



Reflections on future challenges to Housing, Land and Property restitution for Syrian refugees

NRC interviewed 580 Syrian refugee households in Lebanon, Jordan and Iraq to assess their potential Housing, Land and Property (HLP) claims inside Syria if they were to return home.

The findings indicate a complex situation. There are high levels of ownership assertions which are not matched by supporting documents for a variety of reasons, including loss during forced displacement and historical cultural practices regarding transfer of title within families. Future restitution and compensation processes will therefore need to take into consideration the complexity of the pluralist nature of HLP rights prior to the conflict and also ensure that there are remedies for HLP violations that have occurred during the conflict.

Humanitarian organisations, governments, donors and other stakeholders should start preparing now for likely problems of a shortage of adequate housing, disputes over use and/or ownership of HLP assets, and the emergence of other conflicts related to a significant reduction in usable land and housing inside Syria if large scale returns start occurring.

This NRC Briefing Note aims to unpack some of these HLP challenges to sustainable returns to Syria, whilst also offering guidance on potential first steps to mitigate and address these challenges before they create further conflict and prevent durable returns.

HLP as a humanitarian and human rights concept

HLP rights are about having a home, free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood. The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally; both public and private housing, land and/or property assets. Land rights are rights held to both land and natural resources.¹

¹ The Global Protection Cluster's HLP Area of Responsibility (AoR).

Housing, Land and Property Ownership Among Syrian Refugees

A significant majority of Syrian refugees interviewed, sixty seven percent (67%), reported that they owned their place of previous residence² in Syria, while thirteen percent (13%) of respondents reported that they lived in rented property before displacement and nineteen percent (19%) reported living on family land. In Iraq, only forty-six percent (46%) of Syrian refugees reported that they had owned their residence, which may be explained by the fact that the majority of Syrian refugees in Iraq are Kurdish.

Attesting to the recognized importance of ownership documents, **half the refugees who said that they lived on land that they or their families owned, reported that they possessed tapu (land deed) documents as evidence of their ownership.** Respondents also reported using alternative papers, such as sales contracts, notarized documents, and even utilities documents, to demonstrate ownership in the absence of a tapu.

Understanding Refugees' Perceptions of Ownership

The findings suggest that refugee heads of household understand themselves to be owners of their place of previous residence, even if they had lived on land or in a structure that is owned formally within an extended family, a common practice in the region. It is also likely that while refugee heads of household believe that they had formal documented ownership rights over their previous residence, the reality may be more complex given that (i) properties are shared between family members; (ii) the use of alternative documentation is prevalent; and (iii) the myriad complexities in interpreting HLP laws in Syria.

Many existing HLP documents may also be inaccurate; for example, **seventy percent (70%) of document holders interviewed for this survey stated that their document was in another person's name.** This may be indicative of the common practice reported by refugees of transferring ownership or passing properties down through family lines without officially changing the name on the tapu (or other document) with the Real Estate Directorate or relevant authority; or of the practice of building multi-family structures on land held

in a single person's name. Practices such as registering HLP assets in the name of the male heads of household only may also help explain why women lack documents in their names.

HLP Documents: Missing or Destroyed

The precise location of many of the refugees' HLP documents is unclear. When asked about the location of their documents for their most important piece of property in Syria³, **only seventeen percent (17%) of respondents who reported having documentation for their most important property indicated that they still had this documentation with them in their country of displacement.** Ten percent (10%) said they did not know where their HLP documentation was, and twenty-one percent (21%) of respondents reported that their documents had been destroyed. Just over half of the HLP document holders indicated that the document was "somewhere else". This phenomenon was particularly high in Iraq (73%) and Jordan (50%). There are likely varying reasons as to why refugees chose not to bring their documents with them when they fled; for example, refugees in Jordan reported that because they heard the Jordanian government would confiscate any Syrian documents at the border, they chose to leave them behind, either hidden somewhere or with someone in Syria. However, given the high rates of infrastructure and housing destruction inside Syria as a result of the conflict, many who left their documents "somewhere else" fear that their documents or residences may no longer exist. Such fears are validated by other findings, such as a recent NRC report which notes that half of the neighborhoods in Homs were already heavily damaged by 2014.⁴

While Syria's land registries could potentially contain records of HLP documents, there is general uncertainty as to what degree the registries and cadasters have been damaged or destroyed, and whether such records still exist.

Dispute Resolution and Reclaiming HLP Rights Upon Return

The return of IDPs and refugees to their communities of origin inside Syria will likely result in a very high number of competing claims over the use and occupancy of land and property by original owners, secondary

² The survey used the term 'place of previous residence in Syria' to include all types of accommodation that the respondents had prior to their displacement. This included both land and housing structures.

³ Note that this information refers to the respondents' most important piece of property as opposed to their previous residence.

⁴ NRC, Briefing note: Housing, land and property in the Syrian Arab Republic, p. 10, NRC (2016).

occupants, and illegal occupants. Throughout the war, HLP transactions have continued to take place in Syria often as private contracts or agreements between individuals that are not recorded in a statutory system. The data suggests that the majority of refugees wish to retain ownership of their property (assuming it has not been destroyed). **Only four percent (4%) of refugees surveyed reported selling or leasing their land since displacement.** While some of these transactions are done “in good faith,” reports of expropriations and other opportunistic reallocations of land ownership are also common. **Of the twenty-three (23) respondents who stated that this occurred, a quarter said that the selling or leasing was done forcibly, against their will.** The situation is made more complex when these “bad faith” transactions are formalized under the property administration systems that have emerged during the conflict.

