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SYRIA UNDER PINHEIRO: REFORMULATING SYRIAN DOMESTIC LAW FOR DECENTRALIZED RECONSTRUCTION

INTRODUCTION

Seven-year-old Ahmad was home when a bomb struck his family's house in a Syrian city called Idlib.¹ Shrapnel struck the young boy in the head, yet he survived.² His youngest brother, however, perished, and now without a home, Ahmad and the remnants of his family had no choice but to flee Syria.³ In 2015, after several weeks of outdoor journeying, Ahmad lay among thousands of other refugees on an asphalt highway leading to Röszke, Hungary.⁴

According to the United Nations High Commissioner for Refugees (UNHCR), since 2011, the Syrian conflict⁵ has generated roughly 5.4 million refugees like Ahmad.⁶ Furthermore, approximately 6.5 million people, including 2.8 million children, are

1. Magnus Wennman, *Where the Children Sleep*, UNHCR (June 2016), <http://www.unhcr.org/en-us/news/stories/2016/6/5702c1594/where-the-children-sleep.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. The Syrian conflict is a multi-sided armed struggle in Syria being waged between the government of President Bashar al-Assad, its allies, and various forces opposing the government. Lucy Rodgers et al., *Syria: The Story of the Conflict*, BBC NEWS (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>. One simplistic explanation of Syria's unrest is that it was part of the 2011 Arab Spring uprisings. *Id.* The conflict grew out of discontent with the Syrian government and mushroomed into armed conflict after democratic protests were violently suppressed by the Syrian military and intelligence services. *Id.* The war has mushroomed into a brutal proxy war that includes regional and world powers, such as the United States, Russia, Saudi Arabia, Qatar, Turkey, and Iran, as well as transnational non-state actors, such as the Islamic State of Iraq and Syria (ISIS) and the al-Qaeda-affiliated Nusra Front (currently rebranded as Jabhet Fateh al-Sham and part of Hay'at Tahrir al-Sham). *Id.*

6. SYRIAN REGIONAL REFUGEE RESPONSE INTER-AGENCY INFORMATION SHARING PORTAL, UNHCR, <http://data.unhcr.org/syrianrefugees/regional.php> (last visited Jan. 15, 2018).

internally displaced within Syria, making it the largest internally displaced population in the world.⁷

A relatively small number of return migrations to Syria have already taken place, but those numbers constitute a paltry amount compared to the total number of displaced individuals.⁸ Thus far, approximately 556,000 Syrians have reportedly returned.⁹ Of the total returnees, 93 percent—525,000 people—have returned to their own homes.¹⁰ The greatest proportion of returns have occurred in Aleppo and Hama.¹¹ Returnees' second most common mode of shelter is taking up residence in abandoned buildings, with approximately 20,000 individuals opting for this type of shelter.¹² About 1,000 returnees have returned to life in formal collective centers and camps in their hometowns.¹³

This Note operates under the assumption that reconstruction is a process that begins during war. It is imperative, then, that policymakers, negotiators, and lawmakers representing Syria's warring parties debate and negotiate existing Syrian domestic law, which appears likely to persist in some form. The more familiar these stakeholders are with the opportunities and flaws in Syrian law, the more they will be able to anticipate and accommodate the rights of displaced Syrians and Syrian refugees. Syria's Local Administrative Law, Legislative Decree Law 107, if amended to democratize the institution of the Syrian governorship, could be an effective starting point that presents decentralization as a pivotal tool to empower sustainable reconstruction efforts for refugees and displaced persons. Its incorporation, alongside with an amended version of Syria's Public-Private Partnership Law, Legislative Decree Law 5, could safeguard against abuses directed against refugees' and displaced persons' rights under the Principles on Housing and Property Restitution for Refugees and Displaced Persons ("Pinheiro Principles").

Part I of this Note will explore the extensive destruction that Syria has sustained during the ongoing conflict. It will uncover

7. UNHCR, THE UN REFUGEE AGENCY: SYRIA, <http://www.unhcr.org/sy/29-internally-displaced-people.html> (last visited Oct. 1, 2017).

8. WORLD BANK GROUP, THE TOLL OF WAR: THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE CONFLICT IN SYRIA 53 (2017).

9. *Id.*

10. *Id.*

11. There have been 332,000 returns to Aleppo and 61,000 returns to Hama. *Id.*

12. *Id.*

13. *Id.*

the immense task of reconstruction, which Syria is ill-equipped to address alone, and explore the interplay of politics that will ultimately decide the reconstruction debate.¹⁴ Part II will detail the history of Syrians' Housing, Land and Property (HLP) rights. It will also explain the causes of the rapid urbanization and proliferation of informal housing that led to mass discontent in the country. Part III will analyze the Pinheiro Principles and argue that while they provide valuable contributions to an increasing understanding of the needs of post-conflict societies, room may be allotted to tailor a more context-specific approach to remedying the rights of displaced Syrian persons and refugees. Finally, Part IV will analyze and prescribe amendments and additions to existing Syrian domestic law so that it better conforms to the end goals of the Pinheiro Principles.¹⁵ The principles of decentralization inherent in Syria's Local Administrative Law, if amended to democratize the institution of the Syrian governorship, can be wielded to reform Syria's Public-Private Partnership Law. This, in turn, would safeguard against abuses directed at refugees and displaced persons and strengthen ordinary Syrians' voices in the deliberations concerning their country's bottom-up reconstruction.

I. SYRIA'S WARTIME DESTRUCTION AND CURRENT RECONSTRUCTION INITIATIVES

The Syrian conflict has had severe repercussions on the country's housing infrastructure. In urban areas, the World Bank

14. Aron Lund, *Rebuilding Syria's Rubble as the Cannons Roar*, IRIN (Mar. 8, 2017), <https://www.irinnews.org/analysis/2017/03/08/rebuilding-syria%E2%80%99s-rubble-cannons-roar>.

15. This Note's intention is to carve out a unique solution that deserves consideration by various actors, parties, and sides in the Syrian conflict and which prioritizes salvaging rights and dignity for the Syrian people. It tries to steer clear from falling victim to what Bassam Haddad has called the "increasing gravitation toward two mutually exclusive narratives: (a) that [narrative propagated by opponents of the current Syrian government and their backers] of 'pure and consistent revolution,' and (b) that [narrative propagated by the Syrian government and its allies] of 'external conspiracy.'" Bassam Haddad, *The Debate Over Syria Has Reached a Dead End*, NATION (Oct. 18, 2016), <https://www.thenation.com/article/the-debate-over-syria-has-reached-a-dead-end/>. While "[b]oth narratives carry grains of truth," they are "encumbered by maximalist claims and fundamental blind spots that forfeit any common ground necessary for enduring cease-fires or potential transitions, as well as postwar reconciliation." *Id.*

estimates¹⁶ that a total of 316,649 housing units have been exposed to impact from war, with 78,339 residential units destroyed and 238,311 units partially damaged.¹⁷ According to the World Bank's assessments in ten Syrian cities, 27 percent of all housing has been impacted, of which 20 percent is partially damaged and 7 percent is completely destroyed.¹⁸ Further governorate-level assessments¹⁹ reveal that the housing damage across Syria's eight most impacted governorates is estimated at 649,449 partially damaged residential units and 220,826 destroyed residential units.²⁰ Almost one-third of all housing in these governorates has been impacted, with 23 percent partially damaged and 9 percent destroyed.²¹

Large-scale forced population transfers in Syria, termed "reconciliation and evacuation"²² policies, have also facilitated the displacement of Syrians and the demographic makeover of entire neighborhoods and cities.²³ For instance, in August 2016,

16. The World Bank's city-level damage assessments represent a January 2017 estimate for the following ten cities: Aleppo, Dar'a, Deir ez-Zor, Douma, Hama, Homs, Idlib, Kobane, Raqqa, and Tadmur (Palmyra). WORLD BANK GROUP, *supra* note 8, at 20. In this study, physical damage was assessed through remote-sensing techniques and verified using public information channels, such as social media analytics, local news, and other media outlets. *Id.*

17. *Id.* at 22.

18. In the World Bank's study, the physical state of each residential unit was classified according to the following three categories: (1) no damage, (2) partially damaged (less than 40 percent damage), and (3) destroyed (greater than 40 percent damage). *Id.* Aleppo, Syria's largest city, bears the largest share of the country's damaged urban housing at 64 percent, while Homs constitutes the second most housing damage at 16 percent. *Id.* The level of housing destruction varies across cities, as destroyed housing percentages range between 3 percent in cities like Dar'a and Hama and up to 10 percent in Deir ez-Zor. *Id.* at 21–22. The percentage of partially damaged housing units ranges from 2.5 percent in Hama to approximately 33 percent in Tadmur. *Id.*

19. Syria's eight most affected governorates are: Aleppo, Dar'a, Deir ez-Zor, Hama, Homs, Idlib, Rif Dimashq, and Raqqa. *Id.* at 20. To assess these governorates, the World Bank studied city-level damage and relied on the "intensity and composition of conflict in cities and corresponding governorates, as well as the baseline differences between initial stocks of infrastructure." *Id.*

20. *Id.* at 22.

21. *Id.*

22. Emma Beals, *Syria's Cruel 'Reconciliations,'* DAILY BEAST (Apr. 21, 2017), <http://www.thedailybeast.com/syrias-cruel-reconciliations>.

23. For an in-depth discussion pertaining to population transfers in Syria, particularly in the context of the April 2017 "Four Towns" agreement between the Syrian government, Hezbollah, and Iran, on one side, and opposition

more than 300 Iraqi Shi'a families moved to what were once rebel-held neighborhoods in Darayya, a suburb of Damascus, as part of a surrender deal that would allow up to 700 rebel fighters to relocate to the Idlib Province.²⁴ In April 2017, a total of 8,000 residents from the villages of Foua and Kefraya, besieged by anti-government rebels, were permitted to head towards Aleppo, while 3,000 evacuees from Zabadani, Madaya, and surrounding areas, besieged by the Syrian army, were allowed to depart towards Idlib.²⁵

Rebuilding Syria's infrastructure, homes, and businesses will be an immense task, with cost estimates ranging between \$250–\$350 billion USD.²⁶ According to Abdullah al-Dardari, the Deputy Executive Secretary of the United Nations Economic and Social Commission for Western Asia (ESCWA), in order to simply restore Syria's gross domestic product to its prewar level of \$60 billion USD, \$180 billion USD of investment would be needed.²⁷

groups Hay'at Tahrir al-Sham and Ahrar al-Sham, on the other, see Annabelle Böttcher, *Large-Scale Forced Population Transfers in Syria: Details of the Recent "Four Towns Agreement,"* SYDDANSK UNIVERSITET CENTER FOR MELLEMØSTSTUDIER (May 2017), https://www.researchgate.net/profile/Annabelle_Boettcher/publication/316809393_Large-scale_forced_population_transfers_in_Syria_details_of_the_recent_four_towns_agreement/links/59124722aca27200fe493635/Large-scale-forced-population-transfers-in-Syria-details-of-the-recent-four-towns-agreement.pdf. See also Mays Al-Shobassi, *Timeline: Syria's 13 'People Evacuation' Deals*, AL JAZEERA (May 16, 2017), <http://www.aljazeera.com/indepth/features/2017/04/timeline-syria-people-evacuation-deals-170413084313089.html> (providing overview of Syria's thirteen evacuation deals, as of May 2017); SYRIA INST., *NO RETURN TO HOMS: A CASE STUDY ON DEMOGRAPHIC ENGINEERING IN SYRIA* (2017), http://syriainstitute.org/wp-content/uploads/2017/02/PAX_REPORT_Homs_FINAL_web_single_page.pdf (exploring mechanisms and impacts of state-directed population displacement in Syria through the Homs case study).

