

POLICY BRIEF: HLP RIGHTS, MIGRATION AND BUSINESS ACTIVITY IN SYRIA

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Acknowledgments

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Executive Summary

Limited attention has been paid to the role of businesses and their involvement in displacement and in abuses of housing, land and property (HLP) rights throughout the Syrian conflict. Businesspersons have been providing the financial, logistical and moral support which enable and facilitate the commission of international crimes and human rights violations, including displacement and HLP rights violations, by the Syrian government. In this sense, businesses have likely contributed to HLP rights violations committed by the Syrian government and are likely to be complicit in the Syrian government's international crimes, such as the forced displacement of civilians and pillage. The paper analyses the role businesspersons have been playing in displacement and HLP rights abuses, and its impact on accountability efforts in Syria. The paper provides a set of recommendations, including supporting documentation efforts by Syrian civil society, continuing to implement targeted sanctions against perpetrators in Syria as a form of interim accountability, and incorporating business and human rights concerns in the political and constitution drafting processes.

Methodology

The paper draws on information that has been collected through SLDP research on the role of business in the Syrian conflict, on a broad review of human rights reports and publications by international organizations on the situation in Syria, on documents produced by specialized agencies such as UNHCR, OHCHR and COI, and on various media sources such as news reports, articles, and investigations. Reference will also be made to international legal treaties, case law of international and regional courts and legal documents emanating from UN bodies such as the Pinheiro Principles and the UN guiding principles on business and human rights.

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I. INTRODUCTION

Throughout the conflict in Syria, business actors have been supporting the Syrian government in different ways including through means of financial, logistical, and moral support. As a result of this support, Syrian businesses are likely to be involved in the international crimes and human rights violations committed by the Syrian government, in particular, those crimes and violations related to forced displacement, pillage, and housing, land, and property rights (HLP). As such, addressing business-related HLP rights abuses and crimes is closely linked to the issue of refugee return and, more broadly, to the issue of peacebuilding and justice in Syria. Hence, holding businesses accountable for their involvement in human rights abuses and international crimes is an important component of pursuing justice in Syria. Moreover, this will contribute to creating a safe and enabling post-conflict environment which is a prerequisite for the return of IDPs and refugees.

The main objective of the present paper is to highlight the connections between business activity in the Syrian conflict, migration patterns, and HLP rights abuses. The first part of this paper will outline the legal framework applicable to HLP rights and related international crimes such as forced displacement and pillage under international law. It will also provide a brief overview of the main drivers of displacements and considerations for refugees who are not returning. The second part will review the role of businesses throughout the Syrian conflict, and in particular, their role in HLP rights abuses and related crimes. The last part will make recommendations on how different stakeholders can address these issues.

II. HLP RIGHTS AND RELATED INTERNATIONAL CRIMES: THE INTERNATIONAL LEGAL FRAMEWORK

Although HLP rights are only specifically protected under international human rights law (IHRL), International Humanitarian Law (IHL) provides protections that take into account the property related impact of conflict and certain crimes under International Criminal Law (ICL) stem from HLP related rights. IHRL instruments enumerate a number of guarantees protecting HLP rights such as the right to an adequate standard of living,¹ the right not to be deprived of one's property,² and the right to protection from arbitrary interference with one's home,³ and the right to non-discrimination.⁴

IHL, which applies only in times of armed conflict, is based upon the premise that all civilians must be protected during armed conflict.⁵ A clear expression of this premise is found in the rules that expressly prohibit the displacement of civilians.⁶ One way IHL does this is through providing explicit protections against forced displacement of civilians during armed conflicts. The only circumstances under which displacement may be lawful are when the security of civilians is at risk or when there are imperative military reasons.⁷ The unlawful displacement of civilians during an armed conflict, when the required nexus between the displacement and the conflict is established, amounts to a war crime and entails the individual criminal liability of the perpetrators under ICL.⁸ Additionally, IHL contains several provisions for the protection of HLP rights such as the principle of distinction between civilian objects and military objects,⁹ the rule guaranteeing the right of all displaced persons to return to their homes,¹⁰ and the rule providing for the protection of HLP rights of displaced persons.¹¹

Another protection for HLP rights under IHL can be found in the provisions that prohibit the pillage of civilian properties.¹² Pillage is defined as the unlawful appropriation of another's property for personal or private use without the consent of the legitimate owner in the context of a conflict.¹³ The pillage of civilian properties during an armed conflict, the destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly as well as directing attacks

against civilian objects amount to war crimes under ICL.¹⁴ Finally, the most significant development regarding the protection of HLP rights under international law was the adoption of the UN Principles on “Housing and Property Restitution for Refugees and Displaced Persons” (Pinheiro Principles) in 2005 which provide comprehensive guidelines for the international community on post-conflict HLP rights restitution and provide practical steps for the recognition and protection of such rights.¹⁵ The Principles acknowledge the rights of all refugees and displaced persons to property restitution.¹⁶

III. DISPLACEMENT OF CIVILIANS IN SYRIA

The Syrian conflict is characterised by the fact that the displacement of civilians has not been a mere consequence of the conflict, but rather a deliberate strategy of the parties to the conflict. According to the Commission of Inquiry on the Syrian Arab Republic (COI), the displacement of civilians in the Syrian conflict was perpetrated as part of a widespread and systematic attack against civilians.¹⁷ As long as these same parties remain in power, it is unlikely that displaced civilians will be able to return to their homes.

