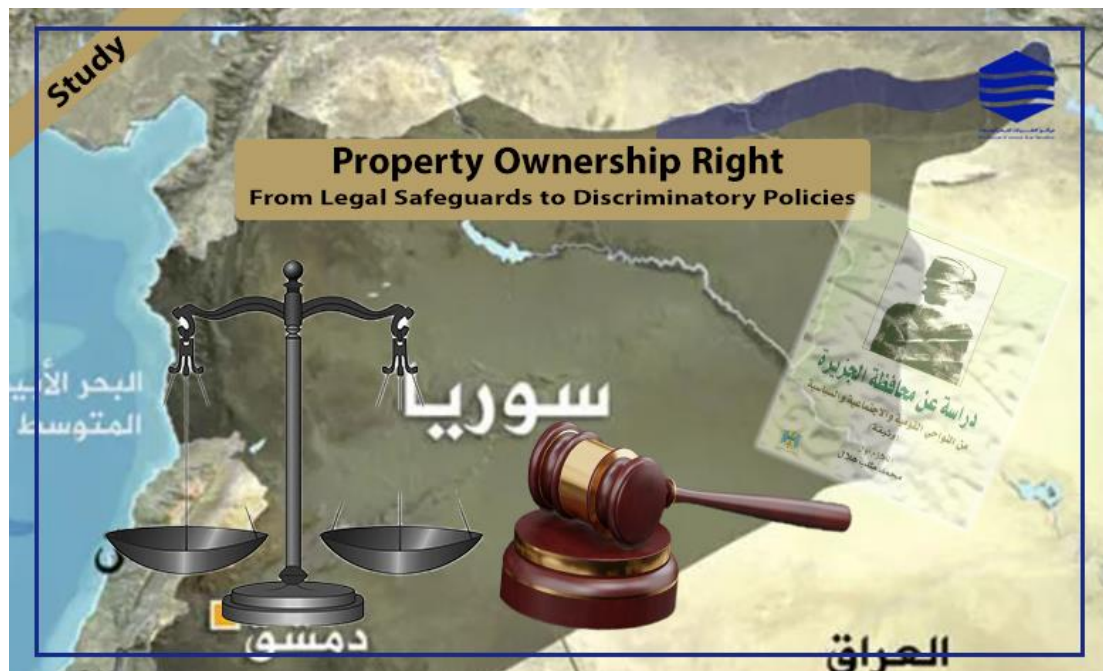


Property Ownership Right

From Legal Safeguards to Discriminatory Policies



Al-Furat Center for Studies

Introduction

The issue of real property disputes and violations of individual property ownership rights in Syria dates back to the 1950s. It is not solely a result of the ongoing armed conflict that has engulfed the country for over a decade. Whereas numerous legislative laws, decrees, and administrative decisions have been issued, sometimes depriving Syrian citizens of their right to ownership and at other times restricting the authority of property owners regarding their property, particularly through real estate legislations issued since the Baath Party came to power in Syria.

The right of ownership occupies the forefront of principal real rights¹ due to its complexity and extensive scope. Additionally, it is one of the oldest subjects in law history, having captured the attention of all societies, with fierce competition among individuals to acquire it since ancient times until today.² The intensity of this competition becomes even greater when the subject of ownership involves real estate, which is considered to hold higher financial value than movable property, as it

¹ Abdul Razzaq Al-Sanhoury, "The Mediator in Explanation of Civil Law, Part Eight, The Right to Ownership, with a Detailed Explanation of Things and Money", Dar Ihya Al-Turath Al-Arabi, Beirut, Lebanon.

² Abdul Salam Al-Tarmanini, "The Intermediate in the History of Law and Legal Systems", Directorate of Books and University Publications, Aleppo, 1986.

represents a lasting source of wealth³. Given this significant value associated with the right of ownership, it has been revered in various ancient and modern legal systems, and international treaties, constitutions, and man-made laws have hastened to protect it.

The Syrian legislator has specifically addressed the right of private real estate ownership in the Civil Code and the Real Estate Registration Law, establishing a legal framework for property rights. Through these laws, the legislator aims to regulate this right and ensure the preservation of this sacred right, which grants the owner extensive authority to possess and benefit from the property in all ways and all the available legal actions without any interference from others.

When studying the history of the evolution of real estate legislation in modern Syria, it can be divided into two main stages:

The first stage: It starts from the establishment of the Syrian state in 1920 until the issuance of the Syrian Civil Law in 1949. This period coincides with the French mandate. During this phase, Syrian real estate legislation was established (Decree 3339 issued by the French High Commissioner⁴) as well as the system of real estate registration, which culminated in the issuance of the Syrian Civil Law in 1949.

The second stage: It properly began in 1950 and extends to the present day, encompassing the period of military coups and the current Syrian war, passing through the era of unity with Egypt and the Baath Party's control over power in Syria. During this period, nationalistic tendencies and socialist orientations emerged in politics and the constitutions that were established at that time. These constitutions considered property rights as an element of national wealth, which influenced the legislative policy in Syria, especially in terms of real estate legislation.

In this later stage, several legislative laws, decrees, and administrative decisions were issued, imposing restrictions on the right of real property ownership, even to the extent of depriving Syrian citizens of ownership rights in some cases. Examples include cases like "Foreigners of Al-Hasakah", property acquisition laws, nationalization, land reform, the seizure of properties in border areas, and other exceptional laws that limited the owner's authority over their property.

In this stage, specifically in the early 1960s, an officer in the Political Security Branch in Al-Hasakah, named "Mohammed Talab Hilal," prepared a study titled "A Study of Al-Jazeera Province: From National, Social, and Political Aspects."⁵ Based on his study, the officer proposed several suggestions, the most important of which were as follows (as mentioned in the study):

³ Badiia Haddad, " Legal Restrictions on Private Property Rights", Doctoral Thesis, University of Mentouri - Constantine 1, Algeria, 2019-2020.

⁴ Decree No. 3339, dated 30/11/1930, known as the "Property Law."

⁵ Mohammed Talb Hilal, "A Study on Al-Jazeera Governorate: National, Social, and Political Aspects," available at the following website: <https://wekhevi.wordpress.com/>

- Relying on internal displacement processes, along with internal distribution, and considering that the overwhelming majority of Kurds residing in Al-Jazeera hold Turkish citizenship, it is necessary to rectify the civil records, which is currently underway.
- Blocking job opportunities: It is essential for us to contribute to the plan by closing job opportunities for the Kurds, making them unable to move freely, and ensuring their unstable situation, ready to depart at any moment. This should be implemented through land reform, starting in Al-Jazeera, by not allowing renting or ownership for the Kurds and settling Arab and national elements in Kurdish areas on the border, acting as a future stronghold and simultaneously as a control over the Kurds until they are forcefully displaced.
- Designating the northern strip of Al-Jazeera as a military zone, similar to a front line area, where military units would be stationed to house Arabs and evacuate Kurds according to the state's plan.
- Establishing collective farms for the Arabs settled by the state in the northern strip, with these farms being trained and armed militarily, similar to the Jewish settlements on the borders.

Based on this study and its recommendations, critical decisions were made during the Third National Conference of the Baath Party in 1966. According to the fifth paragraph of its recommendations (reconsidering the ownership of lands situated along the Syrian-Turkish border, extending 350 kilometers and 10-15 kilometers in depth, and declaring them as the property of the Syrian state).

Previously, several studies have been conducted on the subject of property ownership rights in Syria, especially by human rights and humanitarian organizations⁶. However, most of these studies focused on a major issue, namely, examining the impact of the Syrian war on property ownership rights and the violations it has suffered during this war (such as destruction of buildings, displacement of populations, seizure of houses and properties, loss and disappearance of property ownership documents, and the planting of mines in agricultural lands). They also investigated how to ensure the safe and voluntary return of refugees and displaced people to their homes and properties.

Our study revolves around investigating the roots of the real estate problem within the laws and legislations related to property ownership, spanning from the formation of modern Syria in 1920 to the onset of popular protests in March 2011.

The Research Problem

As an essential human right that constitutes a fundamental factor for individual stability, societal security, and well-being, legislators are expected to enact laws to protect the

⁶ For example, the Norwegian Refugee Council (NRC) has a "Briefing Note: Housing, Land, and Property in the Syrian Arab Republic," dated July 2016, available at the following website: <https://bit.ly/3Eu5AF2>. Additionally, Today's Accomplishment Day (TAD) Organization has a report titled "The Reality of Property, Land, and Housing Rights in Syria," from December 2020, available at the following website: <https://tda-sy.org/>. The Economic and Social Commission for Western Asia (ESCWA) has a report on "Housing and Property Rights" as part of the National Agenda Program for the Future of Syria, United Nations, Beirut 2018, available at the following website: <https://archive.unescwa.org/>. Moreover, Syrians for Truth and Justice have a report titled "Syria: Patterns of Property Seizures in (Olive Branch) and (Peace Spring)" from May 2021, available at the following website: <https://bit.ly/3Ep8meH>.

right to property ownership and provide legal guarantees to preserve it and ensure stable transactions regarding it, while ensuring equality among all citizens without discrimination.