24. Martin Chulov, *Iran Repopulates Syria with Shia Muslims to Help Tighten Regime's Control*, GUARDIAN (Jan. 13, 2017), <https://www.theguardian.com/world/2017/jan/13/irans-syria-project-pushing-population-shifts-to-increase-influence>.

25. *First Phase of Syria Evacuations Ends After Delay*, AL JAZEERA (Apr. 21, 2017), <http://www.aljazeera.com/news/2017/04/phase-syria-evacuations-ends-delay-170421144317350.html>.

26. Lund, *supra* note 14.

27. David Butter, *Salvaging Syria's Economy*, CHATHAM HOUSE 3, (Mar. 2017), <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-03-15-syria-economy-butter.pdf>. For perspective, after World War II, the United States contributed \$13 billion USD to the Marshall Plan to rebuild Europe. Perry Cammack, *The Staggering Price of Syria's*

The task will be daunting, especially considering that the Syrian state's budget for 2017 was approximately \$5 billion USD.²⁸

While the fighting in the Syrian war is not over, the Syrian government and the international community have already started to contemplate postwar reconstruction and even war-time reconstruction.²⁹ It appears that Syrian President Bashar al-Assad will, at a minimum, remain in charge of at least what has been termed "Useful Syria"—the Syrian capital of Damascus and the major cities of Aleppo, Hama, and Homs—as well as most of the population,³⁰ most of the economy, the central government bureaucracy, and Syria's seat in the United Nations General Assembly.³¹ The Geneva Talks have indicated that even Assad's enemies have shifted from the idea of a political transition to a goal of stabilization, resettlement, and reconstruction.³² Therefore, the United States, Turkey, various Western European nations, and the Arab Gulf states face a predicament regarding how to deal with Syria's government, which they view as an unrepentant and unreformed pariah, especially in the context of economic recovery and the Syrian refugee crisis that has spread beyond the Middle East into Europe.³³

Still, reconstruction can be a lucrative, money-making scheme, and even governments that once sided with the opposition rebels

Reconstruction, CARNEGIE ENDOWMENT INT'L PEACE (Feb. 11, 2016), <http://carnegieendowment.org/2016/02/11/staggering-price-of-syria-s-reconstruction-pub-62744>. This equates to \$100 billion USD today, considering inflation. *Id.*

28. Lund, *supra* note 14.

29. *Id.*; Butter, *supra* note 27.

30. While the Syrian government controls 34 percent of Syrian territory, 65.5 percent of the remaining Syrian population lives in the government-held territory. *Who's who in the Syria conflict*, AL-MONITOR (Jan. 20, 2017), <http://www.al-monitor.com/pulse/afp/2017/01/syria-conflict-players.html>.

31. See Joshua Landis, *What the Rebel Loss of Aleppo Will Mean for Syria*, SYRIA COMMENT (July 29, 2016), <http://www.joshualandis.com/blog/loss-aleppo-will-mean-syrian-opposition-landis-heras-lund-abdulhamid/>; Lund, *supra* note 14; see also Aron Lund, *How Assad's Enemies Gave Up on the Syrian Opposition*, CENTURY FOUNDATION (Oct. 17, 2017), <https://tcf.org/content/report/assads-enemies-gave-syrian-opposition/> (detailing how and why foreign support for Syrian opposition groups declined).

32. Aron Lund, *Everything You Need to Know About the Latest Syria Peace Talks*, IRIN (Feb. 21, 2017), <https://www.irinnews.org/analysis/2017/02/21/everything-you-need-know-about-latest-syria-peace-talks>.

33. Lund, *supra* note 14; SYRIAN REGIONAL REFUGEE RESPONSE INTER-AGENCY INFORMATION SHARING PORTAL, *Europe: Syrian Asylum Applications*, <http://data.unhcr.org/syrianrefugees/asylum.php> (last visited Jan. 15, 2018).

are “angling for a piece of the action.”³⁴ In February 2017, during a visit by Turkish President Recep Tayyip Erdoğan to Saudi Arabia, the chairman of the Council of Saudi Chambers of Commerce, Abdulrahman Abdullah Al Zamil, relayed to a Turkish newspaper that “the war in Syria will not last more than a year, and Turkey and Saudi Arabia will be the re-constructors of Syria.”³⁵ At the moment, it is uncertain how involved Assad’s opponents will be in the reconstruction process.³⁶

Syria’s other neighbors are also positioning themselves to profit off of Syria’s reconstruction.³⁷ For example, in Lebanon, the Tripoli Special Economic Zone is expanding the northern port of Tripoli, cited as a potential terminal in China’s trillion-dollar “Silk Road” project and located just eighteen miles from the Syrian border, to accommodate the movement of construction material to Syria.³⁸ The port manager, Ahmad Tamer, estimates a demand for 30 million tons of annual cargo capacity, of

34. Steven Heydemann, *Rules for Reconstruction in Syria*, BROOKINGS INSTITUTION (Aug. 24, 2017), <https://www.brookings.edu/blog/markaz/2017/08/24/rules-for-reconstruction-in-syria/>.

35. *Id.*

36. For instance, in his speech at the inauguration of the Damascus International Exhibition—the first international trade fair hosted in Damascus since the war started over six years ago—Assad said that Syria had “lost its best youth and its infrastructure,” but had “won a healthier and more homogeneous society,” prompting fears of ethnic cleansing for some analysts and critics. @AzmiBishara, TWITTER (Aug. 20, 2017, 4:06 AM), <https://twitter.com/AzmiBishara/status/899226148000866304>. In his speech, Assad labeled Erdoğan a “political beggar” and seemed to dismiss Turkey’s role in reconstruction. Heydemann, *supra* note 34. Assad asserted his vision as to how involved his enemies could be in the Syrian reconstruction process, stating that:

[T]here will be no security cooperation, no embassies, and no role for some countries that say they seek a solution—only after they sever their relations openly and unequivocally with terrorism. . . . We will not allow enemies and adversaries to achieve with politics what they failed to achieve with terrorism.

Id.

37. *Id.* For example, in July 2017, the Jordan Construction Contractors Association and the Ministry of Public Works sponsored and hosted “Syria Re-Build 2017,” an international reconstruction conference in Amman. *Id.*

38. *Lebanon Prepares for Syria’s Post-War Construction Windfall*, ABC NEWS (Aug. 17, 2017), <http://abcnews.go.com/amp/International/wireStory/lebanon-prepares-syrias-post-war-construction-windfall-49266750>.

which the city of Tripoli could provide 5 to 7 million annually.³⁹ According to Raya al-Hasssan, Lebanon's former finance minister who directs the Tripoli Special Economic Zone project, "Lebanon is in front of an opportunity that it needs to take seriously."⁴⁰

Unsurprisingly, the Syrian government's allies have already set ink on reconstruction contracts.⁴¹ A Russian trade delegation has set up reconstruction projects worth \$2 billion USD,⁴² and a Chinese-Arab business group has committed \$2 billion USD to build industrial parks in Syria.⁴³ More than forty Iranian firms attended the Syrian government's reopening of the Damascus Exhibit.⁴⁴ In December 2016, Adnan Mahmoud, Syria's Ambassador to Iran, stated in a meeting with Gholamhossein Shafeyee, the Head of the Iranian Chamber of Commerce, Industries, Mines, and Agriculture, that Syria has prioritized the Iranian private sector in reconstruction projects.⁴⁵ As early as November 2015, Naman Gholami, who oversees Iran's Construction Basij

39. *Id.*

40. *Id.*

41. See, e.g., *Putin Urges New Marshall Plan for Middle East to See Recovery and Growth*, TASS RUSSIAN NEWS AGENCY (Oct. 27, 2016), <http://tass.com/politics/909103>.

42. While the Syrian government would likely afford Russian stakeholders and institutions preferential reconstruction deals, the extent of Russia's role in Syria's reconstruction remains uncertain. At a meeting of the Valdai international discussion club, Russian President, Vladimir Putin, said the following about Syria: "Colossal damage requires a long-term and all-round program, a kind of the Marshall Plan to revive this war- and conflict-torn region." *Putin Urges New Marshall Plan for Middle East to See Recovery and Growth*, *supra* note 41. While it is noticeable that Putin alluded to a West-backed plan, diplomatic circles seem to confirm Russia's position that other world powers fund Syria's reconstruction effort. Kathrin Hille et al., *Russia Asks Global Powers to Fund Syria Reconstruction*, FIN. TIMES (Feb. 23, 2017), <https://www.ft.com/content/47933554-f847-11e6-9516-2d969e0d3b65>. At a February 2017 meeting with European Union ambassadors, Russia's deputy foreign minister, Mikhail Bogdanov, reportedly said that Syria's reconstruction would soon top the global agenda. *Id.* Furthermore, according to the EU diplomats, "he said 'tens of billions of dollars' would be needed, while warning 'nothing' should be expected from Russia." *Id.*

43. Heydemann, *supra* note 34.

44. *Id.*

45. *Envoy: Syria Prioritizes Iranian Companies for Post-War Reconstruction*, FARS NEWS AGENCY (Dec. 26, 2016), <http://en.farsnews.com/newstext.aspx?nn=13951006000476>.

(Voluntary) Organization, cited postwar Iran as a reconstruction model for Syria.⁴⁶

The ESCWA in Beirut has already established the National Agenda for the Future of Syria Programme—a conceptual and inclusive platform for presenting all relevant stakeholders in the conflict with feasible solutions and scenarios.⁴⁷ Even some figures within the Syrian opposition are slowly warming up to the idea of a reconstruction model implementing an Iraq-style or Lebanon-type power-sharing system. According to one opposition figure, “[i]t is far from ideal, and not something we had aspired to, but I think it is better than war.”⁴⁸

II. HISTORY OF HLP IN SYRIA

A proper investigation of the obstacles to Syrian refugees’ achievement of appropriate post-conflict relief and housing restitution necessitates an understanding of HLP rights in prewar Syria. Prior to the Syrian conflict, Syria was undergoing rapid urbanization, “with 56 percent of the population living in urban areas, most of which are in rain-fed agricultural regions, including the basin of the Euphrates River, or along interior trade routes.”⁴⁹ Syria’s two largest cities, Damascus and Aleppo, composed 37 percent of the urban population and 20 percent of the total population.⁵⁰ Approximately 3.4 million Syrians—one-third of the urban population—lived in informal settlements⁵¹ lacking official recognition and registration.⁵²

46. *Id.*

47. *The National Agenda for the Future of Syria Programme*, U.N. ECON. & SOCIAL COMM’N W. ASIA, <https://www.unescwa.org/sub-site/national-agenda-future-syria> (last visited Jan. 15, 2018).

48. Hille et al., *supra* note 42.

49. WORLD BANK GROUP, *supra* note 8, at 21.

50. *Id.*

51. With a shortage of 1.5 million formal homes, many Syrians were forced to turn to informal housing “by squatting on land that they [did] not own (such and is usually owned by the state) or buying a plot on private land (in which the lack of planning permission and legal contracts means the arrangement is informal).” Robert Goulden, *Housing, Inequality, and Economic Change in Syria*, 38 BRIT. J. MIDDLE EASTERN STUD. 187, 188 (2011).