Patterns of Displacement

Broadly, two categories of civilian population movements can be distinguished.¹⁸ First, the movement of civilians as a result of lethal methods applied by the warring parties, and in particular the Syrian government, forcing civilians to leave. Second, the organized movements of civilians as a result of the so-called evacuation or reconciliation agreements between the Syrian government and its allies on the one hand, and various armed groups, on the other, which put an end to the sieges¹⁹ imposed by the Syrian government across the country since at least 2012.²⁰

The main drivers of displacement throughout the conflict have been of the first category. These include indiscriminate attacks on densely populated areas, aerial bombardment, use of chemical weapons, collective punishments, siege, starvation, destruction of civilian objects, including repeated attacks on markets, hospitals, and schools. In addition, the systematic destruction of housing units²¹ and essential infrastructure combined with the absence of public services such as electricity, water, fuel, education, and medical care have also played a role in disrupting the functioning of life and inducing people to leave their homes.²² The violations have been carried out on discriminatory grounds such as geographic origin, political, and religious affiliation.²³ However, the Syrian government’s policy to displace civilians perceived as opposition loyalists failed short of achieving the complete removal of said civilians. Therefore, the Syrian government and its allies negotiated the evacuation of remaining civilians from besieged areas. These agreements have resulted in the forcible displacement of thousands of civilians.²⁴

Ultimately, a large number of civilians have been uprooted from their homes, mainly, in areas perceived as being supportive of the opposition.²⁵ For example, the areas of Basateen Al-Razi²⁶, Qabun,²⁷ Jobar,²⁸ Daraya,²⁹ Eastern Ghouta³⁰ in Damascus and its countryside, which are amongst the early sites that witnessed peaceful anti-government protests in 2011, have been emptied of their residents and civilians’ properties have been looted by the Syrian government through scrap trade and rubble removal contracts awarded to businesses linked to the government. Similarly, civilians of a number of areas in Homs and Aleppo have also been displaced by the government in preparation for reconstruction.³¹

Consolidation of Displacement

The Syrian government has been enacting legislation that serves to consolidate forced displacements

and hamper the return of displaced persons. These laws enable the government and businesses linked to it, to expropriate properties and promote the demographic engineering of certain areas. As such, the urban redevelopment projects initiated under these laws may amount to the war crimes of forced displacement and pillage. While reviewing all laws enacted after 2012 would fall outside the scope of this paper, reference to some of them is necessary to understand the involvement of business elites in displacement in Syria, as some of these laws have created a legal basis for private businesses engagement in Syria's urban redevelopment projects. Legislative Decree no.66 of 2012, for example, enables the government to redevelop specific areas of unauthorized housing and informal settlements in Damascus, which were perceived as being supportive of the opposition, and replace them with modern real estate projects.³² Decree 66 was expanded by Law no.10 of 2018 which allows for the establishment of redevelopment zones across Syria, as opposed to Decree 66 which applies to areas in Damascus only.³³ Law no. 10 requires that Syrians in areas designated under the law for redevelopment must provide proof of ownership of their property to the government within a relatively short period of time.³⁴ The procedural requirements to prove ownership together with the context in which these laws were enacted make it clear that these laws will be used as a political tool for punishment against civilians in areas perceived as opposing the government by expropriating their properties and consolidating their forced displacement, while at the same time benefiting government-affiliated businesses.³⁵

The Syrian government has also enacted public-private partnership laws³⁶ and a rubble removal law³⁷ that allow the government to select members of the private sector to benefit from urban redevelopment projects and rubble removal contracts in areas where houses and the infrastructure was destroyed by the government itself.

Lack of Refugee Return

Since the beginning of 2018, the Syrian government, with the assistance of its allies, has managed to restore control over most of the areas previously controlled by different armed groups. The Syrian government has tried to shift the narrative from the conflict towards reconstruction and refugee return. The Syrian government and its allies, in particular Russia, have been urging Syrian refugees, especially those in the neighbouring countries such as Lebanon, Jordan, and Turkey to return.³⁸ However, according to The World Bank and UNHCR, although thousands of refugees have returned, refugee return to Syria has still been very slow, due to three main obstacles to return: the lack of security in Syria, the lack of livelihood opportunities, and the lack of adequate housing and HLP rights guarantees and of the ability to return to their place of origin.³⁹ The primary obstacle is the lack of security, which includes fears of detention, torture, or revenge upon return and concerns of military conscription.⁴⁰ The presence of landmines and other explosive objects together with the absence of any plan by the Syrian government for landmine clearance also undermines refugee return to some rural areas that witnessed intense hostilities.⁴¹

IV. BUSINESS RESPONSIBILITY UNDER INTERNATIONAL LAW

According to the United Nations Guiding Principles on Business and Human Rights (UNGPs),⁴² businesses have a responsibility to respect human rights. To comply with this international standard, businesses are expected to avoid infringing on the human rights of others⁴³ and to address the human rights abuses with which they are involved.⁴⁴ This means that businesses should, at a minimum, respect the human rights set out in the International Bill of Rights, which includes the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural, Rights (ICESCR).⁴⁵ Even when the domestic context renders it impossible for businesses to meet their responsibility fully, businesses are required to respect these standards to the greatest

extent possible.⁴⁶ Moreover, the responsibility to respect exists “above and over” compliance with domestic legislations and regulations protecting human rights.⁴⁷ The UNGPs describe the scope of the business responsibility to respect human rights through the following three categories of involvement with human rights abuses: *causation*, *contribution*, and *direct link*.⁴⁸

Causation

A business may *cause* human rights abuses where its activities (its actions or omissions) on their own affect the ability of an individual or a group to enjoy a human right.⁴⁹