Have the real estate legislations related to property ownership achieved the following objectives: preserving private property ownership rights and granting them necessary legal protection without discrimination between citizens based on race, ethnicity, religion, or region? Or have these legislations leaned towards restricting property ownership rights and curbing the authority of property owners, thus undermining the essence and significance that the Syrian legislator attributed to property ownership rights due to the numerous exceptional legislations that were issued after the Syrian Civil Code? Did these exceptional legislations related to property ownership rights not differentiate between one region and another within the Syrian geography, and between different components of the Syrian people, in a manner consistent with the policies of the Syrian state and the ruling party? Consequently, did these legislations contribute to the emergence and exacerbation of the property ownership problem, and have these legislations become, in one way or another, part of this problem?

To answer these questions, it is necessary to examine the real estate laws and property ownership regulations that have been issued since the early formation of the Syrian state until the Syrian war, in order to understand the property ownership problem and its historical roots.

Research Importance: The importance of this research lies in two aspects:

1. Despite the significance of property ownership rights in the lives of nations throughout history, there is a lack of legal studies on Syrian legislation related to property ownership rights.
2. Attempting to understand the property ownership problem and clarify its legislative and political roots.

Research Objectives: The research aims to achieve the following points:

1. Provide an overview of Syrian property legislation and its evolution during the modern history of the Syrian state.
2. Highlight the importance and uniqueness of property ownership rights, whether in international agreements, Syrian constitutions, or the Syrian Civil Law.
3. Analyze the relationship between "Mohammed Talab Hilal's study on Al-Jazeera region of Syria" and the exceptional legislations that targeted this region in particular, shedding light on the political dimension of these legislations.

4. Demonstrate how the law has been used as an executive tool for policies pursued by successive Syrian governments since the 1950s.

Research Methodology: We will adopt an analytical approach aimed at reviewing and analyzing relevant legal texts to highlight their contribution to the emergence and exacerbation of the property ownership rights issue. We will extract the features of the Syrian state's discriminatory policy towards a specific region over others and towards a particular component of the Syrian population over others. Additionally, we will examine the political, social, and economic implications of these legislations on the residents of North and East Syria.

Research Outline

Based on the previous, this research will be divided into two consecutive chapters:

- The first chapter highlights the legal protection of property ownership rights.
- The second chapter presents the most significant exceptional laws and procedures concerning property ownership rights.

According to the following outline:

Chapter 1: Legal Protection of Property Ownership Rights

- Part 1: In International Human Rights Law
- Part 2: In Syrian Constitutions
- Part 3: In the Syrian Civil Law
- Part 4: In the Real Estate Registration System

Chapter 2: Exceptional Discriminatory Laws

- Part 1: The Stripping of Citizenship and Deprivation of Property Ownership Right
- Part 2: The Law of Agricultural Land Reform
- Part 3: Law of Expropriation for Public Benefit
- Part 4: Law of Property Located in Border Areas

Chapter One: Legal Protection of Real Estate Property Ownership

The successive documents of human rights and modern constitutions have emphasized the recognition and necessity to respect the right to private property ownership. This protection is also firmly established in the Syrian Civil Law through specific provisions concerning the transfer or acquisition of real estate property rights, as well as the adoption of the Syrian legislator of the Real Estate Registration system.

Part One: In International Human Rights Law:

Given the significant importance of property ownership rights among the fundamental human rights, and its role as a fundamental factor in preserving human existence and enabling individuals to exercise their other rights in life, it has been reaffirmed in numerous international and regional covenants and agreements.

- **Section One: In International Agreements**

The emphasis on the importance and sanctity of private property ownership can be traced back to the "French Revolution" of 1789. This revolution made property ownership a sacred right that should not be violated. The Declaration of the Rights of Man and of the Citizen, issued by the National Assembly of France on August 26, 1789, is considered one of the fundamental documents of the French Revolution. It defines the individual and collective rights of the nation. This declaration was influenced by Enlightenment ideas, social contract theories, and natural rights. While it emerged as a product of the French Revolution, its demands and provisions transcended France's borders and resonated in various countries, influencing their domestic legislation.

Article 17 of this Declaration states: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified." Thus, this article ensured the establishment of the principle of "guaranteeing property rights and freedom of ownership" as a fundamental natural right.

The Universal Declaration of Human Rights of 1948 is considered one of the earliest international covenants that explicitly addressed property rights after the establishment of the United Nations. There is a general consensus that this declaration forms the basis of international human rights law and serves as an inspiring source for a vast array of international human rights treaties, as well as for the development of human rights worldwide as a whole⁷. Article 17 of the Declaration emphasizes that "everyone has the

⁷ Yasser Al-Hawish, Mahand Nuh, "Human Rights," Virtual University Publications, Damascus 2018.

right to own property alone as well as in association with others, and no one shall be arbitrarily deprived of his property." According to Article 25 of the same Declaration, "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, especially regarding food, clothing, housing, and medical care."

These provisions indicate that property ownership is an aspect of individual freedom and serves as a guarantee of stability. This right is equally enjoyed by all individuals and is protected from any arbitrary interference, encroachment, or attack.

Similarly, Article 11 of the International Covenant on Economic, Social, and Cultural Rights of 1966 reiterated the principles stated in Article 25 of the Universal Declaration of Human Rights. Additionally, Article 17 of the International Covenant on Civil and Political Rights of 1966 affirmed that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence."

Furthermore, Article 5 of the "International Convention on the Elimination of All Forms of Racial Discrimination" of 1965 emphasized the necessity of ensuring the right of every individual, without discrimination based on race, color, national or ethnic origin, to enjoy the right to own property alone or in association with others, as well as the right to housing.

- **Section Two: In Regional Agreements**

In addition to the international treaties and conventions with global scope, regional international agreements have also emphasized the importance of property rights and housing while prohibiting any encroachment upon them. The American Convention on Human Rights of 1969 affirmed that "every person has the right to use and enjoy his property, and no one shall be deprived of his property except upon payment of fair compensation."⁸ The European Convention on Human Rights of 1950 recognized the right of individuals to respect for their private and family life and their home.⁹ Similarly, Article 31 of the Arab Charter on Human Rights of 2004 reiterated this principle, stating that "the right to private property is guaranteed to everyone, and it is prohibited, under all circumstances, to arbitrarily or unlawfully confiscate all or part of their property." Property rights are also protected and cannot be infringed upon except for necessity or the public's benefit, according to Article 14 of the African Charter on Human and Peoples' Rights, issued in 1981.

⁸ Article 21 of the American Convention on Human Rights of 1966.

⁹ Article 8 of the European Convention on Human Rights of 1950.

Part Two: In the Syrian Constitutions

Constitutional protection embodies the strongest guarantee for individual rights and freedoms, ensuring their recognition, protection, and due respect.¹⁰ The constitution binds all authorities, the government, and the people to comply with its provisions without exception, including legislative measures. No legislation or laws should contradict the constitution because its provisions supersede all other laws.¹¹

While the constitution provides general protection for all fundamental rights and freedoms, it specifically emphasizes the right to private property due to its significance. In line with international treaties and conventions, various Syrian constitutions have emphasized the importance of property rights and their protection.

We will attempt to provide a brief overview of the essential provisions concerning property rights in the various Syrian constitutions since the inception of the Syrian state in 1920, following its independence from the Ottoman rule, up to the current "in-force" constitution of 2012.

Section One: From the 1920 Constitution to the 1950 Constitution

Constitution of 1920: It is commonly known as "King Faisal's Constitution," it was established for Syria after its separation from the Ottoman Empire. However, it only lasted for fifteen days as the French army arrived and took control over Syria, declaring it under their mandate. Nevertheless, the provisions of this constitution were repeated in most subsequent constitutions.

Article 18 of this constitution stipulated the protection of property ownership rights as follows: "Individual and government properties are guaranteed by the law, and the government cannot expropriate the owner's property except for public interest, after providing compensation according to its laws." From this text, it can be understood that the constitutional legislator set two conditions for expropriating private property: the purpose of expropriation should be for public interest, and secondly, this expropriation should be met with adequate compensation according to the law. However, it is worth noting that the constitution only mentioned the provision of compensation without specifying that it should be fair and equivalent to the real value, leaving the matter to be governed by the laws.