52. Jon D. Unruh, *Weaponization of the Land and Property Rights System in the Syrian Civil War: Facilitating Restitution?*, 10 J. INTERVENTION & STATEBUILDING 453, 457 (2016). In Aleppo, almost half the population lived in informal settlements, while about 40 percent of inhabitants in Damascus lived in such settlements. *Id.*

The prewar land tenure system⁵³ in Syria “was influenced by the mass peasant uprisings of 1889–1890, during Ottoman rule.”⁵⁴ The land tenure in Syria was also a byproduct of the communal farming systems (*musha*)⁵⁵ that existed during Ottoman rule.⁵⁶ The *musha* land system, which is in many ways analogous to the open fields system featured in Eighteenth and Nineteenth Century Europe,⁵⁷ “existed in wide tracts of the Syrian countryside.”⁵⁸ Under the Land Code of 1858,⁵⁹ lands in hundreds of villages became the property of Sultan Abdul Hamid’s family and a few powerful Syrian families.⁶⁰ Personal title of ownership to these *musha* lands gave way to ownership by powerful, yet absentee owners.⁶¹ Tribal chiefs transformed into private owners, and their tribe members became their sharecroppers.⁶² *Musha* land still existed at the eve of the Syrian conflict and was at the communities’ disposal for grazing and grain threshing.⁶³

53. Land tenure is “the bundle of rights an individual, household or community may have with respect to land. It includes property rights but also use rights of a permanent or a seasonal nature.” Nadia Forni, *Land Tenure and Labour Relations*, in SYRIAN AGRICULTURE AT THE CROSSROADS 311 (FAO Policy & Econ. Dev. Ser. No. 8, 2003).

54. *Id.* at 312. Syrian peasants who participated in the uprisings sought protection from eviction by sheikhs. *Id.* They also wanted the reduction of the sheikhs’ share to land to one-eighth and a redistribution of the rest of the land to the peasants. *Id.* For a more comprehensive analysis of the Syrian peasantry’s economic, political, and social evolution, as well as an examination of the peasants’ behavior in Ottoman and Mandate times, and after the Ba’athists’ rise to power, see HANNA BATATU, SYRIA’S PEASANTRY, THE DESCENDANTS OF ITS LESSER RURAL NOTABLES, AND THEIR POLITICS (1999).

55. *Musha*, in Arabic, means joint or collective ownership. EVA KAPTIJN, LIFE ON THE WATERSHED. RECONSTRUCTING SUBSISTENCE IN A STEPPE REGION USING ARCHAEOLOGICAL SURVEY: A DIACHRONIC PERSPECTIVE ON HABITATION IN THE JORDAN VALLEY 378 (2009).

56. Forni, *supra* note 53, at 312–13.

57. *Id.* at 313.

58. *Id.* at 312.

59. For a deeper understanding of the 1858 Land Code and the changes in the pre-modern Middle East’s land regimes, see NEW PERSPECTIVES ON PROPERTY AND LAND IN THE MIDDLE EAST (Roger Owen ed. 2001).

60. Forni, *supra* note 53, at 312–13.

61. *Id.* at 313.

62. *Id.*

63. *Id.*

Land ownership in Syria under the Ottoman Empire⁶⁴ and, later, the French Mandate,⁶⁵ was unequally distributed, with big landowners owning substantial portions of cultivable land in Syria by the end of the 1930s.⁶⁶ In the 1920s, the French authorities cheaply sold, leased, or gave real property that once belonged to the Ottoman Sultan Abdul Hamid to big landlords and other individuals who collaborated with the Mandate.⁶⁷ By contrast, the small farmers who prevailed in the Druze and `Alawi Mountains and Hawran were economically comparable to sharecroppers⁶⁸ on big estates.⁶⁹ The tenancy system in Syria also suffered from many other flaws, including: widespread absentee landownership; verbal tenancy contracts that were terminable at-will by landlords; and sharecroppers who were chronically in debt, unable to directly access the market, under-equipped, and bound by outdated farming methods.⁷⁰

64. The Majalla (*Majallat al-ahkam al-'adliyya*, or “the journal of judicial rules”) was the nineteenth-century codification of Islamic law under Ottoman rule. CHIBLI MALLAT, INTRODUCTION TO MIDDLE EASTERN LAW 242 (2009). It consisted of an introduction and sixteen books, which “adopted the classical language and turn of phrase in various fields of contract, tort, and civil procedure, drawing heavily on . . . Middle Eastern Islamic law.” *Id.* at 249. The Majalla remained the “original fundamental legislative monument, against a background of shifting constitutional and penal laws dominated by the various mandates and protectorates” in many Middle Eastern countries. *Id.* at 253. Syria repealed the Majalla and the statutes of the French Mandate period on May 18, 1949 with the passage of Decree-law 84. *Id.* at 249.

65. Note that the legal tradition in the Middle East is based on civil law, “with the Civil Code at the heart of the legal system.” *Id.* at 184. In Middle Eastern countries like Syria, Lebanon, Morocco, Algeria, and Tunisia, which were ruled with direct French civil law-based traditions, the French impact on the legal system was “massive and wholesale.” *Id.* at 240–41.

66. See Ziad Keilany, *Land Reform in Syria*, 16 MIDDLE EASTERN STUD. 209 (1980).

67. *Id.*

68. While sharecroppers, like laborers, were subject to their landlords’ will, a true tenant possessed land use and occupancy rights protected under the law. *Id.* at 210.

69. *Id.* at 209. According to the International Bank for Reconstruction and Development, 49 percent of the total area of privately owned land in Syria in 1952 consisted of holdings surpassing 100 hectares (1 hectare = 2.471 acres). *Id.* By comparison, 82 percent of the total rural population was either landless or owned small holdings equal to or less than 10 hectares. *Id.* In 1952, those small holdings constituted only 13 percent of land in Syria. *Id.*

70. *Id.* at 210.

Syria's first modern, comprehensive land reform program was introduced by President Gamal Abdel Nasser⁷¹ when Syria and Egypt united⁷² to form the United Arab Republic.⁷³ On September 27, 1958, Nasser enacted Agrarian Reform Law No. 161, which expropriated 1.37 million hectares of land and barred a person from owning more than 300 hectares of rain-fed land and 80 hectares of irrigated land.⁷⁴ The program compensated landlords in full over a 40-year period via negotiable bonds at 1.5 percent interest, while landless peasants received plots of up to 30 hectares of non-irrigated land and up to eight hectares of irrigated land.⁷⁵ The land reform programs of the United Arab Republic, however, encountered various difficulties in Syria, and ultimately, Syrian landlords resisted the programs' execution.⁷⁶

After the Syrian coup of 1961⁷⁷ and the subsequent dissolution of the United Arab Republic, the conservative government of

71. The land reform programs in Egypt were instituted after the 1952 Revolution. Kenneth Parsons, *Land Reform in the United Arab Republic*, 35 LAND ECON. 319 (1959). The program in Egypt entailed "(a) the acquisition of cultivated lands from large holdings for distribution" and "(b) the rent regulation programs for tenanted lands." *Id.* This program was extended to the Syrian region. *Id.*

72. The United Arab Republic was the name of the state that represented a political union between Egypt and Syria between 1958 and 1961. See Sarah Mousa, *Commemorating the United Arab Republic*, ALJAZEERA (Feb. 22, 2013), <http://www.aljazeera.com/indepth/opinion/2013/02/201321985412606377.html>; PATRICK SEALE, *THE STRUGGLE FOR SYRIA* (1965).

73. Keilany, *supra* note 66, at 210.

74. *Id.* at 211. Approximately 27 percent of the rural population and 17 percent of the total population benefitted from this land reform program. *Id.*

75. *Id.*

76. *Id.* at 211–12. First, Syria underwent a three-year drought that reduced its agricultural output and rural income to less than 50 and 60 percent, respectively, of that of 1957. *Id.* at 211. Second, while Syria's land reform program mimicked that of Egypt, Syria's agriculture was more extensive than Egypt's. *Id.*; See also Parsons, *supra* note 71. Third, Syria's population was uneven, as its population was heavily concentrated in the western part of the country, while the eastern part of the country was sparsely populated. Keilany, *supra* note 66, at 212. Therefore, there was not enough expropriated land to distribute in western Syria. *Id.* Fourth, Syria lacked the skilled personnel to implement the program. *Id.*

77. Between 1949 and 1970, Syria underwent a tumultuous period of coup d'états. Halla Diyab, *On Syria's Turbulent History of Coups*, AL ARABIYA (Nov. 26, 2014), <http://english.alarabiya.net/en/views/news/middle-east/2014/11/26/On-Syria-s-turbulent-history-of-coups.html>. By some counts, the bloodless 1970 coup executed by Lieutenant General and President-to-be

Prime Minister Marouf Dawalibi revised the land reform law to accommodate landowners, who complained that the ownership limitations were too rigid and that their compensation period lacked immediacy.⁷⁸ Dawalibi's government amended the law so that depending on factors, such as the nature of the land and its irrigation method, landowners could own more land.⁷⁹

When the Ba`ath Party⁸⁰ assumed control of Syria in 1963,⁸¹ it introduced, under the banner of Arab socialism, more stringent restrictions against landowners.⁸² In fact, the Ba`ath accelerated the process of land expropriation and distribution.⁸³ By 1972, only 239,000 hectares of the 1.37 million hectares expropriated by the Ba`ath-dominated government remained undisturbed.⁸⁴

Hafez al-Assad counted as the twentieth coup since 1949. Eric Pace, *The Syria Take-Over*, N.Y. TIMES (Nov. 21, 1970), at 6. Between the 1950s and 1960s, Syria was a weak state and, like modern-day Lebanon, subject to outside intervention and frequent coups. Joshua Landis, *What Will a Post Assad Syria Look Like?*, SYRIA COMMENT (May 12, 2011), <http://www.joshualandis.com/blog/what-will-a-post-assad-syria-look-like/>. During his presidency, Hafez al-Assad was perceived by many, including the Sunni elite, as having brought stability to the country after more than twenty years of political chaos. *Id.*

78. Keilany, *supra* note 66, at 212.

79. *Id.* For example, the amended law expanded landowners' maximum area of ownership to 600 hectares of non-irrigated land and 200 hectares of irrigated land. *Id.*

80. The Ba`ath ("Renaissance") Party, founded in 1947 by Michel Aflaq and Salah al-Din al-Bitar, strove for Arab unity, secularism, socialism, and an end to foreign colonialism. *The Arab Baath Socialist Party*, AL JAZEERA (Feb. 11, 2008), <http://www.aljazeera.com/focus/arabunity/2008/02/2008525184059317433.html>.

81. The Ba`athist coup in March 1963 represented a reshuffling of Syria's social and political hierarchy, as `Alawi officers and other ethno-religious minority groups' officers from the Syrian countryside broke the political monopoly traditionally held by Syria's Sunni-majority community. NIKOLAOS VAN DAM, *THE STRUGGLE FOR POWER IN SYRIA: POLITICS AND SOCIETY UNDER ASAD AND THE BA`TH PARTY* 31–32 (2011).

82. SYRIA LAND OWNERSHIP AND AGRICULTURAL LAWS HANDBOOK: VOLUME 1 STRATEGIC INFORMATION AND BASIC REGULATIONS 70 (Int'l Bus. Publications, Inc. ed., 2013).