Contribution

On the other hand, a business may *contribute* to human rights abuses through its own activities (actions or omissions), either directly alongside other entities, or through third parties (government, armed group, or other business).⁵⁰ The UNGPs define contribution with reference to the international criminal law standard of aiding and abetting:⁵¹ “providing practical encouragement, or moral support which has a substantial effect on the perpetration of the crime”⁵² with the “knowledge that these acts assist the commission of the crime”⁵³. Under customary international law, it is not required that the contribution is provided for the purpose of assisting the violations.⁵⁴ In addition, it is arguable that the knowledge can be inferred from all relevant circumstances.⁵⁵ Particularly relevant in this regard is, for instance, whether or not there is widespread knowledge about the commission of crimes by the principal perpetrator.⁵⁶ Finally, the acts may take place before, during and after the crime itself has been committed.⁵⁷

Direct Link

Business responsibility can also arise for the human rights abuses of a third party even if the business has not caused nor contributed to such abuses. Direct linkage refers to a situation where there is a direct link between the operations, products, or services of a business and the human rights abuses committed by an entity, including other businesses and state and non-state entities,⁵⁸ with which it has a business relationship.⁵⁹

V. ROLE OF BUSINESSES IN THE SYRIAN CONFLICT

While the conflict in Syria has captured the attention of the international community, less attention has been paid to the role of businesses and their involvement in human rights abuses and/or international crimes throughout the conflict. Syria’s elite businesspersons, who maintain close ties to the Syrian government, have been benefiting from the war economy by using their relationships with government figures. These business elites include Assad family relatives, high ranking officials, and government-loyal businesspeople whose wealth and fate are linked to that of the government.⁶⁰ Additionally, the war economy in Syria has led to the emergence of a new class of business elites with investments in widely varied economic sectors. These new elites have accumulated their fortunes through unlawful activities such as checkpoints, smuggling, and illicit trade.⁶¹

The new business elites together with the old ones have been supporting the government’s war and propaganda in many ways. This includes forming and financing various pro-government militias that have committed several human rights violations and international crimes,⁶² as well as providing financial, logistical, and moral support to the Syrian government through their business activities and deals with the Syrian government and forces affiliated with it.⁶³

Business Involvement in Displacement and HLP Rights Abuses

Displacement of civilians and HLP rights abuses have been carried out systematically by warring

parties, particularly the Syrian government and its allies. This includes businesspersons with close ties to the government, which have contributed to displacement and HLP rights violations in different ways. Some businesspersons have established and financed militias fighting alongside the Syrian government, which participated in battles that have resulted in the forced displacement of civilians and HLP rights violations, through profits from their businesses. Others have been engaging in illicit activities during sieges in exchange for paying fees to Syrian government forces responsible for such sieges. These sieges often lead to displacement. In addition, some businesspersons have been involved in pillaging rubble and metal from areas that have been subject to forced displacement. Finally, a number of businesspersons are involved in urban redevelopment projects pursuant to the new property legislation that consolidate the forced displacement brought about by the Syrian government and that are likely constitute an obstacle to the return of refugees and IDPs.

FINANCING MILITIAS

Several Syrian businesspersons have formed and financially supported militias fighting alongside Syrian government forces in areas that have witnessed HLP rights violations and related crimes. Muhamad Hamsho (who is subjects to EU and US sanctions),⁶⁴ a leading businessman with close ties to Maher Al-Assad (Bashar's brother), has funded one of the militias operating in the countryside of Damascus and believed to have links to the Fourth Division of the Syrian army.⁶⁵ It is known that the Fourth Division, which is led by Maher Al-Assad, has contributed to the suppression, killing, and displacement of thousands of civilians across Syria.⁶⁶ This means that Hamsho's militia is likely involved in the Fourth Division's crimes and violations. Similarly, Rami Makhlof, a prominent businessman and cousin of Bashar Al-Assad has also established and financed militias through his charity Al-Boustan. There are three militias linked to Rami Makhlof and financed by Al-Boustan: Fuhud Homs (Leopards of Homs), Kata'ib al-Jabalawi (the al-Jabalawi Battalion) and Liwa Dir' al-Watan (Homeland Shield). These militias have fought in many areas that witnessed forced displacement and HLP rights violations by the Syrian government such as Homs, Eastern Ghouta, Palmyra and Latakia.⁶⁷ Taking this into account, it is very likely that these militias have contributed to the commission of such crimes and violations. As such, these businesspersons are very likely to have *contributed* to the Syrian government's international crimes in these areas, including forced displacement and pillage, as their profits were used to finance the militias that committed these crimes. At the very least, these businesses and their owners are *directly linked* to the government's crimes.

SCRAP TRADE

Syrian businesses have been involved in scrap trade in areas that the Syrian government has subjected to forced displacement. Since at least 2013, the Fourth Division of the Syrian Army, which is led by Maher Al-Assad, has been controlling the trade of scrap metals looted from areas returned to Syrian government control through the so called "Fourth Division's Security Bureau".⁶⁸ The Fourth Division has several partners within the Syrian business elites in this trade. Muhamad Hamsho has been involved with the Fourth Division in looting and pillaging scrap metal from areas in Damascus and its countryside such as Qabun and Daraya.⁶⁹ Reports indicate that the Fourth Division seized scrap metal during its operations in Damascus and its countryside and forced local mediators to sell it at a very low price to Hamsho's metal factory in "Adra Industrial Area", where the looted metal was melted and resold.⁷⁰ Another businessperson who is involved in the scrap metal trade from areas where civilians have been forcibly displacement is Mohamad Afar. Afar played a prominent role in the "Metal Committees", which are responsible for extracting metal from areas that have been subjected to forced displacement of civilians by the Syrian government in the countryside of Damascus. Under the patronage of the Fourth Division, he participated in extracting metal from

Daraya city.⁷¹ As such, the Fourth Division is involved in pillaging the original residents' properties in different areas in Damascus' countryside and as a result, businesses involved in the scrap metal trade are very likely to be *causing*, through their own activities, to HLP rights abuses. Businesses may also be *contributing* to the crime of forced displacement which occurred in these areas as their involvement in pillaging these areas might contribute to the consolidation of forced displacement.