The implications of the lack of HLP documentation on the property reclamation process after return are significant. At a minimum, **nearly a third of the refugees who reported having documents for their most important property in Syria reported that those documents were lost or destroyed, and at least half who left their documents said that they are at risk of not finding their documents if and when they return.** Additionally, the widespread phenomenon of holding HLP documents that are in someone else’s name suggests that, even if those Syrian refugees who had HLP documents are able to locate them, many are likely to face future challenges in trying to regain access to their HLP assets if they are unable to provide other evidence of either ownership or familial relationship to the person named on the document.

A look at the dispute resolution mechanisms used prior to the conflict can help shed light on people’s expectations or preferences for resolving disputes. Respondents reported that before the conflict, the most common HLP disputes were related to inheritance and boundary issues and, according to twenty percent (20%) of respondents in Lebanon and Jordan, statutory courts were the most used forum for such disputes, which would have valued physical documentation as evidence of the various claims. The second and third most common forums reported were customary committees (13%) and family members (13%). Other mechanisms that were reported included mukhtars, arbitration committees, the police, and Sharia Courts. While the responses from Syrian refugees in Iraq also reflect the

importance of statutory courts, they suggest greater use of customary committees or family mechanisms.

Conclusion and Recommendations

The failure to protect HLP rights often leads to, or is concurrent with, violations of other human rights. The implications of the findings discussed here on future efforts of Syrian refugee returnees to find durable solutions should be considered now, and included in any discussions to find a resolution to the conflict.

- One important step would be to begin developing planned policy responses to the likely problems of a shortage of adequate housing; arguments over use and/or ownership of remaining HLP assets, and the emergence of other conflicts related to a significant reduction in usable land and housing.
- Additionally, as evidenced by efforts to address HLP issues in other post-conflict countries, the large numbers of claims anticipated, weakened or destroyed court systems, and a need for procedural flexibility may necessitate the use of supplementary adjudication models, such as HLP commissions or local dispute resolution mechanisms. Whatever forum is selected, the jurisdiction of any mechanism must be carefully defined, including the substance and time frame of claims that can be considered, and there should be a commitment to the use of transparent, fair and equitable principles to review claims.
- While any process to address such difficult circumstances must be compatible with domestic Syrian law and international standards, there must also be acknowledgement that the vast majority of Syrians were displaced against their will. It is thus important to ensure that efforts to support restitution or compensation for HLP assets (including those that have been destroyed or otherwise appropriated) consider both substantive and procedural aspects that take into account the unique challenges created by violent conflict and forced displacement. Some ideas could include: removing or tolling statutes of limitation for the initiation of HLP claims; reconsidering requirements of continuous possession or payment of fees to protect tenure rights; or re-evaluating evidentiary rules to prove HLP rights.

As the above findings suggest, significant numbers of displaced Syrians will want to reclaim their HLP assets,

but will not have legal or accurate HLP documents upon which to found their claim. Whatever adjudication mechanisms are in place, careful consideration will be required as to what evidence will be acceptable, and how the mechanisms should verify and weigh such evidence in resolving the inevitable HLP conflicts that will arise.

Demographic Overview

This note draws on the findings from interviews conducted with the heads of household of 580 Syrian refugee families in Jordan, Lebanon, and Northern Iraq, representing over 3,000 individuals. The dataset includes information on the situation of Syrian refugees with regard to housing, land and property issues at their place of previous residence in the Syrian Arab Republic (Syria) before the start of the 2011 conflict.

- Sixty percent (60%) of respondents identified themselves as Arab and thirty-eight percent (38%) as Kurdish.
- Sixty-two percent (62%) of respondents reported that they lived in urban or peri-urban areas prior to their displacement, while twenty-nine percent (29%) reported that their residence was on agricultural land.
- As regards to their place of origin in Syria, twenty-six percent (26%) of respondents reported that they were living in Dar'a governorate, twenty-two percent (22%) reported that they were living in Homs governorate, and twenty-one (21%) reported that they were living in Al Hasakeh governorate.

Methodology

The information described here comes from a survey conducted with Syrian refugee heads of household or a representative of the household residing in Jordan, Northern Lebanon, and Northern Iraq between October 2015 and May 2016. NRC used two separate methods for selecting households for inclusion in the exercise. In Lebanon and Jordan, NRC proportionally selected approximately two hundred (200) respondents stratified by geographic location and the household size from NRC's Information, Counseling, and Legal Assistance (ICLA) program beneficiary list in each country. As a result, the sample is as representative as possible of ICLA beneficiaries in Northern Lebanon and Jordan given logistical restrictions to sample size and variation in key indicators. In Iraq, NRC proportionally selected approximately two hundred (200) households stratified by geographic location and the household size from the list of beneficiaries of NRC's Water, Sanitation, and Hygiene (WASH) program in Dohuk. In Iraq, the sample represents WASH beneficiaries in Dohuk.

Altogether, NRC conducted five hundred and eighty (580) interviews with refugee household heads. A goal of the sampling procedure was to include a representative proportion of information provided by women. Given interview schedules and the demographic profile of refugee populations, enumerators surveyed three hundred and nine (309) men and two hundred and seventy-one (271) women, making our sample 47% women. In most cases, male respondents identified themselves as the head of the household while women identified themselves as the most important female in the household at the time of the interview.

This initiative has been funded by the Norwegian Ministry of Foreign Affairs. The views expressed do not necessarily reflect the official policies of the Norwegian government.

- NRC, Housing, Land and Property (HLP) in the Syrian Arab Republic, Briefing Note 2016 available at <https://www.nrc.no/resources/reports/syrian/>

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