83. Keilany, *supra* note 66, at 212. Keilany argues that in Syria, the significance of this land reform lay mostly in its equity, rather than as a means for boosting economic productivity. *Id.* at 213. The Land Reform Law introduced by the Ba`ath Party also introduced the traditions of agricultural cooperatives for the first time in Syria. *Id.* at 219. By the end of 1966, 994,058 hectares of land was expropriated, and 232,050 hectares were distributed. *Id.* at 212.

84. *Id.* at 212–13.

Legislative Decree No. 88 (1963) softened the impact of peasants' mandatory participation in agricultural cooperatives.⁸⁵ Under this decree, the beneficiaries of the allotted expropriated lands only had to pay their cooperatives one-fourth the value of the land received by installments over twenty years.⁸⁶

The Ba`ath's land reform program helped to establish "political linkage extending between the revolutionary elite and the masses in their villages and neighborhoods."⁸⁷ In effect, the Ba`ath eliminated big landlords' political privileges, sapped landlords of rural power, and extended its influence and authority into villages.⁸⁸ Furthermore, land reform integrated Syria's rural areas with the rest of the country and developed a new socioeconomic infrastructure.⁸⁹ Once dominated by big landowners, Syria's geographically-scattered peasants became dependent on a national government.⁹⁰

In the early 1980s, Syria entered into an economic crisis.⁹¹ Syria's economic problems led to the commencement of a slow process of economic *infitah*, or opening-up.⁹² The governments of President Hafez al-Assad and his son and successor, Bashar al-Assad, were increasingly forced to reduce the state's role in

85. *Id.* at 219.

86. *Id.*

87. *Id.* at 221.

88. *Id.*

89. *Id.* at 223. In the two decades proceeding the Ba`ath Party's ascendancy in Syria, GDP per capita increased almost ten-fold, infant mortality declined by 76 percent, and adult literacy increased 40 percent. Goulden, *supra* note 51, at 192. This period lowered poverty rates and transformed rural areas of the country by introducing basic infrastructure, such as roads, water, and electricity. *Id.* at 193. The rural electrification rate, which stood at 2 percent in 1963, was 95 percent by 1992. *Id.* Such attention to agriculture not only reflected the Ba`ath's rural background and identity, but also helped Hafez al-Assad maintain popular support. *Id.*

90. *Id.*

91. *Id.* Goulden points to the following factors to explain the causes of the Syrian economic crisis that started in the early 1980s: the decline of external assistance from the Soviet Union and the Gulf States, political-economic changes in the West, loose controls on consumer imports, and the inability to create competitive industrial exports. *Id.*

92. *Id.* For a more comprehensive grasp of the interplay between the private sector and state-led economic growth, see BASSAM HADDAD, BUSINESS NETWORKS IN SYRIA: THE POLITICAL ECONOMY OF AUTHORITARIAN RESILIENCE (2011), and ALAN RICHARDS & JOHN WATERBURY, A POLITICAL ECONOMY OF THE MIDDLE EAST (1996).

economic activity.⁹³ Despite these efforts, Syria's GDP declined by 25 percent in the 1980s, and it was not until 2004 that the country attained its 1980 GDP level.⁹⁴

As the public sector's capacity diminished in favor of a neoliberal approach, informal housing settlements arose and quickly expanded.⁹⁵ While the country became predominantly urban in the 1980s, the state lacked the capacity to systematically organize urban growth and to undertake expansive housing planning projects.⁹⁶ Law 60 of 1979 was one of a series of legal steps the Syrian government undertook to address unplanned urban expansion. Like the other measures, however, it was inadequate.⁹⁷ Law 60 required local authorities to possess undeveloped land around major cities and towns, but many local authorities were nearly bankrupted by compensating owners of the undeveloped land parcels and, therefore, could not develop that expropriated land.⁹⁸ Hafez al-Assad, therefore, could only instruct local authorities to "[s]ervice existing illegal areas, but stop their expansion" to prevent further degeneration.⁹⁹

In more recent years, the government attempted to boost the private sector's involvement in property development.¹⁰⁰ The government tried divesting itself of the land requisitioned and retained by the government under the Agricultural Reform Law

93. Goulden, *supra* note 51, at 194. Note that the Syrian government eschewed some of the social costs of economic liberalization by refusing to take the following steps: "privatization of public enterprises, liberalization of labor and financial markets, and the reduction of government activity in the field of social policy." *Id.* at 194–95.

94. *Id.* at 194.

95. *Id.* at 195. Goulden argues that neoliberalism is best understood as a political project constructed in the interests of society's privileged class. *Id.* at 196. Neoliberalism "avows minimal state intervention and maximal market freedom." *Id.* In actuality, "while the state's welfare role is reduced, its coercive capacity is maintained, and its *active* support and [incentivizing] of private economic activity muddies its claims of *laissez faire*." *Id.*

96. *Id.* at 195.

97. *Id.*

98. *Id.* Furthermore, Goulden points out that "rental laws, designed to ensure that tenants were protected from exploitation by landlords, simply resulted in private property owners not renting out their property on terms they considered prohibitively unprofitable." *Id.* at 195–96. Furthermore, there were a few public housing projects undertaken, but they were poorly managed and were the subject of corruption and profiteering at the expense of the wider public. *Id.* at 196.

99. *Id.*

100. *Id.* at 197.

of 1958 and subsequent legislative measures.¹⁰¹ In fact, in 2000, Syrian Prime Minister, Muhammad Mustafa Mero, commissioned a study, which recommended the resumption of the land redistribution program.¹⁰² That study's findings were rejected, however, because the government sought to sell this land to big investors.¹⁰³ In the 2000s, under Bashar al-Assad, the government was selling land cheaply to real estate developers, allowing the market to determine rental prices.¹⁰⁴

Prior to the commencement of the Syrian conflict, the Syrian government initiated other steps that boosted private economic activity in housing.¹⁰⁵ For instance, the reduction of interest rates on bank loans for housing in 2004 encouraged property investment.¹⁰⁶ The government was also phasing out private rental laws unfavorable to property owners.¹⁰⁷ In addition, the Real Estate Development and Investment Law permitted the hiring of foreign workers and the importing of construction material and tools for development projects.¹⁰⁸

Furthermore, the government tried "to outsource the problem of the private sector."¹⁰⁹ The last five-year plan projected that 77 percent of new housing would be supplied commercially.¹¹⁰ Prior to the conflict, the Syrian Economic Center noted that, "these projects will not meet the demand for housing that we are facing, as they involve building high-priced luxury housing aimed at the rich classes of Syrians, expatriates, and tourists, and thus will not contribute to solving the crisis that we are talking about."¹¹¹

101. *Id.*

102. *Id.*

103. *Id.* As of 2011, government divestment of extensive land holdings was well-underway. *Id.* In 2007, a major real estate agent in Damascus observed that "[b]ig companies are buying the lands from the government at low prices." *Id.*

104. *Id.* For instance, when rent control was lifted in Hama, the prices of state-owned land multiplied between 7–10 times. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 198. Goulden argues that the Syrian government had been influenced by the work of Peruvian economist Hernando de Soto, "who popularized the idea that the solution to informal housing lies in giving individuals formal property rights. The market would then take care of matters, as the wealth of their homes would be unlocked." *Id.*

110. *Id.*

111. *Id.*

When the Syrian government passed Law 33 of 2008, it “began [trialing] the process of granting property rights to informal dwellers in exchange for a fee to local authorities.”¹¹² While this individualistic, market-based approach coincided with neoliberal orthodoxy, it failed to recognize the *de facto* titling system already existing in Syria’s informal areas and that secure *de facto* tenure—with or without documents—is what matters most to informal dwellers.¹¹³ In addition, Law 33 neglected to anticipate that many low-income, informal residents were uneasy about formalization and that even if they were granted formal property rights, they would have difficulty securing bank loans.¹¹⁴

In the meantime, the Syrian government also enhanced its coercive role.¹¹⁵ Law 1 of 2003 introduced greater fines and incarceration times for all local officials and illegal builders culpable for the construction of informal housing.¹¹⁶ This legislation, however, did not rectify the shortage of formal housing.¹¹⁷ Instead, it resulted in higher bribes requested by local state officials from illegal builders.¹¹⁸ The continued proliferation of informal housing in urban centers, fueled by unsustainable environmental and agricultural policies and Syria’s most severe drought on record between 2007–2010, contributed to the political unrest leading up to the Syrian conflict.¹¹⁹

III. THE CHALLENGES OF SYRIA UNDER THE PINHEIRO PRINCIPLES: THE NEED FOR A CASE-SPECIFIC APPLICATION

Any analysis of Syrian law pertaining to the prospects of post-war resettlement and restitution requires an underlying understanding of prevailing international law. The HLP rights¹²⁰ of

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 199.

116. *Id.*

117. *Id.*

118. *Id.* The Syrian government even encouraged local authorities to eliminate illegal houses pursuant to Decree 59 of 2008, but offered little incentive to meet this obligation. *Id.*

119. Colin P. Kelley et al., *Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought*, 112 PNAS 3241–46 (2015).

120. Historically, property rights have been created and defined by national law. John G. Sprankling, *The Emergence of International Property Law*, 90 N.C. L. REV. 461, 464 (2012). In the international system, each nation state

refugees and displaced persons has been increasingly acknowledged in international law.¹²¹ The Pinheiro Principles,¹²² adopted by the UN Sub-Commission on the Protection and Promotion of Human Rights in 2005, represent the most comprehensive, explicit, and systematic formulation of the concept of the right¹²³ to post-conflict HLP restitution as a stand-alone

possesses territorial sovereignty, which entails its own property laws. *Id.*; see also *Johnson v. M'Intosh*, 21 U.S. 543, 572 (1823) (“[T]he title to lands, especially, is and must be admitted to depend entirely on the law of the nation in which they lie. . . .”). See also IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 535 (8th ed. 2012) (“Ownership in international law is normally seen either in terms of private rights under national law, which may become the subject of diplomatic protection and state responsibility, or in terms of territorial sovereignty.”).

121. Sprankling, *supra* note 120, at 464. HLP rights, understood as a notion of post-conflict justice, have found expression in best-practice postulates, such as the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (‘Basic Principles and Guidelines’) and the ‘Chicago Principles on Post-Conflict Justice.’ *INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY* 273 (Matthew Saul & James A. Sweeney eds., 2015).