RUBBLE REMOVAL

Pursuant to Law 3 of 2018 (Rubble Removal), the governorates of Damascus countryside, Homs, and Aleppo have awarded contracts worth billions of Syrian pounds to remove rubble from the streets of destroyed cities in these governorates.⁷² For instance, a well-known businessman in Eastern Ghouta called Mohiddin Manfoush was awarded a contract to clear rubble in three towns in eastern Ghouta.⁷³ Manfoush was a key player during the siege of Ghouta as he controlled the trade between Damascus and Ghouta at the time. It is believed that Manfoush was able to play this role because of his strong ties to the Syrian government and militias in Ghouta, as well as because of the commissions he allegedly paid to individuals within the government and militias.⁷⁴ Manfoush played a role in the agreement between government forces and the armed groups that controlled Ghouta and ended up in the government's control over Ghouta and dispatchment of thousands of civilians.⁷⁵ Rubble removal, carried out by the Syrian government and affiliated businesses such as Manfoush's, allows the government and these businesses to profit financially from the destruction they caused. This results in the profiteering of war criminals from their own crimes.

PROVIDING FINANCIAL, LOGISTICAL, AND MORAL SUPPORT TO THE SYRIAN GOVERNMENT

Throughout the Syrian conflict, Syrian businesspersons have been providing the Syrian government with all kinds of support including financial, logistical, and moral support for their crimes. For example, Ayman Jaber and Mohamad Hamsho have established and funded TV channels, such as Addounia and Sama, which have played a crucial role in the Syrian government's propaganda and demonization of Syrians perceived as opposed to the government.⁷⁶ Funding such TV channels may amount to moral support to the Syrian government in the commission of human rights violations and international crimes, including HLP rights violations and related crimes.

The prominent businessman and parliament member Samer Debs (not subject on any sanctions) has been providing moral and logistical support to the Syrian government through his activities as a businessman and as the Chairman of Damascus and Rural Damascus Chamber of Industry. Debs has taken part in several delegations and meetings aimed at the promotion of investments in Syria's urban redevelopment. He participated, for instance, in the first delegation to visit the UAE in 2019 and met with businesses from the Abu Dhabi Chamber of Commerce and Industry and discussed Syria's reconstruction.⁷⁷ In this capacity, Debs has also participated in delegations to Russia and Tehran to discuss investments in the Syrian economy, including in the real estate sector and in urban developments.⁷⁸ Debs' promotion of the Syrian government's urban development projects may amount to *contribution* through providing logistical and moral support to the Syrian government to consolidate the crime of forced displacement and HLP rights violations.

Ali Khoder Taher⁷⁹ is a war profiteer and powerful businessperson who has emerged during the conflict and been accused of conducting illegal activities such as smuggling and imposing taxes on plastic factories in Aleppo through the use of militias.⁸⁰ He is one of the Fourth Division's contractors for convoy protection,⁸¹ and his militia has been operating under the protection of the Fourth Division in different areas that have been subjected to gross human rights violations and displacement across Syria.⁸² Through funding a militia linked to the Fourth Division, Khoder may be involved in the violations and crimes committed by his militia through the Fourth Division, including displacement and HLP rights violations. Moreover, Khoder has established at least 11 companies since 2017.⁸³

Through his companies' activities, he has been supporting and promoting the Syrian government and its reconstruction plans. One of his companies, Castle for Protection and Security Services, has participated in the Damascus International Trade Fair 2018⁸⁴ and sponsored the 2019 Conference on Geology and Reconstruction.⁸⁵ Castle is considered to be the informal executive arm of the Fourth Division's security bureau.⁸⁶ As a result, Castle's activities have provided moral and logistical support to the Syrian government to foster investment in its urban redevelopment projects and hence, this company is very likely *contributing to* the HLP rights violations arising from Syrian government's urban redevelopment projects, including the pillage of property and the consolidation of forced displacement.

Wassim Kattan⁸⁷ is another business figure who has emerged as one of the most powerful businesspersons in Syria during the conflict. He was appointed as the Chairman of Rural Damascus Chamber of Commerce in 2018.⁸⁸ Kattan has accumulated his fortune through unlawful activities that took place during the siege of Ghouta.⁸⁹ An agreement worth SYP 10 billion was concluded between Kattan and the Syrian government forces besieging Ghouta to bring 5000 tons of food into Ghouta. A fee of SYP 2000 (Nearly USD 4 at the time) were imposed on each kg.⁹⁰ Between 2017 and 2019, Kattan established a number of companies; shortly after their establishment, some of his companies have been awarded contracts by the Syrian government to rebuild, manage, and invest in shopping malls and facilities owned by the latter in exchange for billions of Syrian pounds.⁹¹ This constitutes significant financial support the Syrian government. In addition, in his capacity as the Chairman of Rural Damascus Chamber of Commerce, Kattan has participated in several delegations and conferences aimed at restoring the Syrian government's relationships with other countries like the UAE and Italy, as well as encouraging foreign businesses to participate in real estate and urban redevelopment in Syria's.⁹² Through his business' activities, Kattan has provided financial, logistical, and moral support to the Syrian government's urban redevelopment plan. As such, he and his business have likely *contributed to* the Syrian government's urban redevelopment related HLP rights violations and pillage of property and may also have contributed to the consolidation of forced displacement.