Constitution of 1930: It was established by an elected Constituent Assembly during the French mandate period and the liberal tendencies of the political class in Syria. The Constitution of 1930 appeared to be more considerate of the right to private property than its predecessor. Article 13 stated: "The right to property is protected by the law. No one's property shall be expropriated except for public benefit and in the cases specified by law, after providing fair compensation." It is noteworthy that this

¹⁰ Kamal Al-Ghali, "Constitutional Law," Publications of Damascus University, Damascus 1987.

¹¹ Hassan Al-Bahri, "Constitutional Law and Political Systems," Publications of the Virtual University, Damascus 2018.

constitution added the condition that the compensation should be "fair" compared to the previous constitution. Additionally, article 14 of this constitution stipulates that public confiscation of funds is not permissible.

Constitution of 1950: This constitution was the first one established after the end of the French mandate in Syria. It was criticized for being excessively liberal in its economic scope, which made it favorable to the wealthy class. However, it is difficult to separate it from the backdrop of the military coup movements that accompanied its formulation, along with the rise of nationalistic and socialist tendencies. This is seen as the constitution emphasized the link between private property and its social function. According to its provisions: "Private property is inviolable, and the law regulates its acquisition and disposal in a manner that fulfills its social function." "Expropriation for public benefit is permissible, and it shall be carried out in accordance with the law, providing fair compensation."¹²

For the first time, this constitution addressed the imposition of a limit on land ownership and the termination of the right to dispose of it ¹³when it is neglected. Article 22 stated: "When land is neglected, the right to dispose of it is forfeited, and an end to possession is set by law according to the regions, provided that it does not have a retroactive effect." This constitution also prohibited public confiscation of funds and permitted private confiscation by virtue of a judicial ruling or law for the necessities of war and disasters.¹⁴

Section Two: From the 1953 Constitution to the Current Constitution

The 1953 Constitution, as well as the Unity Constitution and the interim Baath Constitutions: they were established following military coups, their contents reflecting the consequences of military intervention in the political life and prevailing nationalist and socialist orientations. These developments had negative impacts on the right of property ownership, treating it as a component of national wealth and emphasizing its social function, leading to the concept of nationalization.

In the 1953 Constitution, the following articles were included:

Article 29: "Property, capital, and labor are the fundamental elements of national wealth, all of which are individual rights with social functions."

Article 31: "The state can nationalize, by law, any institution or project related to the public benefit in exchange for fair compensation."

¹² Article 21 of the 1950 Constitution.

¹³ According to the provisions of the Syrian Civil Law, the right to dispose of state lands is subject to the same rules as the right of ownership of private lands, except as otherwise specified in a special provision. Article 772 of this law states the following: "The provisions related to the right of ownership apply to the right to dispose of state lands unless the law stipulates otherwise."

¹⁴ Article 23 of the 1950 Constitution.

Article 34: "Private property is preserved within the limits that it does not contradict public benefit and social justice. The law regulates its possession and disposal to ensure its social function and its contribution to national production."

In the **1958 Constitution**, Article 5 stated: "Private property is preserved, and the law regulates its social function. Property can only be expropriated for public benefit and in exchange for fair compensation according to the law."

With the coup of 1963, a new phase of governance began in Syria, different from previous stages, and its effects were evident in subsequent constitutions. The country shifted away from the Western liberal legal concept towards general laws based on socialist systems. This shift became particularly clear in the 1973 Constitution.

In the **1973 Constitution**, the texts explicitly reflected both the nationalist and socialist dimensions of the Syrian state. This was evident from the very first article, where it stated that "The Syrian Arab Republic is a popular democratic socialist state." Article 13 emphasized that "the country's economy is a planned socialist economy aimed at eliminating all forms of exploitation" and "that economic planning in the country takes into account the achievement of economic integration within the Arab world."

The constitution also discussed different types of ownership,¹⁵ including:

- 1. Public Ownership:** This includes natural resources, public facilities, state-owned or state-established enterprises, and institutions. The state is responsible for investing in and overseeing their management for the benefit of the entire population, and citizens have a duty to protect them.
- 2. Collective Ownership:** This encompasses properties owned by popular and professional organizations, productive units, cooperative societies, and other social institutions. The law ensures their care and support.
- 3. Individual Ownership:** This covers properties owned by individuals. The law determines their social function in serving the national economy and development plan, and their use must not conflict with the interests of the people.

Then it spoke about the protection of private property and stated that its expropriation is not permissible except for public benefit and in exchange for fair compensation. It also prohibited public confiscation of funds but allowed private confiscation under a judicial order or law and in exchange for fair compensation.¹⁶

Article 16 of this constitution mandated the legislator to set a maximum limit for agricultural land ownership, stating: "The law shall determine the maximum limit for agricultural land ownership to ensure the farmer and agricultural worker's exploitation and guarantee increased production."

It is noted from the above that when the constitutional legislator divided ownership into three types, it mentioned "public ownership." At first glance, this could be understood

¹⁵ Article 14 of the permanent (previous) Constitution of 1973.

¹⁶ Article 15 of the permanent (previous) Constitution of 1973.

as implying the denial of state ownership of public funds because it attributed ownership of funds (natural resources and public facilities) to the people. However, upon closer inspection, it becomes apparent that the purpose of highlighting the ownership of the public is to justify the socialist measures taken in the fields of nationalization and agricultural land reform.¹⁷

Moreover, private ownership was considered a function, not a right. It is well known that ownership is not a social function but a social right, and describing it as a social function negates the idea of the right itself.¹⁸

The previous texts had a negative impact on the right of ownership as it did not receive adequate constitutional protection. Moreover, practical application further exceeded these texts, the meaning intended by the constitutional legislator for the phrase "in exchange for fair compensation" was not granted in cases of property expropriation, which made expropriation appear more like confiscation without compensation.¹⁹

Constitution of 2012: This constitution was drafted in response to popular demands for change that arose in March 2011, the introduction acknowledging that it comes "in response to transformations and changes."

Regarding the right of ownership, Article 15 states that:

Private ownership, both individual and collective, is protected based on the following principles:

- General confiscation of funds is prohibited.
- Private property can only be expropriated for public benefit through a decree and in exchange for fair compensation according to the law.
- Expropriation can only be imposed through a valid judicial order.
- Private confiscation is permissible for the necessities of war and public disasters through a law and in exchange for fair compensation.
- The compensation must be equal to the real value of the property.

Article 16 also stipulates the following: The law shall set the maximum limit for agricultural land ownership and agricultural investment to ensure protection for the farmer and agricultural worker from exploitation and guarantee increased production.

This current constitution does not define Syria as a socialist state, nor does it include any reference to that in its preamble. It also does not adopt the socialist economy of the

¹⁷ "See page 15 and beyond.

¹⁸ "The center of the owner differs fundamentally from the center of the employee. The owner exercises his authorities for his own account and to achieve his private interest. On the other hand, the interest of the community is achieved indirectly. As for the employee, he exercises the authorities that fall within his jurisdiction for the account of the community and to achieve the interest of the community directly." - Muhammad Wahid Al-Din Suwar, "Explanation of Civil Law: Original Property Rights," Directorate of Books and University Publications, Aleppo, 1996, p. 159.

¹⁹ See page 17 and beyond."

state as its predecessor did, and it surpasses the classifications of ownership adopted by the 1973 constitution. Similarly, it does not describe private ownership as a social function or place it in the service of the national economy.

Furthermore, the new constitution implicitly acknowledges that compensation for past expropriation was not based on fair grounds, as indicated by the addition of paragraph 2 to Article 15, which specifies that compensation must be equal to the real value.

Overall, despite all constitutional texts speaking of the protection of private ownership and restricting its expropriation to public benefit and fair compensation, the practical implementation and laws enacted under these constitutions have not adhered to the constitutional texts. As a result, private ownership has been subject to seizure and confiscation at times without compensation and at other times with insufficient compensation not commensurate with the property's real value.

Part Three: In the Syrian Civil Law

The Syrian Civil Law²⁰, issued by Legislative Decree No. 84 of 1949²¹, delved into the provisions of property rights²² and distinguished between real estate in its nature and movables²³ and allocated real estate.²⁴

Section One: The Concept and Types of Real Estate

Real estate, as defined in Article 84 of the Syrian Civil Law, is "anything fixed in its place and cannot be moved from it without damage." From this legal text, it is understood that real estate, in its nature, encompasses not only lands but also everything

²⁰ The Syrian Civil Law of 1949 came somewhat coordinated with the provisions of property rights, which were previously scattered among multiple laws. However, it is criticized for its lack of consistency within itself in some cases and with other laws in other cases. The reason lies in the haste that accompanied the adoption of the Syrian Civil Law from the Egyptian Civil Law, which did not allow the Syrian legislator the opportunity to harmonize between the provisions adopted from the Egyptian law (the original law) and the provisions derived from Resolution 3339 (Syrian property legislation). Moreover, there was no consideration for consistency between the Civil Law and other existing special legislations at the time of its issuance.