122. The Pinheiro Principles are the fruition of a seven-year process that started with the adoption of Sub-Commission resolution 1998/26 on *Housing and property restitution in the context of the return of refugees and internally displaced persons*, which was preceded by a study between 2002–2005, and then by the draft principles of Paulo Sérgio Pinheiro—the Sub-Commission Special Rapporteur on Housing and Property Restitution. *HANDBOOK ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS: IMPLEMENTING THE ‘PINHEIRO PRINCIPLES’* 11 (2007), http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

123. Note that the Pinheiro Principles are general principles of international law, rather than a treaty or formal law. Therefore, they do not command the same legal status accorded to such sources of international law. *Id.* at 19. Nevertheless, they have “*persuasive authority* and are *explicitly* based on existing international, regional and national law.” *Id.* (emphasis in original); See also *Prosecutor v. Erdemović*, Case No. IT-96-22, Joint Separate Opinion of Judge McDonald and Judge Vohrah, ¶ 57 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 7, 1997), <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-aso-jmcd971007e.pdf> (“[A]lthough general principles of law are to be derived from existing legal systems, in particular, national systems of law, it is generally accepted that the distillation of a ‘general principle of law recognised by civilised nations’ does not require the comprehensive survey of all legal systems of the world.”); Statute of the International Court of Justice art. 38(1), June 26, 1945 [hereinafter ICJ Statute].

right.¹²⁴ They provide that “[a]ll refugees and displaced persons have the *right* to have restored to them *any* housing, land and/or property of which they were *arbitrarily or unlawfully* deprived” or “to be compensated” if “an *independent, impartial* tribunal” has determined that such HLP restoration is “*factually impossible*.”¹²⁵ Furthermore, Principle 21 strictly ensures that restitution can “only [be] deemed factually impossible in extreme circumstances,” specifically when “housing, land and/or property is destroyed or when it no longer exists,”¹²⁶ rather than impossibilities due to economic, political, or transitional considerations.¹²⁷ The Pinheiro Principles, after all, are convinced that the right to HLP restitution “is *essential* to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law. . . .”¹²⁸

Indeed, the Pinheiro Principles present a useful legal, administrative, and enforcement guide for Syrian and international

124. Sprankling, *supra* note 120, at 494–95. James A. Sweeney also identifies the Guiding Principles on Internal Displacement (“Guiding Principles”), issued in 2001 by the Secretary General of the United Nations, as the other major legal approach to the right of restitution as a stand-alone right for displaced people. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 274. He asserts that the Guiding Principles “express a significant preference for restitution but [unlike the Pinheiro Principles] did not declare an individual ‘right’ to restitution as such.” *Id.*

125. Special Rapporteur on the Housing and Property in the Context of the Return of Refugees and Internally Displaced Persons, Principles on Housing and Property Restitution for Refugees and Displaced Person, U.N. Sub-Commission on the Promotion and Protection of Human Rights, Economic & Social Rights Council, princ. 2.1, U.N. Doc. E/CN.4/Sub.2/2005/17; Comm’n of Human Rights, Sub-Comm’n on the Promotion of Human Rights, 56th Sess. (June 28, 2005), <http://www.unhcr.org/en-us/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html> (emphasis added) [hereinafter The Pinheiro Principles].

126. The Pinheiro Principles, *supra* note 125, princ. 21.2.

127. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 274–75.

128. The Pinheiro Principles, *supra* note 125, pmb. (emphasis added). Sweeney also observes that the Pinheiro Principles notably declare that the right to restitution “is free-standing, rather than being derived from either the right to return or the remedy to a particular human rights violation.” INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 275. In addition, Megan Ballard has ascribed the Pinheiro Principles’ conception of restitution as essential to a conflict’s resolution to the lessons garnered in Bosnia. Megan J. Ballard, *Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations*, 28 BERKELEY J. INT’L L. 462, 484 (2010).

stakeholders invested in the country's post-conflict justice.¹²⁹ For instance, they underscore that any refugees' or displaced persons' return be "based on a free, informed, individual choice,"¹³⁰ rather than out of political, economic, or transitional coercion.¹³¹ This is an intuitively attractive option for Syrians who no longer wish to reside in Syria for any plethora of reasons, ranging from human or material loss and trauma¹³² to fear of potential political reprisals.¹³³ The Pinheiro Principles reaffirm gender equality and recognize "the rights of refugee and displaced women and girls,"¹³⁴ which is especially important for the Syrian women and girls who have lost male relatives in the war,¹³⁵ and whose property rights were limited by restrictive

129. According to Sweeney, post-conflict justice is a victim-oriented idea that "is premised on an understanding that domestic stability, security, and democratic governance in the aftermath of atrocity are strengthened by a commitment to *justice and accountability*." INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 275 (emphasis in original).

130. The Pinheiro Principles, *supra* note 125, pmb1.

131. The Pinheiro Principles state:

Refugees and displaced persons *shall not be forced*, or otherwise *coerced*, either *directly or indirectly*, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue *durable solutions* to displacement *other than return, if they so wish, without prejudicing their right* to the restitution of their housing, land, and property.

Id. princ. 10.3 (emphasis added). *See also id.* princ. 10.4 ("Voluntary return in safety and dignity must be based on a free, informed, individual choice.").

132. Maria Hawilo, *The Consequences of Untreated Trauma: Syrian Refugee Children in Lebanon*, 4(1) NW. PUB. HEALTH REV. 5, 5-12 (2017).

133. *Lebanese Leaders Divided Over Fate of Syrian Refugees*, FRANCE 24 (Oct. 10, 2016), <http://www.france24.com/en/20171016-lebanon-aoun-hariri-hezbollah-return-syrian-refugees>.

134. The Pinheiro Principles, *supra* note 125, pmb1.; *See also id.* princ. 4.1 (ensuring "the equal right of men and women, and . . . boys and girls, inter alia, to voluntarily return in safety and dignity, local security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access" to HLP); *id.* princ. 4.2 (calling for HLP restitution programs, policies, and practices that reflect "a gender-sensitive approach.").

135. As of October 2016, women headed 66,000 (approximately 31 percent) of the 180,000 Syrian refugee families in Jordan registered with the U.N. High Commissioner on Refugees. Ann M. Simmons, *Widowed, divorced, abandoned—Syrian refugee women forge new lives in Jordan*, L.A. TIMES (Oct. 24, 2016), <http://www.latimes.com/world/global-development/la-fg-global-women-syrian-refugees-snap-story.html>.

legal interpretations before the war's commencement.¹³⁶ Moreover, the Pinheiro Principles undertake the prohibition of both "de facto and de jure discrimination"¹³⁷ on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status."¹³⁸ Such a provision is undoubtedly crucial for any society, especially Syria, where thorough examinations of the role of sectarian, regional, and tribal loyalties are critical to understanding the patchwork of networks controlled by the Ba'ath Party and the Assad dynasty.¹³⁹

Despite the laudable efforts of the Pinheiro Principles, the insistence to the right of restitution programs has also posed challenges.¹⁴⁰ In the past decade, in the aftermath of the successful restitution program in postwar Bosnia, the world has witnessed few unambiguously successful restitution programs, partly due to the interplay of politics.¹⁴¹ Land and property are, after all,

136. Int'l Legal Assistance Consortium, *ILAC Rule of Law Assessment Report: Syria 2017* 149 (2017), <http://www.ilacnet.org/wp-content/uploads/2017/04/Syria2017.pdf>.

137. The Pinheiro Principles, *supra* note 125, princ. 3.2.

138. *Id.* princ. 3.1.

139. See VAN DAM, *supra* note 81.

140. See, e.g., Giulia Paglione, *Individual Property Restitution: from Deng to Pinheiro—and the Challenges Ahead*, INT'L J. OF REFUGEE L., 391, 403 (2008) (explaining how an almost exclusive focus on individual real property restitution pursuant to the Pinheiro Principles has "entirely neglected" alternative remedies and non-returnees' rights.); Miriam J. Anderson, *The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles): Suggestions for Improved Applicability*, 24 J. REFUGEE STUD. 304, 304 (2011) (discussing how an exclusive focus on post-conflict restitution of property overlooks many displaced people's unwillingness to return to their prewar residence, the displacement of secondary occupants, the timing of repossession, the coordination of regional restitution regimes, and diverse conceptions of property.); *But see* RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS 3-4 (Scott Leckie ed., 2003); Dan E. Stigall, *Refugees and Legal Reform in Iraq: The Iraqi Civil Code, International Standards for the Treatment of Displaced Persons, and the Art of Attainable Solutions*, 34 RUTGERS L. REV. 205, 205-38 (2008).

141. Rhodri C. Williams, *Guiding Principle 29 and the Right to Restitution*, FORCED MIGRATION REV. 23 (Dec. 2008), <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/GuidingPrinciples10/williams.pdf> [hereinafter Williams, *Guiding Principle 29*]. The property restitution process after the conflicts in Bosnia and Herzegovina shaped the U.N. General Assembly's Basic Principles and Guidelines and support for the right to restitution under the Pinheiro Principles. *Id.* In fact, the General Framework Agreement for Peace in Bosnia and Herzegovina provides that "[a]ll refugees and displaced

valuable assets that are subject to desired control by local and national authorities, and in frozen conflicts, restitution is usually implausible.¹⁴² Even if political will for restitution exists, many countries, including Syria at the moment and in the foreseeable future, do not enjoy the resources or legal capacity to accommodate refugees' and displaced persons' equitable access to land.¹⁴³ In addition, restitution programs face the immense task of integrating customary tenure systems,¹⁴⁴ which as indicated above, remains a challenge in Syria.¹⁴⁵ Furthermore, despite enjoying support in various peacebuilding settings, the Pinheiro Principles have yet to be widely applied through national laws and policies.¹⁴⁶ In places like Syria, where unequal property relations may have helped sow the seeds of the conflict in the first place, the restoration of the status quo ante via restitution is a troublesome idea.¹⁴⁷

persons . . . shall have the right to have restored to them their property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them." General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, at Annex 7, art. 1(1), ¶ 28 Dec. 14, 1995. The implementation of restitution was successful in the Bosnia context, as over 200,000 property claims were resolved in six years of postwar administration. Rhodri C. Williams, *Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice*, 37 N.Y.U. J. INT'L L. & POL. 441, 442–44 (2005).

142. Williams, *Guiding Principle 29*, *supra* note 141.

143. *Id.* For example, in Afghanistan, landlessness was already a common phenomenon prior to displacement, and in Burundi, the population has almost exceeded available land. *Id.*

144. *Id.* Rhodri Williams asserts that “[w]hile traditional systems should be respected, lack of state recognition and formal documentation often complicate restitution claims. Customary systems are often nontransparent or even discriminatory, complicating efforts to ensure that respect for collectively held customary rights does not harm individuals.” *Id.*

145. See Norwegian Refugee Council, *Briefing Note: Housing Land and Property (HLP) in the Syrian Arab Republic*, 7–15 (May 2016), <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>.

146. TRANSITIONAL JUSTICE AND DISPLACEMENT 93 (Roger Duthie ed., 2012).

147. *Id.* at 95. In addition, land tenure experts at a research program hosted by the Overseas Development Institute (ODI) in London have dismissed the Pinheiro Principles as “shortsighted, dogmatic, and potentially counterproductive in humanitarian settings.” *Id.* While the Pinheiro Principles do not condition restitution on the physical return of people, “they do arguably reflect a residual return bias in the notion of restitution as ‘the preferred remedy for displacement and as a key element of restorative justice.’” *Id.* See also

The scholar, Megan Ballard,¹⁴⁸ lodges further reservations regarding what she considers to be the flawed legal and theoretical foundations underlying the Pinheiro Principles in the context of population displacement caused by armed conflict.¹⁴⁹ For example, the Pinheiro Principles call upon “[i]nternational organizations . . . [to] work with national Governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards.”¹⁵⁰ Indeed, large-scale restitution processes have relied heavily on Western nations’ imposing or influencing law in recovering societies, resulting in unintended, harmful consequences evoking imperialism.¹⁵¹ While the United Nations has declared that the right to return must be voluntary,¹⁵² one such unintended consequence is the involuntary return of refugees living in asylum nations to their prewar residence, due to the asylum nations’ economic and political considerations.¹⁵³ Ballard, therefore, contends that “post-conflict property restitution schemes could benefit from considering the . . . emphasis on broader human development and reconsideration of a one-size-fits-all model of reform.”¹⁵⁴

Past human rights cases, furthermore, inconsistently support the Pinheiro Principles’ assertion that a right exists to postwar

INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 285.

