HLP violations took place is unlikely to be sufficient in cases where these were systematic and widespread. Instead,

the recognition should involve (or give rise to) fact-finding and recognition of the scale and nature of HLP violations, as well as their geographical and temporal patterns.

### *Provision of an effective legal remedy*

The first step in providing a remedy for HLP violations involves ensuring fair, impartial and effective procedures for receiving and adjudicating claims. This is based on the basic human right to a remedy in cases where other more substantive rights are alleged to have been violated. This ‘right to a procedural remedy’ implies access to an impartial adjudicator with the power to enforce its decisions, including against state agents.

However, under ordinary circumstances, claimants alleging a violation of their human rights face the burden of producing all the necessary evidence both to establish the harm they suffered and to link it to actions or omissions by the responsible party. Such proceedings typically take place before national courts, which frequently entails delays and significant costs, as well as uncertainty as a result of the necessity of anticipating and contesting legal appeals by the opposing party that could see favourable judgments challenged and overturned.

Where patterns of HLP violations in the context of conflict have been identified and officially recognised, as described in the previous section, this can become the basis for expedited administrative restitution procedures, allowing claimants to bypass the delay and uncertainty of judicial proceedings. Where judicial proceedings tend to view wrongful acts as exceptional and impose high burdens on individuals claiming to be victims, administrative programmes can build on recognition of known patterns of wrongful behaviour, allowing victims to receive a remedy if they can present *prima facie* evidence that they were affected by such acts.

Beyond such moves to shift the burden of production of evidence, administrative procedures can also incorporate rules allowing alternative forms of evidence to be admitted, such as witness or community testimony, utilities bills linking claimants to a particular address, or informal or unregistered sales contracts. Acceptance of such evidence is often crucial in establishing claims based on *de facto* property rights, but can also be more broadly important for communities displaced by conflict, who may have lost access to documentation of even more formal, legally recognised rights.

While the right to a remedy was understood to focus exclusively on procedural measures, more recent international standards have shifted the focus to substantive elements of remedies as well. There has been complicated and ongoing debate around the ‘right to a substantive remedy’, but for the purpose of property restitution, it has mostly involved the trade-off between actual restitution, or the physical return of claimed properties, and compensation, or the provision of equivalent property or its value in cash.

Most standards and guidelines on substantive remedies for violations of property rights state that restitution should be provided wherever possible and that compensation should be provided where restitution is not possible. While some standards, such as the Pinheiro Principles, have taken a very strict and narrow view of the circumstances under which restitution should be deemed not possible, others have taken a more flexible approach.

While this debate has not been definitively resolved, a key principle that has emerged is the importance of seeking to respect the wishes of displaced and dispossessed communities in relation to their property. In cases where clear majorities of such communities have freely stated that they are not interested in return, restitution efforts are unlikely to be helpful. Similarly, in situations in which the displaced are trying to return, limiting remedies to compensation will be similarly counterproductive.

## Questions and answers

After each of the panellists shared his or her views, the audience was invited to ask questions.

Cadman stressed that it is worrying to use Bosnia and its peace agreement as an example of success. While it stopped the conflict, the country is still very tense. In that country, post-conflict, many citizens returned to their properties only long enough to sell them and move to areas of the country where they felt more protected with significant populations of their own ethnic groups. This is equally a risk for Syria, he warned.

In turn, Williams questioned what the position of Syria's authorities might be; that is, whether it will encourage a 'facts on the ground' scenario, or whether there will be areas where return would be permissible, potentially with incentives or property concessions to encourage sustainability. Williams posed the question of whether demographic engineering is the central aim of Damascus or simply a negotiating chip.

In response, Olabi noted that although people may return to sell their properties, in most cases this is not physically possible. For example, family members of persons arrested by security forces would not dare ask about their property for fear of being arrested themselves. As for the regime's end goal, Olabi surmised that it appears to be one of political control.

Asked if there had been any initiatives within civil society to profile displaced persons so that the most sustainable outcome might be determined, Olabi stated that civil society organisations are working on this issue, but the matter is particularly challenging given that so many areas are now destroyed and unrecognisable. Ultimately, the decision to return or not is a personal or familial one.



## Recommendations

At the end of the conference, the panellists were asked to share their final recommendations and thoughts on the topics discussed:

- Sassòli suggested the establishment of a property register, based in Geneva or Vienna (similar to that established by the UN General Assembly for Palestinian victims of the separation wall in the Occupied Palestinian Territories), where Syrians could bring claims to avoid recourse to Damascus and to government procedures unlikely to guarantee their rights in any event.
- Olabi emphasised the need to be alert to, or wary of, misinformation campaigns designed to cast doubt on what has really happened in Syria.

*“ Speak to Syrians. They are around. There are a million of them in Europe.*

- Beals highlighted that a renewed international political will is necessary to push pragmatic, holistic solutions to the forefront of the peace process.
- Cadman emphasised the need for justice and accountability to be at the core of the reconstruction process, to which a long-term and supportive approach should be taken as the greatest burden that will ultimately fall on Syrians and Syrian institutions. By contrast, the case of Bosnia, where support was withdrawn too early, serves as a cautionary tale where a quick-fix solution did not work. The cases that Damascus will have on its hands will take decades to address, and the international community must recognise that Syria needs long-term support.
- Williams opined that, in the Bosnian context, the international community spent too much time thinking about what would make people return to the country (and reconstructing white elephant infrastructure through corrupt practices) instead of facilitating Bosnians to answer that question. He insisted that the only way to understand how to make people's return sustainable is to engage with Syrians early on, ensuring that there is a reasonable dialogue between those who will engage in responsible reconstruction efforts and the Syrians who will benefit from these.

## Conclusion

McCallin concluded that many elements presented seemed to indicate an intention of the Syrian authorities to alter the country's ethnic demography through demographic engineering strategies, with HLP laws being but one tool employed by the regime.

She further highlighted that the vast reconstruction needs in Syria, considerably beyond what Iran and Russia can provide, do give other states bargaining power. Those states, however, must ensure that any future involvement does not create further harm or consolidate displacement. Further, she insisted that those involved in reconstruction should ask Syrians where they want to be involved and do a proper profiling of cities; for example, looking at the dynamics of each neighbourhood and satellite images both before and after the conflict better to understand what areas are feasible for return or not. McCallin concluded that this will be essential in understanding the dynamics of demographic engineering.





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