Finally, some businesspersons have provided financial support to the Syrian government through the so called "levying contracts" with the Fourth Division Security Bureau. Levying is a phenomenon that arose during the conflict when various warring parties began to deploy checkpoints at the internal borders between their areas and areas controlled by other parties. Later, the parties administering these checkpoints began to impose fees on the transit of goods and individuals through these checkpoints.⁹³ By 2018, the Fourth Division had become the main levying body and started to grant contracts to intermediaries affiliated with it or major businesspersons. Khaled Hboubati (not subject to any sanctions), a prominent businessman in Damascus and the Chairman of the Syrian Red Crescent was awarded a contract for levying at the Khirbet Ghazaleh crossing in Daraa. According to the contract, Hboubati was required to pay SYP 700 million to the Fourth Division Security Bureau.⁹⁴ As such, levying activities with the Fourth Division constitute financial support to the Fourth Division. Hence, businesses involved in such activities may have *contributed to* the human rights violations committed by the Fourth Division including HLP rights violations and related international crimes.

INVOLVEMENT IN URBAN REDEVELOPMENT PROJECTS

Syrian businesses have also been involved in urban redevelopment projects pursuant the controversial property laws enacted after 2011. Marota City is the first project to be approved pursuant to Decree 66 in 2012. It is taking place over the Basateen Al-Razi area in Damascus, which includes parts of the districts of Mazzeh and Kafr Sousseh. Marota City will be followed by a similar project in Damascus called Basilia City.⁹⁵ The Marota City project is now being managed by the Damascus governorate through Damascus Cham Holding. Since its establishment, the holding has

attracted several investments from Syrian businesspersons; some of whom are known to have strong ties with the Syrian government. So far, Damascus Cham has signed six contracts for joint projects with private businesses in Marota City.⁹⁶ Rami Makhlof joined the project with USD 57.7 million through four companies partially or wholly owned by him. The four Makhlof companies are Ramak Development and Humanitarian projects, Al-Amar, Timeet Trading LLC, and Wings Private JSC.⁹⁷ Samer Foz, one of the most powerful businesspersons emerging after 2011, is also investing USD 312 million in the project through his company Aman Group.⁹⁸ According to the contracts, the investors will provide funding for the project in exchange for Damascus Cham providing them with plots to redevelop.⁹⁹ All businesspersons investing in Marota city, except Rami Makhlof, were not subject to any sanctions up until 21 January 2019, when the EU added them to its sanctions lists.¹⁰⁰

Finally, while no projects have been implemented based on Law 10 so far, the Syrian government announced that it has begun preparation for the redevelopment of Baba Amr in Homs and Qabun and Jobar in Damascus pursuant to Law 10. These areas are known to be amongst those that witnessed peaceful anti-government protest and later saw massive destruction and forced displacement of civilians by the Syrian government and its allies.¹⁰¹ It is very likely that all redevelopment projects in areas that have witnessed forced displacement of civilians and HLP rights violations will be subject to Law 10/2018 and through public-private partnerships, as Homs has already established a holding company similar to Damascus Cham¹⁰² and Aleppo governorate has announced that the city will launch its own holding company to manage and invests in its properties.¹⁰³ In short, participating in urban redevelopment projects under the current circumstances, means *contributing to* HLP rights abuses and forced displacement and pillage, as reconstruction under the present legal framework consolidates forced displacement and renders the illegal appropriation of properties by the Syrian government permanent.

VI. RECOMMENDATIONS

Throughout the conflict, Syrian businesses have contributed to HLP rights abuses and related crimes in many ways. Moreover, the current legislative framework used by the Syrian government for reconstruction ignores the HLP rights of the refugees and IDPs, benefits businesses linked to the government, and constitutes an obstacle for refugee return. As such, it is very likely that businesses participating in future urban redevelopment projects in areas that witnessed forced displacement will contribute to further HLP rights abuses and hinder the realisation of refugees' and IDPs' right to return. On the other hand, the increased pressure on Syrian refugees in neighbouring countries, like Lebanon, Jordan, and Turkey, to return without taking any practical measures to stop the public-private reconstruction partnerships, will very likely lead to future migration from these countries towards Europe. In this sense, if Europe wants to ensure its own security interests and avoid a new wave of migration, it must take all feasible measures to ensure that the reconstruction process in Syria is based on the principles of human rights, transparency, justice, and equality as to address the current HLP rights abuses, prevent further violations, and create favourable conditions for the return of all refugees and IDPs. Therefore, addressing business-related HLP rights abuses should be a key component of any peacebuilding and justice process in Syria, as this will contribute to creating a safe and enabling post-conflict environment which is a prerequisite for effective implementation of the refugee right to return to their place of origin. In this sense, absent effective support to enable Syrian civil society organizations to address business-related HLP rights abuses means that displaced Syrians will be unable return or have their property restored.

The incorporation of business-related HLP rights abuses in the political negotiations and the constitution drafting process is essential to ensure sustainable peace and justice in post-conflict Syria. Failure to tackle HLP rights issues including business-related abuses risks consolidating the forced displacement and the illegal expropriation of properties, and ultimately it will lead to a new wave of

migration towards Europe.

This section outlines a set of recommendations to tackle the issues of displacement and HLP rights abuses by business actors in Syria.

Documentation of Business-Related HLP Rights Abuses

Documentation of HLP rights abuses and crimes involving business actors in Syria is essential to address them as well as to prevent further abuses and to hold the perpetrators to account. However, there is an urgent need to build the capacity of Syrian organizations on issues related to human rights and business.

To States

- Fund and support Syrian civil society organizations in order to enable them to:
 - monitor and document the impact of business activity on human rights in Syria and in particular, its impact on HLP rights of refugees and IDPs;
 - monitor the Syrian government's compliance with international law standards concerning business activity in Syria;

To UN Bodies

- The Commission of Inquiry on Syria, the IIIM, and the Human Rights Council should ensure that their activities and reports address the involvement of businesses in human rights abuses and international crimes in Syria, in particular those related to displacement and HLP rights.