148. Megan Ballard is a Professor of Law at Gonzaga University School of Law. *Our Faculty: Megan J. Ballard, J.D.*, GONZ. U., <https://www.gonzaga.edu/academics/faculty-listing/detail/ballard> (last visited Jan. 15, 2018). Her academic research focuses on refugee integration and post-conflict property restitution. *Id.*

149. Ballard, *supra* note 128, at 462–96. Note that “drawing a line between ‘conflict’ and ‘post-conflict’ is difficult.” World Bank, *Post-Conflict Fund: Guidelines and Procedures* 2 (1999).

150. The Pinheiro Principles, *supra* note 125, princ. 22.3.

151. Ballard, *supra* note 128, at 468, 492. Ballard points to the Bosnia episode as an illustration that international actors expropriated power over the “drafting, adjudicating, and enforcing [of] local property laws.” *Id.* at 470.

152. G.A. Res. 428 (V), ¶ 2, U.N. Doc. A/1775 (Dec. 14, 1950).

153. Ballard, *supra* note 128, at 487–88; *see also* B.S. Chimni, *Refugees, Return and Reconstruction of ‘Post-Conflict’ Societies: A Critical Perspective*, 9 INT’L PEACEKEEPING 163, 163 (2002) (“Today, the return of refugees also coincides with the disinclination of states to host refugees.”).

154. Ballard, *supra* note 128, at 473.

housing restitution for refugees and displaced persons.¹⁵⁵ The scholar, James Sweeney,¹⁵⁶ distinguishes the following three groups of cases: (1) cases where the act of displacement is itself the issue, (2) “cases in which restitution is featured as a remedy for a human rights violation within the scope of the enforcement body,” and (3) cases where the inability to provide the right of postwar restitution is deemed the infraction.¹⁵⁷ It is the third category of cases that indicates that human rights law does not create a firm legal precedent for restitution.¹⁵⁸

In cases where the act of displacement is itself the issue, case law appears to support the Pinheiro Principles.¹⁵⁹ In *Sudan Human Rights Org. & Ctr. on Hous. Rights & Evictions (COHRE) v. Sudan*, the African Commission on Human and Peoples' Rights addressed alleged state involvement in the forced displacement of populations in Darfur and the perceived failure of the Sudanese government to prevent ‘rampaging attacks’ by the Janjaweed militia.¹⁶⁰ The Commission held that Sudan’s failures on these counts violated Article 14 of the African Charter on Human and Peoples' Rights, which addresses the right to property.¹⁶¹ The Commission, “aware that the Pinheiro Principles are guidelines and do not have any force of law,” explicitly cited to

155. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 276.

156. James Sweeney is Professor of Law at Lancaster University Law School. *People: Professor James Sweeney*, LANCASTER U. L. SCH., <http://www.lancaster.ac.uk/law/people/james-sweeney> (last visited Jan. 15, 2018). His academic research focuses on the after-effects of conflict, specifically the rights of refugees and human rights in transitional democracies. *Id.*

157. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 276.

158. *Id.*

159. *Id.* See, e.g., *Akdivar v. Turkey*, Application No. 21893/93, (1997) 23 EHHR 143 (upholding the right to peaceful enjoyment of possessions); Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, Nov. 1950, 213 U.N.T.S. 221, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf [hereinafter European Convention on Human Rights] (upholding the right to respect for home, family, and private life). *But see* European Convention on Human Rights, art. 15 (allowing derogation of rights in time of emergency).

160. Sudan Human Rights Org. & Ctr. on Hous. Rights & Evictions (COHRE) v. Sudan. App No 279/03-296/03, African Commission on Human and Peoples' Rights, ¶¶ 3–4, ¶ 205 (May 27, 2009) [hereinafter *COHRE v. Sudan*].

161. *Id.* at ¶ 205.

principles 5.3¹⁶² and 5.4¹⁶³ of the Pinheiro Principles, as “they reflect the emerging principles in international human rights.”¹⁶⁴

The second grouping of cases address the following two sub-issues: (1) instances where there are inadequate human rights reparations in domestic law, which lead to further distinct human rights violations; and (2) the issue of international courts’ and tribunals’ remedial powers.¹⁶⁵ Turning to the first issue, the European Court of Human Rights (ECHR) gives little guidance on the optimal form of relief, but has held that a provision of reparations is within the notion of the right to an effective remedy, pursuant to the European Convention on Human Rights.¹⁶⁶

162. Principle 5.3 declares that: “States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.” The Pinheiro Principles, *supra* note 125, princ. 5.3.

163. Principle 5.4 declares that: “States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.” The Pinheiro Principles, *supra* note 125, princ. 5.4.

164. *COHRE v. Sudan*, *supra* note 160, ¶¶ 203–204.

165. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 277–81.

166. The European Court has held that the effect of Article 13 of the European Convention on Human Rights, which addresses the right to an effective remedy, is the following:

[T]o require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint *and to grant appropriate relief*, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision.

Al Nashiri v. Poland, App. No. 28761/11, Eur. Ct. H.R. ¶ 546 (2014) (emphasis added); *See also* *Vilvarajah and Others v. The United Kingdom*, App. No. 13163/87; 13164/87; 13165/87; 13448/87, Eur. Ct. H.R. ¶ 122 (1991). Note, however, that in most cases, the European Court has had the tendency to treat Article 6 (right to a fair hearing)—not Article 13—as the *lex specialis derogat legi generali* (“special law repeals general laws”) with regards to the sufficiency of domestic remedies. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 279.

In addition, in *Akdivar v. Turkey*, the European Court states:

[A] judgement in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach

The International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee (HRC), and the Inter-American Court of Human Rights have more explicitly mentioned the possibility of restitution, with the Inter-American Court prioritizing restitution.¹⁶⁷ Turning to the second issue, the requirement of reparations for human rights violations or infractions against individual criminal responsibility, as

and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restituto in integrum* is *in practice impossible* the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard.

Akdivar v. Turkey, Application No. 21893/93, (1997) 23 EHHR 143 (non-Latin emphasis added) [hereinafter *Akdivar v. Turkey*]. Sweeney poignantly indicates that the *Akdivar* court's "threshold of 'in practice impossible' is lower than that in the Pinheiro Principles of 'factually impossible.'" INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 279. It is notable that the European Court has not supervised this element. *Id.*

167. See INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 277–78. The ICCPR HRC has stated the following:

Without reparations to individuals whose Covenant rights have been violated, the obligation to prove effective remedy . . . is not discharged. . . . In addition to the explicit reparation required . . . the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, *reparation can involve restitution*, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

UN Human Rights Committee, General comment no. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004) UN Doc OCP/R/C/21/Rev1/Add13, ¶ 16 (emphasis added). The Inter-American Court arguably prioritizes restitution as a remedy for human rights violations in domestic law, deeming them distinct infractions to the judicial guarantees protections recognized pursuant to Articles 8(1) and 25(1) of the American Convention. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 278; see also *Garcia Lucero et al v. Chile*, Judgment on Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 627, ¶ 182 (Aug. 28, 2013).

articulated in treaties¹⁶⁸ and the interstate Draft Articles on Responsibility of States for Internationally Wrongful Acts,¹⁶⁹ have been extended to individuals' claimable rights against states in both human rights and international criminal law courts and tribunals.¹⁷⁰ While it is possible, however, to interpret restitution to be the preferred remedy¹⁷¹ of cases in the International Court of Justice, the Permanent Court of International Justice, and the Draft Articles on Responsibility of States for Internationally Wrongful Acts, the *modus operandi* of international human rights tribunals and courts is less consistent.¹⁷²

168. See, e.g., European Convention on Human Rights, art. 41; Rome Statute of the International Criminal Court art. 75, adopted July 17, 1998, 2187 U.N.T.S. 90.

169. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 31, 34-35, in *Report of the International Law Commission on the Work of Its Fifty-Third Session*, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001); see also *Factory at Chorzow (Germany v. Poland)*, 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13), ¶¶ 55, 125 ([“T]he reparation due must, in principle, take the form of the payment of compensation, a statement which is moreover formally repeated in the Case. . . . Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”).

170. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 279. For example, in *Velasquez Rodriguez v. Honduras*, the Inter-American Court agreed that “[i]t is a principle of international law, which jurisprudence has considered ‘even a general concept of law,’ that every violation of an international obligation which results in harm creates a duty to make adequate reparation.” *Velasquez Rodriguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7 para. 25 (July 21, 1989). The Court continued, “[r]eparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.” *Id.* at ¶ 26.

171. Compensation and satisfaction, in this context, would qualify as secondary modes of remedy.

172. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 280. For example, in *Dagmar Brokova v. Czech Republic*, the ICCPR HRC held that an applicant was discriminately excluded from a restitution scheme, reasoning that the Czech Republic was obliged to provide an effective remedy pursuant to Article 2(3)(a) ICCPR. *Dagmar Brokova v. Czech Republic*, Communication No. 774/1997, UN Soc. CCPR/C/73/D/774/1997 (15 January 2002), ¶ 9. The court reasoned, “the State party is under an obligation to provide the author with an effective remedy. Such remedy *should include*

Finally, cases where the inability to provide the right of post-war restitution is deemed the infraction present the most challenges, since human rights law does not appear to create a legal foundation for restitution as an obligation. In *Kopecký v. Slovakia*, the ECHR deliberated as to whether, under Article 1 of Protocol No. 1, the applicant could legitimately expect to claim restitution of his father's property.¹⁷³ According to Sweeney, the ECHR held that Article 1 of Protocol No. 1 "cannot be interpreted as imposing any general obligations upon contracting states to restore property that was transferred to them before they ratified the Convention."¹⁷⁴

The underlying methodology of measuring Syrian law against international human rights law, particularly the Pinheiro Principles, ought to be one that recognizes that human rights law does not sufficiently facilitate post-conflict restitution as the principal response to displacement, rather than as "only one amongst several, potentially re-distributive, approaches."¹⁷⁵

restitution of the property or compensation, and appropriate compensation for the period during which the author and his widow were deprived of the property." *Id.* (emphasis added). Here, the ICCPR HRC appears to treat restitution and compensation as near-equal options, instead of explicitly prioritizing restitution as in the Pinheiro Principles. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 280. See also *COHRE v. Sudan*, *supra* note 160, ¶ 29 (explaining that Sudan should "take measures to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation."). (emphasis added).

173. *Kopecký v. Slovakia*, App. No. 44912/98, 2004 Eur. Ct. H.R. (ser. 9), ¶ 35 (2004) [hereinafter *Kopecký v. Slovakia*].

174. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 282–83. See *Kopecký v. Slovakia*, *supra* note 173, ¶ 35 ("If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.") (emphasis added).

175. INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY 276 (Matthew Saul & James A. Sweeney eds., 2015). Sweeney adds:

The response of human rights courts and tribunals to restitution instead can be seen as taking place within a much broader framework of contingencies and qualifications applied to the use of law during times of transition, and where the approach to restitution is just one example of 'transitional relativism'—where human rights international legal standards are modulated to accommodate transitional needs.