²¹ The Civil Law retained most of the provisions of Resolution 3339, especially those related to property legislation. The explanatory memorandum of the Civil Law stated: "This project retains the current property legislation, and the provisions of Resolution 3339 have been incorporated after correcting their texts in their appropriate places within the project because this legislation is related to the real estate registry, its systems, and the legal principles it is based on. It was necessary to retain it to maintain this registry, which was organized based on the identification and demarcation operations that took place in Syrian lands."

²² Article 544 of the French Civil Law states: "Property is the right of the owner to enjoy and dispose of what he owns without restrictions."

²³ The Syrian Civil Law did not provide a direct definition for movable property as it did for immovable property. Instead, it confined its definition to immovable property and classified everything else as movable (Article 84 Civil Law). Movable property, by its nature, includes anything that can be transferred from one place to another without damage, whether it can move on its own (such as animals) or can be moved by an external force (such as inanimate objects). The Syrian Civil Law did not provide a direct definition for movable property as it did for immovable property. Instead, it confined its definition to immovable property and classified everything else as movable (Article 84 Civil Law). Movable property, by its nature, includes anything that can be transferred from one place to another without damage, whether it can move on its own (such as animals) or can be moved by an external force (such as inanimate objects).

²⁴ According to Article 84/2 of the Civil Law, immovable property by allocation refers to movable property that the owner specifically allocates to serve or exploit a particular immovable property he/she owns.

above the land, such as plants and buildings, and everything below it, including mines and quarries.

The Civil Law categorizes real estate in its nature into five types, as stated in Article 86: Real property, state property, attached abandoned property, protected abandoned property, and permissible vacant property.

Real Property is real estate within the built-up urban areas, administratively defined and subject to absolute ownership²⁵. State Property is real estate that is titled to the state and it may have the right to dispose ²⁶of it. It effectively includes all real estate outside the scope of the administratively defined built-up areas. It is a private state property.

It should be noted that we may find in Syria outside the “administratively designated built-up areas” some real estate registered in the real estate registry or title books as “Real Property,” even though it is surrounded by “State Domain.” The question that arises is that how did these "real" properties infiltrate these areas?

The answer to this question lies in the Ottoman legislation that was applicable in Syria, which allowed the state, under exceptional circumstances, to sell part of its State Domain lands to individuals if there was a legitimate reason justifying such a sale (such as the state treasury lacking funds or the land's revenue not covering its expenses).²⁷ Additionally, it was permissible to convert a property's status from State Domain to real property, provided that the State Domain property went within the designated built-up area administratively.

"Attached Abandoned Property", these are the properties that belong to the state and a group has a right to use them. Its advantages and extent are determined by local customs or administrative systems,²⁸ such as threshing floors and pastures left for the benefit of the people of a village or several villages.

"Protected Abandoned Property" includes properties belonging to the state, provinces, or municipalities and forms part of the public domain²⁹, such as roads, streets, and public gardens.

"Permissible Vacant Property" or "Dead Lands" refers to State Domain lands that belong to the state but are not specific or defined. Individuals or entities may obtain the right of priority to occupy or use these lands with permission from the state, subject to specific conditions set forth in state property laws.

²⁵ Article 5 of Decree No. 3339 for the year 1930 states:

²⁶ Article 86/3 of the Civil Code states that the legislator did not define the right of disposal (right of disposition) in the Civil Code. However, we find a definition for this right in Decree No. 3339 for the year 1930. Article 14 of this decree defines the right of disposal as follows: "The right to use and enjoy and dispose of a property within the conditions specified in the provisions of this decree and within the limits of laws, decrees, and regulations. This right only applies to state-owned properties."

As for Article 86/5 of the Civil Code, it is referenced without further information in the provided text.

²⁷ Source: Mohamed Wahid Al-Din Suwar, "Explanation of the Civil Code: Original Property Rights," Directorate of University Publications, Aleppo, 1996, p. 43.

²⁸ Article 7 of Decree No. 3339 for the year 1930 and Article 86/4 of the Civil Code.

²⁹ Article 86/5 of the Civil Code

According to the Syrian Civil Law, any real property rights³⁰ and related lawsuits fall under the category of "real estate." The following are some of the recognized real property rights: ownership, disposal, superficies, usufruct, right of priority over unclaimed vacant lands, real estate development rights, mortgage and collateral rights, easements, endowments, leases, long-term leases, and option rights resulting from a promise to sell.³¹

The legislator in the Civil Law also distinguished between "Public Property"³² and "Private Property."³³ Public Property includes real estate and movable property that belongs to the state or public legal entities and is designated for public benefit either by default or by law or decree (e.g., public parks)³⁴. These public funds cannot be disposed of, seized, or acquired through prescription³⁵. On the other hand, "State Private Property" refers to things that are privately owned by the state or other public legal entities and are not designated for public benefit. Such properties may be managed by the administration or may be under the disposal of other entities (e.g., attached abandoned properties).³⁶

Section Two: Legal and Judicial Protection

Due to the importance of properties, the legislator in the Syrian Civil Law has established several legal rules. Some of these rules pertain to the right of ownership and distinguish it from other property rights, while others aim to protect real estate property rights in general.

The legislator in the Syrian Civil Law has considered that the owner of a property has the sole right, within the bounds of the law, to use, exploit, and dispose³⁷ of it. The owner of a property possesses all its essential elements, and the ownership of land includes everything above and below it, to the extent beneficial for its use vertically or horizontally³⁸. The owner of the property has the right to all its fruits, products, and

³⁰ The real right is defined as a direct authority granted by the law to a specific person over a particular thing, and it can be asserted against everyone else (similar to the owner's authorities over the owned property). It is opposed to the personal right, which is a legal relationship between two specific persons, whereby one of them has the right to compel the other to perform an act or refrain from performing an act on their behalf (such as the buyer's commitment to pay the price of the sold item). (Source: "Explanation of the Civil Law: Original Real Rights" by Muhammad Wahid Al-Din Suwar, as previously mentioned, p. 19).

³¹ Article 85/2 of the Civil Code states the following: "The following real rights may be created on real properties: 1- Ownership 2- Disposition 3- Usufruct 4- Surface right 5- Right of priority over vacant and unclaimed lands 6- Easement 7- Mortgage and real estate security 8- Privilege 9- Endowment 10- Dual lease 11- Long-term lease 12- Right of preemption arising from a promise to sell."

³² Article 90 of the Syrian Civil Code defines public properties as real estates and movables owned by the state or public legal entities and designated for public use either by actual designation, law, or decree.

³³ These properties are owned privately by the state or other public legal entities and are not designated for public use. They may be under the administration of the government or other individuals (e.g., abandoned attached lands). Refer to Muhammad Wahid Al-Din Suwar "Explanation of the Civil Code: Original Real Rights," Directorate of University Books and Publications, Aleppo, 1996, p. 119.

³⁴ The organization of state properties was established by Decree No. 144 of 1925 and Decree No. 320 of 1926. Several laws were issued to protect state properties, including Legislative Decree No. 135 of 1952 and State Property Law No. 252 of 1959.

³⁵ Refer to the previously mentioned reference.

³⁶ See previously, page 10.

³⁷ Article 768 of the Syrian Civil Code states: "The sole owner of a thing has the right, within the limits of the law, to use, exploit, and dispose of it." (Source: Shafiq Taama, Adib Istanbuli, "The Syrian Civil Codification: Legal Texts - Preparatory Works - Preliminary Project Memoranda - Judicial Judgments - Jurisprudential Comments," Part Seven, from Article 768 to Article 893, Legal Library, Damascus, 1997).

³⁸ Article 769 of the Syrian Civil Code.

accessories, unless there is a provision or agreement to the contrary³⁹. The legislator emphasized that no one should be deprived of their ownership except in the cases specified by the law and through the established procedures, and such deprivation should be compensated fairly.⁴⁰

Furthermore, the legislator has granted specific legal rules regarding the acquisition and transfer of real property rights from one party to another. According to the general rules, a legal act (such as a contract or will)⁴¹ that establishes a property right is not sufficient in itself for acquiring or transferring the real property right from one party to another. It requires registration of the establishing or transferring act in the real estate registry.⁴² Article 825/1 of the Civil Law states that: "Real property rights are acquired and transferred by registering them in the real estate registry." This means that real property rights, such as ownership and rights derived from it, can only be acquired and transferred through registration in the real estate registry. This legal formality was imposed by the legislator as a guarantee and protection for the contracting parties (e.g., the seller and buyer) on the one hand, and for others on the other hand.⁴³

Additionally, any judicial claim regarding a real property right will not be heard until it is marked on the property's record. This formal procedure also significantly contributes to preserving the rights of the claimant, especially in cases where several buyers are competing for the same property. In such situations, the priority goes to the one who first registers the claim on the property record, which becomes the subject of judicial dispute.