To Syrian civil society organizations

- Syrian civil society organizations documenting human rights abuses and international crimes must ensure that the HLP rights abuses and crimes with which businesses are involved and the Syrian government's compliance with international law standards concerning business activity are systematically monitored and documented.

Implementation of Targeted Sanctions (Restrictive Measures)

Targeted sanctions should continue to be used as an interim accountability mechanism against businesses involved in human rights abuses and international crimes. As such, sanctions can play a crucial role to prevent HLP rights abuses and crimes by businesses in light of the slow-moving nature of other available accountability mechanisms and the absence of an international tribunal with jurisdiction over the crimes committed in Syria. Targeted sanctions can also be used as a policy tool to pressure the Syrian government to change its reconstruction policy and to efficiently engage in the political process as laid out in UNSC resolution 2254. Additionally, the implementation of targeted sanctions will send a clear message to the Syrian government and its supporting Syrian businesses that financially benefiting from HLP rights violations will not be tolerated by the EU. In short, targeted sanctions will enable the EU to exercise some leverage to stop the current HLP rights violations, deter further violations, and advance the political process.

To EU Member States

- Collaborate with other EU member states to continue the implementation of targeted sanctions as an accountability mechanism against businesspeople and companies involved in HLP rights abuses in Syria. This includes businesses participating in urban redevelopments under Decree 66/2012, Law 10/2018, or subsequent similar laws.
- Support the effort for the renewal of current EU sanctions, as European sanctions on Syria are subject to annual renewal by unanimous vote and a single member state could block renewal.

- Collaborate with other EU member states to impose sanctions on Syrian businesses providing support to the Syrian government's HLP rights violations.
- Collaborate with other EU member states to adopt new European sanctions regimes similar to the US Global Magnitsky Act and the Caesar Act to prevent foreign businesses and states from providing financial, material, and technical support to human rights abusers in Syria, as well as preventing businesses from benefiting from urban redevelopments in areas that have been subjected to forced displacement of civilians and HLP rights violations.
- Collaborate with other EU member states to ensure the effective implementation of EU sanctions exemptions for humanitarian aid, as to ensure that humanitarian NGOs operating inside Syria are able to reach the most vulnerable displaced people.

Business and Human Rights Issues and the Political and Constitution Drafting Processes

UNSC resolution 2254 emphasizes *"the critical need to build conditions for the safe and voluntary return of refugees and internally displaced persons to their home areas and the rehabilitation of affected areas, in accordance with international law"*.¹⁰⁴ Notwithstanding, the peace talks and the Constitution drafting process have never focused on addressing HLP rights violations, nor on the involvement of businesses in such violations.

To States

- Ensure that the political process is compatible with the UNSC resolution 2254 as to facilitate the return of all refugees and IDPs and the rehabilitation of damaged areas in light of the applicable rules of international law including human rights and business standards.
- Ensure that HLP rights issues in general, and business-related HLP abuses in particular, are incorporated in the peace talks and the Constitution drafting processes.

To the UN Special Envoy to Syria

- Ensure that the political process is compatible with the UNSC resolution 2254 as to facilitate the return of all refugees and IDPs and the rehabilitation of damaged areas in light of the applicable rules of international law including human rights and business standards.
- Ensure that HLP rights issues in general, and business-related HLP abuses in particular, are incorporated in the peace talks and the constitution drafting processes.

To Syrian civil society organizations

- Ensure to have a comprehensive plan to tackle business-related HLP rights abuses during the political and the Constitution drafting processes.

Endnotes

¹ Universal Declaration of Human Rights (UDHR) Art. 25, ICESCR Art. 11

² UDHR, Art. 17

³ UDHR, Art. 12, ICCPR, Art. 17

⁴ Art. 2(1) and 26 ICCPR; Art. 2(2) ICESCR

⁵ The principle of distinction is outlined in Art. 48 of the Additional Protocol I to the Geneva Convention and considered as a rule of Customary International Humanitarian Law (CIHL) in both IAC and NIAC, International Committee of the Red Cross (ICRC), CIHL database, Rule 1; The International Court of Justice (ICJ) also acknowledged that the “principle of distinction” between civilians and combatants is one of the cardinal principles of IHL. It is aimed at “the protection of civilians and civilians objects and establishes the distinction between combatants and non-combatants”, Nuclear Weapons case, para.78.

⁶ Geneva Convention IV (IAC), Art. 49; Additional Protocol II (NIAC); Art. 17, ICRC, CIHL database, Rule 129 (both IAC & NIAC).

⁷ Ibid.

⁸ Rome Statute, Art. 8(2)(e)(viii), 8(2)(d)(viii); ICC, Elements of Crimes, Art. 8(2)(e)(viii) and 8(2)(d)(viii).

⁹ ICRC, CIHL database, Rule 7.

¹⁰ ICRC, CIHL database, Rule 132.

¹¹ ICRC, CIHL database, Rule 133.

¹² Geneva Convention IV, Art. 33; Additional Protocol II, Art. 4(2)(g); ICRC, CIHL database, Rule 52.

¹³ Rome Statute, Art. 8(2)(b)(xvi)

¹⁴ Rome Statute, Art. 8(2)(b)(xvi) and 8(2)(e)(v).

¹⁵ George Somi, “*Syria under Pinheiro: Reforming Syrian Domestic Law for Decentralized Reconstruction*”, Brooklyn Journal for International Law, Volume 43:2 (2018), at 734.

¹⁶ United Nations Principle on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), Principle 2.

¹⁷ Human Rights Council (HRC), Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (COI), HRC/23/58, July 2013, Summary.