While the Pinheiro Principles provide increasing understanding of the needs of post-conflict societies, room may be allotted to tailor a more context-specific approach to remedying the HLP rights of displaced Syrian persons and refugees.¹⁷⁶ In this context, a strict, inflexible application of the Pinheiro Principles would not only risk an inability to abide by these principles, but could also result in their being undermined and decelerate any international momentum towards adopting them.¹⁷⁷

IV. RECONCILING SYRIAN DOMESTIC LAW WITH THE PINHEIRO PRINCIPLES: RECOMMENDATIONS

This Note has operated under the notion that much of postwar Syria will likely be governed, to some extent, under the sphere of the current Syrian government. The issue that arises is whether or not current Syrian law can be renegotiated and amended between the relevant warring parties to establish a methodology of reconstruction that pays more than just lip service to the rights befitting internally displaced Syrians and Syrian refugees under the Pinheiro Principles. This Part will prescribe amendments and clarifications to Syria's Public-Private Partnership (PPP) Law, Legislative Decree Law 5 of 2016 ("Legislative Decree 5"), according to the spirit of Syria's Local

Id. at 272–73. See also Ballard, *supra* note 128, at 483 (explaining that postwar property restitution is instead “a new right based on the evolution of international law, rather than one firmly grounded in international law.”).

176. The Principles “*shall not be interpreted as limiting, altering or otherwise prejudicing* the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.” The Pinheiro Principles, *supra* note 125, princ. 23.1 (emphasis added).

177. For example, according to the Pinheiro Principles, “States shall prohibit eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.” The Pinheiro Principles, *supra* note 125, princ. 5.3. According to rebel groups, however, Syrian state actors employed “a scorched earth policy to destroy the city [of Aleppo] and uproot its people.” *The Agony of Aleppo*, *ECONOMIST* (Oct. 1, 2016), <https://www.economist.com/news/middle-east-and-africa/21707937-america-ceasefire-deal-russia-never-stood-chance-agony-aleppo>. In at least the short term, the same Syrian state will rule the country. Therefore, while this right of protection under the Pinheiro Principles cannot be enforced, it is crucial to administer the principles under the pretense that it will be impossible to enforce them cleanly. Otherwise, they stand little chance of being relevant.

Administrative Law, Legislative Decree Law 107 of 2011 (“Legislative Decree 107”).¹⁷⁸

The aim of these prescribed changes is to wield decentralization as a tool to strengthen ordinary Syrians’ voices in the deliberations concerning their country’s reconstruction and its resettlement of citizens. These recommendations also seek to minimize corruption and cronyism that may be unresponsive to displaced Syrians’ rights and which could result from an overly centralized approach to reconstruction. These prescribed changes recognize that the realization of a grand, centralized reconstruction is far-fetched. Finally, they seek to minimize the extensive outsourcing of valuable reconstruction projects to international urban development and architecture firms at the expense of qualified Syrian firms, labor, and the people who once inhabited these destroyed areas.

A. Analysis of Legislative Decree 107

Given the daunting costs of reconstruction¹⁷⁹ and the lack of political capital that Assad’s government wields in many parts of the international community,¹⁸⁰ it is implausible that Syria will be able to implement a grand, centralized, and national reconstruction project the day after the war’s cessation.¹⁸¹ Instead, there will be a lot of informal reconstruction, and the challenge for the Syrian people will be how to manage this informality in

178. At the moment, there is “no extant body of international law that provides generally applicable rules on post-conflict constitutional reform. . . . [T]his is an area that has been largely practice driven, with policies formulated as a result of reflection on practice rather than in response to legally mandated requirements.” INTERNATIONAL LAW AND POST-CONFLICT RECONSTRUCTION POLICY, *supra* note 121, at 122.

179. Lund, *supra* note 14.

180. Steve Scherer & Crispian Balmer, *G7 Powers Seek Broad Support to Isolate Syria’s Assad*, REUTERS (Apr. 11, 2017), <https://uk.reuters.com/article/uk-g7-foreign-syria/g7-powers-seek-broad-support-to-isolate-syrias-assad-idUK-KBN17D0GC>.

181. According to Omar Abdulaziz Hallaj, a Syrian architect and urban planner from Aleppo, “[t]his notion that one day the conflict will stop and the next day a grand national reconstruction will begin is a fake paradigm. There’s not going to be a ‘day after.’” Sina Zekavat, *Syrian Architects Challenge ‘Post-War’ Reconstruction with Real-Time Designs*, GLOBAL VOICES (Oct. 15, 2017), <https://globalvoices.org/2017/10/15/syrian-architects-challenge-post-war-reconstruction-with-real-time-designs/>.

order to resettle their citizenry and rehabilitate their infrastructure, economy, and society.¹⁸²

At this very moment, local councils operating in some opposition and Kurdish-held areas in Syria, have proliferated in the absence of the Syrian government's presence.¹⁸³ They base their legitimacy on the Syrian government's passage of Legislative Decree 107 in August 2011.¹⁸⁴ This decentralization law was legislated as part of a bundle of reforms to appease the protests that spread across the country.¹⁸⁵ Legislative Decree 107 has featured extensively in ongoing peace negotiations between the various Syrian actors in Astana, Kazakhstan and Geneva, Switzerland.¹⁸⁶ Its general acceptance has constituted a rare form of agreement between the Syrian government, opposition factions, the United States, and Russia.¹⁸⁷ While it remains unclear how Legislative Decree 107, or one of its future iterations, will be implemented nationally, or what its consequences will be,¹⁸⁸ this

182. Hallaj asserts that:

In reality urban growth will mainly take place in the informal sector with a few exceptions where neoliberal policies will incentivize limited opportunities for the emerging war lords and their regional partners. . . . There's probably going to be two or three such exceptions in Syria with beautiful landscapes and restored facades like in Beirut. . . . The rest of the country is going to be desolate land.

Id.

183. Samer Araabi, *Syria's Decentralization Roadmap*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Mar. 11, 2017), <http://carnegieendowment.org/sada/68372>.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. Under Legislative Decree 107, it is plausible that a more prominent local council system may empower Syrian citizens to participate in their government. *Id.* There also exists, however, a risk that this law could merely add another layer of bureaucratic control that is unresponsive to citizens. *Id.* Furthermore, Syria arguably may have already featured a system of decentralization, in the sense that central authorities fostered relationships with local networks of religious leaders, business elites, and family notables. Kheder Khaddour, *Local Wars and the Chance for Decentralized Peace in Syria*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Mar. 28, 2017), <http://carnegie-mec.org/2017/03/28/local-wars-and-chance-for-decentralized-peace-in-syria-pub-68369>.

Note asserts that it may form the basis of a decentralized reconstruction scheme compatible with the Pinheiro Principles.¹⁸⁹

Legislative Decree 107's aim is to "decentralize authorities and responsibilities and concentrate them in the hands of the people's groups in accordance with the principle of democracy, which makes the people the source of all authority. . . ."¹⁹⁰ This law promotes political decentralization, increases financial resources and revenues for local councils, and allows the local councils to implement development plans in order to empower local actors and their services.¹⁹¹ The President of Syria appoints a governor to head each province and ensure that local councils' efforts comply with national strategies.¹⁹² The locally elected councils under each governor are tasked with "planning, implementing, and developing community development plans"¹⁹³ in order to achieve "economic, social, cultural and *urban development*."¹⁹⁴ Under this national plan for decentralization, the local councils can take all the measures necessary to approve "architectural and urban systems"¹⁹⁵ according to the law, to "change the allocation of public property of the city or town,"¹⁹⁶ and to establish, manage, and invest in the "construction of cities, buildings, playgrounds, and sporting facilities."¹⁹⁷

While Legislative Decree 107 represents a drastic departure from prewar Syria's centralized state apparatus,¹⁹⁸ its challenges are threefold. First, the law has arguably lacked

189. Much of the prevailing literature mentioning Legislative Decree 107 alludes to it as a decentralized approach to empowering local authorities, addressing local grievances, and fostering social cohesion and reconciliation. It falls short, however, of explicitly detailing legal steps of reconciling this provision with Legislative Decree 5 and the HLP rights of displaced Syrians. See, e.g. Maya Yahya & Jean Kassir, *Coming Home? A Political Settlement in Syria Must Focus on Refugees*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Mar. 30, 2017), http://carnegieendowment.org/files/Yahya_Syrian_Refugees.pdf.

190. Legislative Decree 107 of Aug. 23, 2011 (Local Administrative Law), § 1, ch. 1, art. 2(1) (Syria).

191. *Id.* § 1, ch. 1, arts. 2(1), 2(3).

192. *Id.* § 4, ch. 1, arts. 39–41.

193. *Id.* § 1, ch. 1, art. 2(2).

194. *Id.* (emphasis added).

195. *Id.* § 5, ch. 1, art. 60(4).

196. *Id.* § 5, ch. 1, art. 60(7).

197. *Id.* § 5, ch. 1, art. 60(14).

198. Araabi, *supra* note 183.

implementation.¹⁹⁹ Local level investments, in the aftermath of the Legislative Decree 107's passage, became difficult because of the devaluation of the Syrian pound and the diversion of the Syrian state budget towards the war effort.²⁰⁰ Therefore, implementation of the law became difficult and was relegated to sewer maintenance and solid-waste management.²⁰¹ Furthermore, when local elections were held on December 12, 2011, only about 43,000 candidates ran for 17,629 seats.²⁰² As much as 15 percent of the local councils could not be filled.²⁰³ Therefore, a postwar environment may usher in more non-military investment and increased civic participation based in necessity and opportunities to serve local self-interests, rather than in admiration for President Assad. The extent of any such increased implementation of Legislative Decree 107, however, is admittedly uncertain.²⁰⁴

Second, Kurdish-controlled areas have enjoyed autonomy and will likely resist returning power back to the Syrian government in compliance with Legislative Decree 107.²⁰⁵ It is premature to gauge what would happen in this scenario, but this source of tension may necessitate a renegotiation of the law that liberalizes it or affords the Kurds some autonomy within the legal framework.²⁰⁶ Certainly, amending Legislative Decree 107 will likely be necessary for various reasons.

One major reason to amend Legislative Decree 107 is the third challenge it poses: the disputed role and authority of governors

199. Omar Abdulaziz Hallaj, *Geographies of Absence: Radicalization and the Shaping of the New Syrian Territoriality*, 29 NEW ENG. J. PUB. POLICY 1, 16 (2017).

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. Hallaj argues that while decentralization failed in the aftermath of Legislative Decree 107's passage, the Syrian government did decentralize its local military control by creating private and local militias to defend their neighborhoods against Syrian and foreign opposition rebel groups. *Id.* The localization of the conflict and the creation of checkpoints not only reduced civilian movement, but created a situation where "[e]ach political stakeholder has its power situated in and dependent on a different type of territoriality." *Id.* at 17. According to Hallaj, such asymmetry "will constitute the first challenge for the peace process because the interests and powers of each of the actors are clearly situated at different ends of the scale." *Id.*

205. Araabi, *supra* note 183.

206. *Id.*

pursuant to the statute.²⁰⁷ The law states that “[t]he governor shall take an oath to the President of the Republic before undertaking the duties of the office.”²⁰⁸ The governor is also “appointed and relieved of his post by decree and shall be considered a member of the executive authority.”²⁰⁹ According to Legislative Decree 107, the governor’s duty of loyalty arguably lies, first and foremost, in the Syrian President who selects him or her, rather than his or her Syrian constituents, who do not have the agency to vote for this pivotal central figure. Furthermore, “[t]he governor represents the central authority in the governorate and works for all ministries.”²¹⁰ While the law strives to decentralize political power and to “enable [the local councils] to fulfill their responsibilities in improving the administrative unit economically, socially, culturally, and in urban development,”²¹¹ its reforms would be more far-reaching and responsive to individual Syrians if each governor overlooking the councils was democratically elected by Syrian citizens.²¹² Therefore, this Note prescribes an amendment to Legislative Decree 107 establishing the governor as a representative of the central authority who is elected by, and may only be impeached by, his or her constituents.