Moreover, to ensure the preservation of the real estate legislation connected to the real estate registry and its systems, as well as the operations of identification and documentation of properties, the legislator has retained the laws related to the real estate registry system.

Part Four: The Real Estate Registry System

The real estate registry system is considered one of the most important institutions in safeguarding real property rights and real estate interests in general⁴⁴. It is essential and necessary for facilitating the transfer of real estate and encouraging real estate credit. The system is based on a set of fundamental principles that the Syrian legislator took into account in Decree No. 188 of 1926.⁴⁵

³⁹ Article 770 of the Syrian Civil Code.

⁴⁰ Article 770 of the Syrian Civil Code.

⁴¹ Fawaz Saleh, "General Theory of Obligations: Sources of Obligations," Publications of Damascus University.

⁴² Muhammad Wahid Al-Din Suwar, "Explanation of the Civil Code: General Theory of Obligations - Part One: Sources of Obligations - Voluntary Sources - Involuntary Sources," Directorate of University Books and Publications, Aleppo, 1994.

⁴³ Refer to the following: "Chapter Four: Real Estate Registration System."

⁴⁴ Hamdan Hussein Abdul Latif, "Real Estate Registration System," Al-Halabi Legal Publications, Lebanon 2007.

⁴⁵ Amal Sharba, "Real Estate System in Major Legal Systems: Latin - Germanic - Anglo-Saxon," Doctoral Thesis, Damascus 2000.

Section One: Definition of the Real Estate Registry

The Law of the Real Estate Registry consists of a series of decisions issued by the French High Commissioner,⁴⁶ which are as follows: Decree No. 186 of 1926, which established the system for identifying and documenting real estate. Decree No. 187 of 1926, which specified the procedures for identifying real estate properties. Decree No. 188 of 1926, which created the Real Estate Registry. Decree No. 189 of 1926, which included the executive regulations of the Real Estate Registry system.⁴⁷

According to Article 1 of Decree No. 188 of 1926, the Real Estate Registry is defined as "a collection of documents that indicate the characteristics of each property, determine its legal status, specify the rights arising from or affecting it, and record the transactions and modifications related to it."⁴⁸ These documents are organized based on the processes of identification and documentation. Consequently, properties that have not been identified are not subject to the provisions of the Real Estate Registry. It is noteworthy that the process of registering properties in the Real Estate Registry is similar to the registration of individuals in civil records. Some have rightly compared the Real Estate Registry system to the registration of individuals in civil records.⁴⁹

Contrary to its name, the Real Estate Registry is not limited to a single record; rather, it comprises a collection of registers and documents that indicate the characteristics, legal status, and rights of each property, along with any encumbrances, transfers, and ongoing modifications. Each of these registers is dedicated to a specific category of real estate transactions. The second paragraph of Article 1 of Decree No. 188 lists these registers as follows: "This registry consists of the Real Estate Property Register and complementary documents (Daily Register, Identification and Documentation Minutes, Survey Maps, Aerial Photographs, Survey Designs, and Supporting Papers)."

The legislator attached special importance to the Ownership Register, also known as the "Real Property Record," in Articles 9 and 10 of Decree No. 188, among the documents of the Real Estate Registry. This significance arises from the fact that the authenticity of the Real Property Record lies in the encumbrances recorded therein. Anyone interested in knowing the status of a specific property and the rights related to it or arising from it only needs to consult the Real Property Record without examining other documents in the Real Estate Registry. The encumbrances recorded in the Real Property Record carry full weight and probative value.⁵⁰

⁴⁶ This system, which was implemented in Syria and Lebanon among the Middle Eastern countries, was derived from similar texts in France, Switzerland, and Germany. Shams Al-Din Muhammad, "Real Estate Registration System in Syria and Lebanon," Al-Nouri Foundation, Damascus 1999.

⁴⁷ The currently enforced Land Registry Law is one of the oldest laws that remains in effect to this day.

⁴⁸ The Lebanese legislation defines it as follows: "A collection of documents that show the characteristics of each property, determine its legal status, mention its rights and burdens, and record the transfers and changes that occur to it." Hussein Abdul Latif Hamdan, "Provisions of the Land Registry," Dar Al-Jami'iyah 1991, p. 187.

⁴⁹ Mohammed Wahid Al-Din Suwar, "Explanation of Civil Law: Original Property Rights," Directorate of Books and University Publications, Aleppo, 1996.

⁵⁰ According to the jurisprudence of the Syrian Court of Cassation, "The real estate record is the identity of the known property." Decision number 3785 dated 29/11/2010.

Section Two: Principles of the Real Estate Registry

The Real Estate Registry is based on a set of fundamental principles, which are publicity, probative value, and perpetuity. The Syrian legislator has embraced these principles, which serve as essential pillars and foundations when conducting real estate transactions.

The principle of publicity: This means that any act or decision establishing a right to real property (or any other real right pertaining to a property), or transferring, or extinguishing it, will only be effective against third parties from the date of registration in the Real Estate Registry. The Syrian legislator has adhered to this principle in Article 9 of Decree No. 188 of 1926. This article states that "Real rights that require establishment by law, real encumbrances, reservations, as well as real estate claims related to a property or registered immovable assets must be recorded in the dedicated register for each property or immovable assets in the Ownership Register. They are not deemed to exist against third parties except from the date of their registration in the Real Estate Registry." The principle of publicity is realized, and the right to real property becomes valid against everyone only from the date of its registration in the Real Estate Registry.

The principle of probative value: This means that the Real Estate Registry is the sole means to assert rights recorded therein against all individuals. The entries in the Real Estate Registry serve as irrefutable evidence of ownership rights. Article 8 of Decree No. 188 of 1926 states that "The explanations in the Real Estate Registry have probative force, and the facts and rights mentioned therein are trusted against other individuals."

The principle of perpetuity: Prescription may be a means to acquire real property ownership⁵¹, but if the property is registered in the Real Estate Registry, prescription does not apply to it. In other words, registered real rights in the Real Estate Registry are not subject to the principle of acquiring ownership through prescription. Article 19 of Decree No. 188 of 1926 stipulates that "the passage of time does not obstruct registered rights in the Real Estate Registry."⁵²

From the above, it becomes evident that one of the most important objectives sought by the legislator in establishing the Real Estate Registry system is to enable others to access the legal status of each property and accurately understand all the rights burdening it. If the Real Estate Registry, or more precisely, the Real Estate Ownership Registry, lacks any entries concerning rights held by the owner for another person, whether original or derivative, then those rights are considered non-existent for third parties. Consequently, these rights are not enforceable against third parties. This is why the Real Estate Ownership Registry serves to disclose all properties, their rights,

⁵¹ Articles 907 to 935 of the Syrian Civil Code

⁵² The same principle is reiterated in Article 925 of the Civil Code, which states: "The statute of limitations does not apply to rights recorded in the real estate record..."

burdens, and any changes affecting them, and the recorded restrictions on the property have absolute probative value. These restrictions act as irrefutable evidence of property ownership or any other real right subject to registration.

While the texts contained in international treaties, covenants, and various Syrian constitutions, as well as in the Syrian civil law, have recognized the owner's right to dispose of, utilize, and use their property, and the prohibition of deprivation of this right except for public interest and in exchange for fair compensation proportional to the true value of the property, these provisions have lost much of their significance and have been stripped of their substance in the face of a vast number of laws and legislative decrees specifically related to real estate ownership. These laws are exceptional in their content and objectives and were issued after the Syrian Civil Law.

Chapter Two: Discriminatory Exceptional Laws

Successive Syrian governments have sought to oppress the Kurds in various aspects of life, including stripping many of them of their Syrian citizenship based on the exceptional census conducted in 1962. Other deliberate policies included depriving them of their property rights under the pretext of "agricultural land reform" and abolishing individual feudal holdings. Additionally, restrictions were imposed on them regarding ownership of new properties, citing reasons like "border areas" and "national border protection." These discriminatory practices are evident in the texts of exceptional laws and decrees issued since the 1950s until the start of the public protests in Syria in March 2011.