¹⁸ Population movements refer to persons or group of persons who have been forced or obliged to flee or leave their homes in particular as a result of or in order to avoid the effects of hostilities or disasters. Population movements include movements of people that may have experienced displacement more than once. As such, it does not represent individual displaced population but rather trends in displacement. This definition has been adopted by OCHA in its “*Humanitarian Needs Review 2019: Syrian Arab Republic*”, Endnote 1.

¹⁹ Sieges have been mostly imposed by the Syrian government and its allies, but also by armed groups. Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, “*Sieges as Weapons of War: Encircle, Surrender, Starve and Evacuate*”, 29 May 2019, Para. 1.

²⁰ Report of the Office of the High Commissioner for Human Rights, “*Living under siege*” February 2014.

²¹ For instance, a Human Rights Watch Report has analyzed satellite imagery of Qaboun neighbourhood in Damascus and found that even after the end of fighting, a large-scale demolition has been carried by the Syrian Government. Human Rights Watch, “*Syria: Resident Blocked from Returning*”, October 2018.

²² Report of the Special Rapporteur on the Human Rights of Internally Displaced, “*Protection of and assistance to internally displaced persons: situation of internally displaced persons in the Syrian Arab Republic*”, A/67/931, July 2013, P.17.

²³ See for example, Commission of Inquiry on the Syrian Arab Republic Report, “*Sieges as Weapons of War: Encircle, Surrender, Starve and Evacuate*”, 29 May 2019, Reports of the Commission of Inquiry on the Syrian Arab Republic, A/HRC/23/58 of 4 June 2013, HRC/34/CRP.3 of February 2017, A/HRC/36/55 of 8 August 2017, HRC/37/72 of February 2018.

²⁴ For a comprehensive overview of evacuation agreements in Syria, see for example, Reports of the Human Rights Council, Commission of Inquiry on the Syrian Arab Republic Reports A/HRC/36/55 of 8 August 2017 and HRC/23/58 of July 2018; Amnesty International report “*We leave, or we die*” *Forced displacement under Syria’s reconciliation agreements*, November 2107.

²⁵ Discussing all situations of forced displacement in Syria may go beyond the scope of this paper. Therefore, this paper provides some instances of displacement from areas that have witnessed involvement of businesses in forced displacement and HLP rights violations, either through providing support to the Syrian government, or through participation in activities that contributed to the consolidation of displacement and HLP rights violations, such as reconstruction and rubble trade.

Human Rights: An interpretative Guide”, (2012), available at:

<https://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>

⁵⁰ Ibid.

⁵¹ UNGPs, Commentary to Principle 17.

⁵² ICTY, *Prosecutor v Sainovic et al.*, Appeals Chamber Judgment (23 January 2014), para 1649.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ ICJ, ‘Corporate Complicity and Legal Accountability’, Vol. 2, 17.

⁵⁶ In the post WWII *Flick* case, a German businessman was convicted of aiding and abetting the crimes committed by the SS through the provision of financial support despite his denial of having had knowledge of the crimes committed by the SS since such knowledge was widespread.

⁵⁷ For an overview of the corporate complicity and aiding and abetting under international criminal law, see for instance “*Corporate Complicity and Legal Complicity, Criminal Law and International Crime*”, Report of the International Commission of Jurist, Volume 2 (2008).

⁵⁸ OHCHR, *The Corporate Responsibility to Respect Human Rights: an Interpretive Guide*, 2012, 5.

⁵⁹ OHCHR, 2017, 6.

⁶⁰ Aurora Sottimano, “*The Syrian Business Elites: Patronage Network and War Economy*”, Syrian Untold (2016), available at: <https://syriauntold.com/2016/09/24/the-syrian-business-elite-patronage-networks-and-war-economy/> (accessed 27 January 2020), Bassam Haddad, “*The Syrian Regime’s Business Backbone*”, “Middle East Report 262 (Spring 2012), available at <http://www.merip.org/mer/mer262/syrian-regimes-business-backbone> (accessed 27 January 2020)

⁶¹ Samer Abboud, “*The Economy of War and Peace in Syria*”, The Century Foundation (2017), available at: <https://tcf.org/content/report/economics-war-peace-syria/#easy-footnote-bottom-28> (accessed 28 January 2020)

⁶² For an overview of pro-regime militias, see for example, Maen Tallaa (ed.) and others, “*Changing the Security Center in Syria*”, Omran for Strategic Studies (2017), pp. 89- 95, available at:

https://www.kas.de/c/document_library/get_file?uuid=af43489f-4096-527b-baf9-a0029dd2dbd3&groupId=252038

(accessed 27 January 2020); The Arab Weekly, “*Syria’s Businessmen Invest in Post-Conflict Reconstruction*”, June (2016), available at: <https://theArabweekly.com/syrias-businessmen-invest-post-war-reconstruction> (accessed 27 January 2020)

⁶³ Syrian Legal Development Programme, “*Business Activity Linked to Human Rights in Syria*”, (2019), available at: <https://www.hrbu.syrianldp.com/ba-report>

⁶⁴ Official Journal of the European Union, EU Council Regulation no. 36/2012, Annex II available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0036-20190521&from=EN>

⁶⁵ Mahmoud Lababidi, “*Damascus Businessman: The Phantoms of Marota City*”, European University Institute (2019), p. 18, available at:

https://cadmus.eui.eu/bitstream/handle/1814/62227/MED_2019_07_EN.pdf?sequence=1&isAllowed=y (accessed 29 January 2020), p. 18.

⁶⁶ See for instance, Pro-Justice, “*The Blacklist, violations committed by the most prominent Syrian Regime figures and how to bring them to justice*”, (2019), p.130, available at: <https://pro-justice.org/wp-content/uploads/2019/10/The-Blacklist.pdf> (accessed 29 January 2020)

⁶⁷ Ibid., see also, *The Arab Weekly, Syria’s businessmen invest in post-war reconstruction*” June (2016), available at: <https://theArabweekly.com/syrias-businessmen-invest-post-war-reconstruction> (accessed 29 January 2020).