B. Reconciling Legislative Decree Law 5 with Syrian HLP Rights

In 2016, Syrian Prime Minister, Wael al-Halqi, announced that Syria was transitioning from a social market economic model to what the government termed as “National Partnership,” which alludes to establishing public-private

207. *Id.*

208. Legislative Decree 107 of Aug. 23, 2011 (Local Administrative Law), § 4, ch. 1, art. 40 (Syria).

209. *Id.* § 4, ch. 1, art. 39.

210. *Id.* § 4, ch. 1, art. 41.

211. *Id.* § 1, ch. 1, art. 2(1).

212. Again, the prospects of such an amendment will be subject to political negotiations between the warring Syrian parties and their benefactors. This Note envisions that opponents of the Syrian government will logically seek the decentralization of President Assad’s power by leveraging the extensive economic resources of their Western and Gulf allies and supporters as part of post-war reconstruction. The Syrian government may leverage its decisive battlefield gains and the return of Syrian refugees residing outside its borders to keep President Assad in power, to ensure that he regains a stable and functioning state, and to reintegrate Syria into the global order.

partnerships.²¹³ Legislative Decree Law 5, Syria's new PPP Law, prominently features this emphasis on public-private partnerships.²¹⁴ The law enables the private sector to invest in and "design, construct, implement, maintain, rehabilitate, develop, manage, or operate public utilities, infrastructure, or projects owned by the public sector."²¹⁵ The law aims to "ensure transparency, non-discrimination, equal opportunity, and competitiveness,"²¹⁶ and the private partner "bears full responsibility and risk"²¹⁷ for financing and implementing its obligations before transferring the property back to the State.²¹⁸

Legislative Decree Law 5, however, suffers from three impediments. First, the law risks returning Syria to the same neoliberal policies that benefitted certain private actors and exacerbated the mass migration of Syrians from rural areas to informal housing in urban centers.²¹⁹ Indeed, it has been met with some skepticism by Syrian parliamentarians, who fear it could benefit private and foreign businesses at the people's expense.²²⁰ Second, the law vests coordination of all public-private partnerships in the Participation Council,²²¹ which is a highly centralized body headed by the Prime Minister that includes only temporary participation by governors.²²² Such a law appears to backtrack from the spirit of decentralization ushered in by Legislative

213. *National Partnerships: Syria's New Economic Order*, SYRIAN L. J. (Mar. 18, 2016), <http://www.syrianlawjournal.com/index.php/national-partnership-syrias-new-economic-order/>.

214. *Id.* It is plausible that the Electricity Investment Law 32/2010, which emphasizes public-private partnerships by inviting local and foreign investors to participate in power-related infrastructure projects, will also prominently feature in some form during reconstruction. *Id.*

215. Legislative Decree Law No. 5 of Jan. 10, 2016 (Public-Private Partnership Law), § 1, art. 2(a) (Syria).

216. *Id.* § 1, art. 2(c).

217. *Id.* § 5, art. 57(a)(1).

218. *National Partnerships: Syria's New Economic Order*, *supra* note 213.

219. *Id.*

220. *Id.*

221. Legislative Decree Law No. 5 of Jan. 10, 2016 (Public-Private Partnership Law), § 2, art. 7(a) (Syria).

222. *Id.* § 2, arts. 7(b)(1)–7(b)(10). The Board of Directors of the Participation Council includes the following individuals: the Prime Minister, the Deputy Prime Minister for Services Affairs, the Deputy Prime Minister for Economic Affairs, the Minister of Economy and Foreign Trade, the Minister of Finance, the Minister of Presidential Affairs, the Chairman of the Planning and International Cooperation Authority, two independent experts appointed by the Council of Ministers, and the Chairman of the Expert Group of the Bureau. *Id.*

Decree 107. Third, the law lacks any controls or regulations that reserve a role in postwar reconstruction for Syrian laborers and architecture, urban planning, and development firms.

Turning to the first point, this Note prescribes an explicit anti-corruption clause and a provision subjecting all parties in the PPP transaction to international, independently-monitored appraisal and audit committees. Assuming a cessation in hostilities, any incarnation of a Syrian state will emerge from the current conflict with very limited resources and, presumably, minimal negotiating power at its disposal with wealthy development companies. Furthermore, postwar Syria's system of norms mitigating conflicts between different communities and "people's conception of a legitimate political order and its associated standards in relation to offices and positions of trust" will likely be rudimentary or even missing, particularly in areas long occupied by opposition rebel groups, because of the nature of war and the breakdown of political order.²²³ Therefore, these amendments ensure that postwar profiteering and bribery is minimized²²⁴ and that private entities participating in Syria's reconstruction remain accountable, transparent, and timely in affording refugees and displaced persons their HLP rights, as enshrined by Pinheiro Principles 12.1²²⁵ and 21.2.²²⁶

223. CORRUPTION AND POST-CONFLICT PEACEBUILDING: SELLING THE PEACE? 32 (Dominik Zaum & Christine Cheng eds., 2011).

224. An anti-corruption provision might actually benefit the Syrian Government because it would allow Assad to dispel any popular discontent with his government's handling of economic and reconstruction policies. It could plausibly reestablish the federal government's power amid the rise of the informal war economy and decentralized militias. Even President Hafez al-Assad undertook such a measure in 1977. VAN DAM, *supra* note 81, at 73. The elder Assad formed a Committee for Investigation of Illegal Profits "to investigate crimes of bribery, imposition of influence embezzlement, exploitation of office and illegal profits." *Id.* Hafez al-Assad's anti-corruption campaign intended to drive away the corruption plaguing his government's bureaucracy and to eliminate widespread criticism of his handling of the economy. *Id.* Note, however, that the 1977 anti-corruption campaign failed because indispensable members of Assad's inner circle and 'Alawi sect were also guilty of involvement in corrupt practices. *Id.* Such a quandary may again present itself today.

225. Principle 12.1 declares, in part, that: "States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims." The Pinheiro Principles, *supra* note 125, princ. 12.1.

226. Principle 21.2 states:

Second, this Note recommends that the Participation Council's composition for each project should include the permanent, mandatory participation of democratically-elected governors, whose jurisdictions have a direct interest in the project and its corresponding contracts. Explicit acknowledgment of Legislative Decree 107 and the local councils' powers to participate in local reconstruction and resettlement projects ought to be added to Legislative Decree Law 5 as well. These measures will not only add an extra layer of transparency, scrutiny, and public deliberation over the resettlement and restitution rights of refugees and displaced persons,²²⁷ but they can also enhance civic engagement and strengthen any demoralized or underdeveloped local institutions. Such decentralization and democratization, recognizing that a top-down centralized reconstruction scheme's fruition will be limited to a few localities, will allow ordinary Syrian actors to regroup their assets and maximize local resources in a multi-territorial approach.

Finally, this Note recommends that Legislative Decree Law 5 contain explicit provisions reserving and allotting economic opportunities and participation in the reconstruction process for Syrian laborers and Syrian architecture, urban planning, and development firms. Should the quality of the project proposal of a Syrian company mirror that of a foreign company, the Syrian entity ought to be given the contract. Such measures would develop Syria's human capital, create employment for returning Syrian refugees who have been dependent on unskilled labor and aid programs, reduce Syrian citizens' dependence on aid programs within their own country, empower Syrian visionaries and voices with the opportunity to architecturally engage war-time memory and national healing, and redevelop

International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

Id. princ. 21.2.

227. *Id.* princ. 12.1.

neighborhoods and city centers in a manner that is more mindful of their fellow citizens' welfare.²²⁸

CONCLUSION

The Syrian government of President Bashar al-Assad and the international community have already started to contemplate postwar reconstruction and even wartime reconstruction, as the Syrian conflict continues to wage on.²²⁹ Reconstruction is a process that begins during war, but the notion that Syria will be able to implement a grand, centralized reconstruction project after the war's cessation is an unrealistic paradigm, given the immense costs that the Syrian government cannot plausibly address.²³⁰ Therefore, it is imperative that policymakers, negotiators, and lawmakers representing Syria's warring parties debate and negotiate existing Syrian domestic law, which appears likely to persist in some form, in order to anticipate and accommodate the rights of displaced Syrians and Syrian refugees. This discourse necessitates an understanding of the rapid urbanization and proliferation of informal housing spurred by prewar, neoliberal government policies, which led to massive discontent in Syria.²³¹

Syria's Local Administrative Law, Legislative Decree Law 107, if amended to democratize the institution of the Syrian governorship, is an effective starting point that presents decentralization as a pivotal tool to empower sustainable reconstruction efforts that are more mindful of the country's returning refugees and displaced persons. Its incorporation alongside an amended version of Syria's Public-Private Partnership Law, Legislative Decree Law 5, could safeguard against a repetition of Syria's detrimental, neoliberal policies leading up to the conflict, as well as against abuses directed against refugees' and displaced persons'

228. According to Hallaj:

[E]very line [architects and planners] put on [their] drawing[s] will decide who gets to come back to the city and who doesn't get to come back. If you do beautiful grand projects, that some big developer is likely to develop, most likely people will not be able to return to their cities.

Zekavat, *supra* note 181.

229. Lund, *supra* note 14.

230. Butter, *supra* note 27.

231. Goulden, *supra* note 51, at 195.

HLP rights under the Pinheiro Principles. Such recommended measures would once again empower the individuals who have lost the most during the Syrian conflict: ordinary Syrian citizens.

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* B.A., Boston College (2010); M.A., Harvard University (2012); J.D., Brooklyn Law School (Expected 2019); Editor-in-Chief, *Brooklyn Journal of International Law* (2018–2019). This Note is dedicated to my mother and father-immigrants from Lebanon and Syria—and my brothers, who have extended their endless love and support to me. It is also dedicated to members of my family living in Syria or who have recently joined the Syrian diaspora during the ongoing war. I am indebted to my extended family in the United States and to the friends I met in Boston, who supported my transition to law school. I am also deeply grateful to the faculty at Boston College’s Islamic Civilization and Societies program and at Harvard University’s Center for Middle Eastern Studies for their teaching, guidance, and affectionate encouragement in my foundational development as a student and scholar in Middle Eastern studies. I would like to thank Professor Jean Davis at Brooklyn Law School for her crucial legal research tools and tips, as well as Jessica Martin, Michelle Lee, and Matthew Hurowitz for their patience and invaluable feedback in the editing process. Finally, to Syrian readers, I would like most earnestly to say that I have tried to be fair and objective, although I may not always have succeeded. This is not a Note for or against any particular Syrian leader, party, or political outcome—all of which ought to be negotiated and decided first and foremost by and for the Syrian people. I would be honored if Syrians and the policy-makers serving their interests, in particular, would accept the work, with all its flaws, as a tribute to a country and people to which I, as a Syrian-Lebanese American, am greatly attached. All errors or omissions are my own.