Part One: The Stripping of Citizenship and Deprivation of Property Ownership Right

The issue of those deprived of their citizenship stands as a grave violation in the modern history of the Syrian state for decades, resulting from the exceptional census conducted in Al-Hasakah province on October 5, 1962, known as the "Al-Hasakah Census of 1962." This census was a result of Decree No. (93) issued by the separatist government at the time. Article One of this decree stated: "A general census of the population in Al-Hasakah province shall be conducted on a specific day determined by a decision of the Minister of Planning upon the proposal of the Minister of the Interior."

This census seems to have aligned with the subsequent policies of the Baath Party governments. One of the most significant recommendations included in Mohammed Talib Hilal's study titled "A Study of Al-Jazeera Province from National, Social, and Political Perspectives" was to strip the Kurds of their Syrian citizenship. He explicitly mentioned: "Civil registry records must be corrected, and this is currently underway (referring to the Al-Hasakah Census)."

As a result of this census, tens of thousands of Syrian Kurds were stripped of their citizenships, later known as "foreigners of Al-Hasakah." Consequently, they were deprived of basic citizenship rights and legal protection. One of the most critical impacts was the inability to secure land ownership for Kurdish owners who were stripped of their citizenships, along with their exclusion from receiving lands distributed under the Agricultural Land Reform Law⁵³. This, in essence, meant depriving them of the right to own property.

It is worth noting that there are specific laws that grant the right to own property in Syria to non-Syrian foreigners (Palestinians or any Arab from another Arab country who does not hold Syrian citizenship) under certain conditions defined by relevant laws (such as obtaining permission from the Ministry of Interior or the property being

⁵³ Later see page 15.

designated for residential purposes and located in provincial centers, etc.)⁵⁴. However, even these laws did not apply to the category of "foreigners of Al-Hasakah," despite their historical and geographical status as Syrians, as they were considered foreigners politically and legally.

Part Two: The Law of Agricultural Land Reform

Perhaps one of the most dangerous laws on the right of ownership and the rights to dispose of the state domain lands in this area; It is the one that set a limit for agricultural land ownership, and set a limit on agricultural land ownership and stipulated that the excess land beyond this limit would be owned by the state.

Section One: The Content of The Law

The Agricultural Reform Law started with the issuance of Legislative Decree No. 135 in 1952. Its explanatory memo stated that large areas of unregistered state lands were occupied by certain individuals for various periods. These individuals claimed the right to dispose of these lands while many Syrian farmers were left without lands to cultivate. To prepare for the equal distribution of lands among citizens, this law stipulates that the possession of these lands - whatever their size - is not considered except within the area of its upper limit maximum limit of 200 hectares for each individual, including their male and female offspring and spouses.

Article 2 of this decree stipulates that: "The placement of possession prior to the issuance of this legislative decree on all lands permanently registered in the ownership books or real estate records, is not considered to have acquired the right to dispose of it, except within an area of its maximum limit of 200 hectares for each person and each of his/her spouses and children."

Later, in 1955, Law No. 84 was issued to ease the severity of previous restrictions and guarantee greater freedom in acquiring the right of disposal. The key provisions of Law No. 84 were as follows:

1. Differentiating between irrigated and non-irrigated lands and setting the maximum limit for the former at 200 hectares and for the latter at 500 hectares. This increased the area that individuals could acquire the right of disposal, similar to what was stipulated in Decree 135.
2. Lowering the status of grandchildren to be considered for the maximum limit alongside children and spouses. Previously, only children and spouses were included in the calculation of the maximum limit, but with this law, grandchildren were also considered.

⁵⁴ For example, Law No. 11 of 2008, known as the "Law on Ownership of Arabs and Foreigners in Syria," deals with provisions related to the establishment, modification, or transfer of real property rights to or for the benefit of non-Syrians. It is available on the website of the Syrian People's Council.

3. Allowing the combination of the two limits: The law stated that "the imposition shall not be considered a gain of the right of disposal except within the maximum limit of 200 hectares for irrigated lands and 500 hectares for non-irrigated lands." This means that combining the two maximum limits is permitted when there is a connection or kinship. However, the law exempted land registered definitively in the land ownership records from setting a maximum limit, and this was indicated in an absolute decision.

4. Excess lands beyond the legal limit are considered state property from the date of the decree's publication, and the state is not required to compensate for them⁵⁵. These excess lands are registered under the state's name based on a request submitted by the director of the Agricultural Reform Institution to the specialized land judge.⁵⁶

On September 27, 1958, nearly eight months after the establishment of the union between Syria and Egypt, the Agricultural Reform Law No. 161 was issued to regulate agricultural ownership with a new approach, drawing inspiration from Egypt's experience with the Agricultural Reform Law⁵⁷. This law set a maximum limit for agricultural ownership based on the region, irrigation, and watering method. The state was granted the right to seize any land exceeding this maximum limit. The seized lands would become full property of the state⁵⁸, and the owners would receive compensation calculated at ten times the average land rent for a single agricultural season, not exceeding three years or the owner's share⁵⁹ of the land rent. Consequently, the compensation was meager since it was based on land rent rather than the true value of the property.

Over time, several amendments were introduced to the Syrian Agricultural Reform Law, which fluctuated the maximum limits of agricultural ownership. The most significant amendment came with Legislative Decree No. 23 in 1963, which set the absolute maximum limit for ownership and nullified all previous amendments made during the period of separation. Then, the final amendment was made through Legislative Decree No. 145 dated December 13, 1966, which expedited the process of land expropriation.

These amendments did not impose an absolute threshold; instead, they adopted a relative and fluctuating approach. They considered the productive conditions of the land and the family's ownership status. The maximum limit varied, ranging from 15 hectares in Ghouta (countryside of Damascus) to 300 hectares for non-irrigated lands in Al-Hasakah, Raqqa, and Deir ez-Zor. Additionally, the state was granted the right to seize any land exceeding the maximum limit for irrigated lands if the non-irrigated land was converted into irrigated land.

The new law, unlike the previous one, grants the right to compensation to those whose lands have been expropriated by the state for exceeding the specified limit. This compensation is calculated at ten times the average land rent for a single agricultural

⁵⁵ Article 4 of Legislative Decree No. 135, dated 3/11/1952.

⁵⁶ Article 10/1 of Law No. 84 of 1955.

⁵⁷ The Egyptian Agricultural Reform Law issued on 9/9/1952.

⁵⁸ Article 5 of Agricultural Reform Law No. 161 of 1958.

⁵⁹ Article 9 of Agricultural Reform Law No. 161 of 1958.

season, not exceeding three years or the owner's share of it. The amount of compensation is determined by initial committees formed in each province by a decision from the Minister of Agriculture and Agricultural Reform and a civil engineer from the Ministry of Public Works. In any case, the owner's share cannot exceed the ratios specified by Agricultural Relations Law No. 134 of 1958. The compensation is provided in the form of nominal bonds from the state for a duration of forty years.

Section Two: The Fate of The Expropriated Lands

Once the expropriation records are officially approved, the state becomes the owner of the seized lands. Subsequently, the Agricultural Reform Institution distributes⁶⁰ these lands to farmers or "beneficiaries⁶¹." The beneficiary becomes the owner of the allocated land starting from the agricultural season following the date of publication of the distribution decision in the official newspaper. The distributed land is registered in the beneficiary's name in the land registry upon request from the Agricultural Reform Institution, and this registration is exempt from fees and taxes.

However, it should be noted that under the Agricultural Reform Laws, the legislator did not only set a limit on agricultural ownership and the consequent deprivation of ownership rights beyond that limit. They also imposed restrictions on the owner's authorities regarding utilization and disposal as per the provisions of the Civil Law. On one hand, those who receive the land through distribution must cultivate it and exercise due care in their work according to the investment plan and fundamental principles of the cooperative association they belong to, as well as the laws and decisions issued by the Agricultural Reform Institution. In case the beneficiary fails to fulfill essential obligations, the special committee may decide to cancel the land distribution, reclaim it, and register it again under the state's name.

On the other hand, neither the beneficiary nor their heirs are allowed to dispose of the distributed land or establish any real rights on it, except for mortgages with the Agricultural Cooperative Bank, before twenty years have passed since its registration in their name in the land registry. Approval from the Agricultural Reform Institution is required after this period elapses.

Part Three: Law of Expropriation for Public Benefit

Successive constitutions in Syria have enshrined the principle of "expropriation for public benefit," allowing the constitutional legislator to impose a dangerous limitation

⁶⁰ The Distribution Law came into effect in accordance with the 1950 Constitution, which stated that "the state distributes from its lands, for a modest and installment price, to those who are not landowners, enough land to sustain their livelihood."