⁶⁸ Ayman Aldassouky, “*The Economics Networks of the Fourth Division During the Syrian Conflict*”, The European University Institute, January (2020), P.7, available at:

https://cadmus.eui.eu/bitstream/handle/1814/65844/MED_WPCS_2020_1.pdf?sequence=1&isAllowed=y (accessed 29 January 2020).

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⁷⁰ Ibid.; see also, The Financial Times, “*The Men Making Fortune from Syria’s War*”, 3 October 2019, available at: <https://www.ft.com/content/525ec4e4-e4a3-11e9-9743-db5a370481bc> (accessed 30 January 2020)

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⁷² Ibid.

⁷³ Enab baladi, “*Al-Manfoush removes the ruins of three towns in Ghouta after securing a contract with military housing*”, May (2019), (in Arabic), available at: <https://www.enabbaladi.net/archives/301800> (accessed 30 January 2020)

⁷⁴ The Syria Report, “*Manfoush Expands Business to Rubble Removal*”, 28 May (2019), available at: <https://www.syria-report.com/news/real-estate-construction/manfoush-expands-business-rubble-removal> (accessed 3 February 2020)

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- ⁷⁷ Al-Iqtisadi “*60 Syrian Businessmen in Syrian-Emirati Private Sector Meeting*”, 20 December (2019), (in Arabic), <https://aliqtisadi.com/1320250-اماراتي-استثماري-سوري-إماراتي> (accessed 29 January 2020)
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- ⁸¹ Ibid., Ayman Aldassouky, supra note 68, p. 10.
- ⁸² See for example, Orient News, “*Meet Ghawar: the Man who Blackmailed Aleppo People Under the Patronage of Iranian Militias*”, (in Arabic) February (2019), available at: https://orient-news.net/ar/news_show/163249/0/-إلى-تعرف-إلى-الغوار-شيخ-بيت-الحلبين-بتفويض-من-المليشيات-الإيرانية (accessed 29 January 2020); Baladi News, “*The Agent of Iran, Hezbollah and Maher Al-Assad in Syria*”, (In Arabic), February (2019), available at: <https://www.baladi-news.com/ar/articles/41481/سوريا-إلى-وكيل-إيران-وحزب-الله-وماهر-الأسد-في-سوريا> (accessed 29 January 2019)
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- ⁸⁴ Interview with The company’s director, The Castle for Protection and Security Services website, available at: <http://csp-sy.com/ar/2018/05/19/لقاء-صحفي-وطني-بدرس/> (accessed 30 January 2020)
- ⁸⁵ The Castle for Protection and Security Services Facebook page, 1 April (2019), available at: https://www.facebook.com/permalink.php?story_fbid=1445041039035441&id=588593844680169 (accessed 30 January 2020)
- ⁸⁶ Ibid., Ayman Aldassouky, supra note 68, p. 10.
- ⁸⁷ At the time of writing, the EU added Wassim Kattan to the sanctions lists by the Council Implementing Decision (CFSP) 2020/212 of 17 February 2020.
- ⁸⁸ Aliqtisadi, February (2018) (in Arabic), available at: <https://aliqtisadi.com/1038399-دمشق-رف-لجنة-مؤقتة-لتجارة-ريف-دمشق/> (accessed 4 February 2020).
- ⁸⁹ Ibid., Mahmoud Lababidi, supra note 65, p.17,
- ⁹⁰ Orient News, “*Eastern Ghouta, between Assad Siege, Fees and High Prices*”, 16 October (2017), (In Arabic), available at: https://www.orient-news.net/ar/news_show/141524/0/الغوطة-الشرقية-ما-بين-حصار-الأسد-والإتاوات-والأسعار-الخيالية (accessed 4 February 2020)
- ⁹¹ A contract was awarded to Kattan for the management of the Qassioun Mall in Barzeh neighbourhood in Damascus for exchange of SYP 1.2 billion per year to Damascus Governorate. Another contract for investment of a real estate complex in central Damascus known as Yalbugha and owned by the ministry of Endowments (Ministry of Awqaf) was awarded to one of Kattan’s Companies, namely, Intersection LLC. The company will pay the ministry an annual rent at SYP 1.7 billion throughout the duration of the contract (48 Years). In a similar vein, Kattan won a contract for the management of Massa Plaza Mall in Malki area in Damascus through his company Adam LLC in exchange of an annual rent of SYP 1.29 billion to the Damascus governorate. Finally, Kattan has also been awarded a 45 years contract by the Syrian government to invest Al-Jalaa Hotel in Mezzeh district in Damascus through his company Mourouj Al-Cham in exchange for SYP 2.2 billion SYP. Ibid., Mahmoud Lababidi, supra note 67, pp. 16-17. See also, The Syria Report, “*Yalbugha Deal Confirms Grip of Influential Investor on Prime Commercial Properties in Damascus*”, 14 January (2019), available at: <https://www.syria-report.com/news/real-estate-construction/yalbugha-deal-confirms-grip-influential-investor-prime-commercial-prop> (accessed 4 February 2020).
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- ⁹⁴ Ibid., p.12.

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¹⁰² Tom Rollins, “*Decree 66: The Blueprint for Al-Assad’s Reconstruction of Syria*”, The New Humanitarian (Formerly IRIN News), 20 April 2017, available at: <https://www.thenewhumanitarian.org/investigations/2017/04/20/decree-66-blueprint-al-assad-s-reconstruction-syria> (visited 18 February 2020)

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