⁶¹ The distribution of state-owned lands was initially regulated by Decree No. 768 of 1952, and later replaced by another legislation, Law No. 252 of 10/10/1959, along with its executive regulations issued by the Minister of Agricultural Reform on 12/4/1960. Subsequently, there was another legislation that provided for the distribution of agriculturally invested state-owned lands to farmers. This was enacted by Legislative Decree No. 166 of 16/12/1968, along with its executive regulations issued by the Minister of Agriculture and Agricultural Reform on 20/1/1969.

on the right to property, permitting individuals to be compelled to cede their property to the state for public needs in exchange for fair compensation.

Section One: Concept of Expropriation for Public Benefit

Expropriation is defined as the deprivation of ownership for public benefit through an administrative procedure that forcibly takes immovable property from its owner by the government to allocate it for public benefit, in return for providing compensation. From this definition, we can deduce the elements of expropriation for public benefit, which should include:

- The subject of expropriation must be real estate.
- The deprivation of ownership must be coercive.
- The purpose of expropriation must be to achieve public benefit.
- The expropriation must be accompanied by fair compensation.

The laws regarding expropriation in Syria have evolved over time, with different regulations governing the process. Initially, the rules were outlined in Law No. 272 of 1964, which was later replaced by Law No. 20 of 1974. Additionally, Law No. 18 of 1971 governed expropriation in areas submerged by the Euphrates Dam, and eventually, Legislative Decree No. 20 of 1983 was issued. Common to these laws was the practice of sometimes expropriating private property without providing compensation, or in some cases, offering meager compensation that did not correspond to the property's true value at all. On the other hand, these laws were utilized by the state as a means to expropriate private property contrary to the intentions of the constitutional legislator and the principles of justice and fairness.

Law No. 20 of 1983 significantly broadened the concept of public benefit. According to this law, the scope of public benefit extended beyond projects with public benefit to include facilities owned by the Baath Party and public organizations, as well as all projects falling within the jurisdiction of public authorities and the public sector, and is missions as defined in the prevailing laws and regulations, based on the state's established plans.⁶²

Furthermore, Law No. 20 of 1983 specified the entities authorized to carry out expropriation⁶³ and expanded the scope of expropriation. It allowed administrative bodies and housing supervisory authorities, or entities responsible for housing affairs,

⁶² Article Three of Law No. 20 of 1983.

⁶³ Article 2 of Law No. 20 of 1983 states the following: "Ministries, administrations, public institutions, and entities of the public sector are permitted to expropriate both developed and undeveloped properties, whether they are privately owned, owned by endowments, or subject to endowment rights. This is done to implement projects of public benefit as stipulated in this legislative decree."

to expropriate properties, plan them, and divide them into plots suitable for building public housing or selling them to those interested in constructing such homes.

The legislator also granted the Ministry of Defense the authority, under Law No. 20 of 1983, to expropriate properties for establishing military residential complexes or building housing units for sale to military personnel, the families of martyrs, Defense Ministry employees, or other entities determined by decree.

Lastly, the law allowed administrative bodies to expropriate properties for the purpose of establishing industrial zones, planning and dividing them, and investing or selling the resulting plots⁶⁴. Moreover, the legislator permitted administrative entities to expropriate properties or parts of properties that were unsuitable for construction under prevailing building regulations or due to other technical reasons, such as size or geometric shape, with the intention of merging or combining them to become suitable for construction according to the applicable regulations and technical considerations.

Based on the information mentioned above, private property rights are subject to expropriation by public entities according to the broad concept granted to the public benefit by the legislator and the wide interpretation of the expropriation is left to the entity expropriating the property, especially the judicial authority, which means there is no authority to oversee the expropriation decree or examine the legality of expropriation decisions.

According to Article 7 of Law No. 20 of 1983, the expropriation decree is considered final and not subject to any form of appeal or review before the judiciary. This contradicts the provisions of the constitution that guarantee the right to litigation and appeal against administrative decisions before the judicial authority.

Section Two: Compensation for Public Benefit Expropriation

Law No. 20 of 1983 established procedures for assessing the compensation value for expropriated properties and referred the rules for calculating this compensation and the relevant committee to Law No. 3 of 1976, which regulates land sales. The latter law specifies the basis for determining compensation as follows:

- The price of the known real estate, as determined by the provisions of Article 2 of Law No. 14 of 1974, is considered and estimated at a percentage set by the executive office of the province, not exceeding 30% of the construction cost.
- The mentioned construction cost is calculated based on the expenses incurred by the public entities supervising housing projects in the province.
- The executive office in each province issues a decree that determines the applicable percentages mentioned in clause (A) of this article, taking into consideration the criteria

⁶⁴ Article Four of Law No. 20 of 1983.

specified in the decree issued according to the provisions of clause (E) of this article. The provisions of this decree take effect from the date of its approval by the local administration.

- The price of the remaining lands is estimated at a percentage not exceeding ten times its annual yield. For the purposes of applying this clause, these lands are considered agricultural, whether they are under agricultural cultivation or not, without violating the provisions of civil law, state property law, and other valid laws and regulations related to agricultural land investment and use.

- The criteria for determining these percentages and values are specified by a decree, considering the classification of lands, the location of the property, the type of existing agricultural land, and other relevant factors.

As for the committee concerned with estimating the expropriation compensation, according to the principles stipulated in Law No. 3, it is a primitive committee formed by the expropriating authority.⁶⁵ The committee evaluates the value of real estate on the basis of its value immediately prior to the expropriation decree. And to drop from the calculation every rise in prices as a result of the expropriation project, or commercial speculations, if this rise in value is not justified by a similar rise in neighboring areas⁶⁶.

In addition, the decisions of the preliminary assessment committee referred to above regarding the assessment of compensation are subject to appeal before a reconsideration committee, which is constituted by a final decision of the head of the executive office of the governorate council within whose administrative boundaries the expropriated property is located.⁶⁷ This last committee is composed of the following members: a judge named by the Minister of Justice, a representative of the expropriating authority, a representative of the owners of the expropriated real estate, a representative of the Farmers Union named by the Executive Office of the Farmers Union, and a representative of the governorate chosen by the Governor. The decisions of this committee are final and not subject to any method of review or appeal.⁶⁸

It should be noted that if the administration is late and lax in estimating the expropriation compensation, then the value of the expropriation allowance is estimated at the date of expropriation and not at the date of estimating the compensation. For example, if the administration expropriated real estate in 1980, then delayed in estimating the value of the expropriation compensation until 2010, then the expropriation compensation is estimated at 1980 prices and not 2010 prices. This constitutes a prejudice to the rights of expropriated real estate owners, especially in the event of an increase in the value of the real estate, not to mention the disproportion between the estimated expropriation allowance and the real value of the expropriated property.

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⁶⁸ Article 24 of Law No. 3 of 1976.
Amended by Article 4 of Legislative Decree No. 18 of 1976.

The usual practice in most expropriation cases is to provide cash compensation to the owners of the expropriated property. However, in a specific case, for political reasons it seems, the owners of the expropriated properties were compensated in kind. This particular case relates to Law No. 18 of ⁶⁹1971, as amended by Legislative Decree No. 18 of 1976, which included the rules for expropriation in the submerged area⁷⁰. According to Article 14⁷¹ of this law (as amended), it states: "Compensation to the rightful owners may be granted in kind by providing them with other properties that are equal to, less than, or greater than the expropriation compensation, as determined by a decree." As a result of this law, the owners of properties that were submerged by the waters of the Euphrates Dam (referred to as "Al-Maghmourin/The Submerged") were compensated in kind this time. They were granted lands in a different province than their own. These lands were distributed to them from the state's private properties in the province of Al-Hasakah, which the government had acquired previously under the "Agricultural Reform" laws and the surplus resulting from determining the maximum limit of agricultural land ownership.⁷² Villages and model farms were established along the border strip with Turkey to the north and Iraq to the east, with the aim of housing the families brought in from the Raqqa province (later referred to as "Al-Maghmour villages"). This project was known as the "Arab Belt Project," primarily aiming to change the demographic and societal structure of the area and to separate Syrian Kurds from their brethren in Turkey and Iraq. All of this was part of the plan advocated by Muhammad Talab Hilal.⁷³

Therefore, the expropriation law is described as unjust due to its infringement on the rights of citizens and their properties. It deviates from the constitutional legislator's intended goal, which is to achieve the public benefit. Thus, it can be said that expropriation was more like seizing property, as the compensation was not fair or proportional to the actual value of the property⁷⁴. This law was utilized as a tool to alter the demographic structure in the border regions adjacent to Turkey from the north and Iraq from the east.

These border areas, with their ethnic particularities, were targeted by another Syrian law that further restricted the buying and selling of properties in those regions.

⁶⁹ Legislative Decree No. 18 of 1976, which amended Law No. 18 of 1971 concerning the rules of expropriation in the Al-Ghab area, is available on the website of the "Syrian People's Council."

⁷⁰ The area that was submerged by the waters of the Euphrates River.

⁷¹ Amended by Article 4 of Legislative Decree No. 18 of 1976.

⁷² Refer to the previous page 15.

⁷³ See previous, page 2

⁷⁴ It is worth mentioning that the new constitution of 2012 explicitly states that compensation shall be assessed based on the real value of the expropriated property.

Part Four: Law of Property Located in Border Areas

The right of ownership is the sole right among the original property rights that grants its holder all authorities over the owned property (authority of disposal, use, and exploitation). However, numerous laws have been enacted that restrict these authorities granted to the property owner, particularly the law concerning ownership of properties located in border areas.⁷⁵ This law requires obtaining security approval as a primary condition before any disposal of a property located in a border area.

Section One: Historical Development of Border Areas Law

The first decrees that stipulated that Syrian citizens must obtain prior authorization for property ownership in border areas emerged after the end of the French mandate, specifically in 1952. Decree No. 193 was issued, stating: "Border areas will be determined by a decree, based on the proposal of the Minister of Justice, after the approval of the Ministry of National Defense."⁷⁶

In 1956, another decree was issued under number 2028, which specified the border areas. Indeed, that decree designated the entire Quneitra province as well as the areas adjacent to the Syrian-Turkish border, extending for twenty-five kilometers, starting from Latakia, passing through Idlib, considering the entire Jisr al-Shughur as a border area, and reaching the southernmost point of the Syrian borders in Al-Hasakah province.

After several years, specifically following the Baath Arab Socialist Party's rise to power on March 8, 1963, Decree No. 1360 was issued in 1964 to confirm the content of Decree 2028 mentioned earlier. It also deemed the entire Al-Hasakah province as a border area, similar to Quneitra province.

By virtue of the latter decree in 1964, the entire Al-Hasakah province was considered a border area, just like Quneitra province. However, while the geographic proximity of Quneitra province to the Israeli borders justified its classification as a full border area, the only justification for considering the entire Al-Hasakah province, with an area of approximately 23,000 square kilometers, as a border area was the presence of Kurds in that region.

In accordance with Legislative Decree No. 193, certain transactions are subject to prior authorization, which can be summarized as follows: (Establishing any real property rights on lands located in border areas, transferring or modifying these rights, leasing such lands or establishing companies or contracts for agricultural investment for a

⁷⁵ For example, Law No. 31 of 1976 (Law on Prohibition of Land Trafficking) states in its first article: "It is prohibited for anyone who purchases any land located within the boundaries of any approved general development plan or within the tourism areas to sell it, in whole or in part, or to delegate such authority. This prohibition includes gifts, unless they are intended for public or charitable entities without compensation, and any disguised contracts of sale." Recently, these restrictions have been eased with the issuance of Legislative Decree No. 26 of 2013, which allowed owners of lands located within the boundaries of any approved general development plan to dispose of them in any form of transfer of ownership, except for reasonable exceptions.

⁷⁶ Article 2 of Legislative Decree No. 193, as amended by Legislative Decree No. 75 of 1962.

period exceeding three years, and all company contracts or contracts related to agricultural investment that require farmers, workers, or experts from other districts or foreign countries. Also, executing court decisions related to these lands, etc.)⁷⁷. It should be noted that the term "lands" is used in a general sense, so all the mentioned transactions require prior authorization if they are related to unbuilt properties located in border areas, whether they are inside or outside the zoning plan.⁷⁸

This situation remained unchanged until 2004 when Law No. 41 of 2004⁷⁹ was issued. This law exempted properties located within the zoning plan from the requirement of prior authorization, regardless of whether they were built or unbuilt. This provided a slight relief in the matter of real estate transactions. However, properties located outside the zoning boundaries were still subject to prior authorization.

The major shock occurred in 2008 when Decree 49 was issued, amending Law 41 of 2004.⁸⁰ The first article of this decree stated the following: "It is not permissible to establish, transfer, modify, or acquire any real estate right on land located in a border area or occupy it, whether through leasing, investment, or any other means, for a period exceeding three years, in the name of or for the benefit of a natural or legal person, except with prior authorization."⁸¹ In other words, this recent decree subjected all properties located in border areas to licensing, whether they were within the regulated boundaries or outside, whether developed or undeveloped. It also prohibited the registration of any real estate lawsuit in the courts and the placement of a notice of the lawsuit in the property registry before obtaining prior authorization⁸². The decree mandated the rejection of all claims brought before the courts unless the authorization was clearly presented in the lawsuit file.⁸³

Section Two: The Practical Application of the Law on Border Areas and Its Effects

Since the issuance of Decree 193 in 1952, which defined the areas subject to its provisions, it was possible to register a property ownership lawsuit before the competent court and place a notice of the lawsuit on the property's records for the claimant's benefit. The court could issue a judgment based on the merits of the case. If the decision was made to validate the validity of the property sale contract under dispute, and the decision acquired the power of a final ruling, then the execution of the judgment in the land registry offices (i.e., registering it under the new owner's name) remained contingent on obtaining permission or security approval. If the interested party obtained these approvals, the property would be registered under their name; otherwise, it would not be registered. This was the case for properties outside the zoning plan. As for properties within the zoning plan boundaries, they did not require prior approval. The only requirement from the courts regarding these properties was to conduct an inspection and technical expertise on the mentioned property to ensure that

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⁸¹ The first article of Law No. 41 of 2004, as amended by Decree No. 49 of 2008, is available on the previous website.

⁸² Also, the fourth article (A) of Law No. 41 of 2004, as amended by Decree No. 49 of 2008, is available on the previous website.

⁸³ Please note that the repeated information might be a duplication or an error in the provided input. If you have any specific questions or need further details, please let me know.

it was a built property and within the zoning plan boundaries. If both conditions were confirmed, the court would issue its decision to validate the sale, and then the decision would be executed and registered in the land registry without the need for further approvals.

However, after amending Law No. 41 of 2004 by Decree No. 49 of 2008, all those procedures came to a halt, including all property buying and selling, whether within or outside the urban plan, whether the property was built or unbuilt. According to Decree 49, the courts were required not to register any real estate claim unless the permit was attached to the lawsuit summons. Consequently, it became impossible to publish any property claims in the real estate registry, despite its significant importance in preserving the claimant's rights, as stipulated in Article 9 of Decision No. 188 of 1926.

Therefore, it can be said that Decree No. 49 of 2008 paralyzed the real estate transactions in Al-Hasakah province. This decree subjected all properties in this province, considered entirely a border area (unlike other provinces where the legislator exempted properties within the urban plan from the licensing condition), to security approval, whether built or unbuilt, within or outside the urban zoning plan. As a result, this right was subject to the will of the security apparatus. Moreover, it was used as a discriminatory tool against Kurds or based on their political stance. Obtaining this security permit was nearly impossible for Kurdish citizens, while non-Kurdish Syrian citizens usually obtained it by simply submitting routine documents.

In addition to the existence of discriminatory provisions in the legislation of border areas, where the entire province of Al-Hasakah was considered a border area without any justifiable reason, the practical application of these laws followed a policy of discrimination. This discrimination involved denying security permits to Kurdish citizens while granting them to citizens of other ethnicities, which constitutes a violation of the principle of "equality among citizens" and the obligation not to discriminate based on constitutional texts and international commitments. Particularly concerning is that all these legislations consider the decision to deny security permits as non-reviewable or subject to appeal.

Furthermore, these legislations have had catastrophic economic, social, and political effects on the regions under their provisions. Economically, the real estate market stagnated, leading to an economic recession. Construction activities on lands falling within the urban plan halted due to the freeze in buying, selling, and real estate transactions. Consequently, job opportunities decreased, and many professions related to the construction industry, such as block factories, building materials, plumbing, and electrical installations, experienced a standstill. The need for the labor force, real estate offices and real estate lawsuits and transactions became scarce.

On the social and political front, these legislations, which differentiated between one province and another and applied different mechanisms for various components of the Syrian people, had a significant negative impact on the population of the northeastern region of Syria. They created divisions, animosity, and mistrust among the components of the Syrian people. The inability of some individuals to obtain security approval resulted in their inability to own property, while others from different ethnicities easily acquired ownership. These laws fostered animosity and resentment and led to a feeling

of not belonging to the Syrian state, which deprived some of its citizens of property ownership and stability within its borders.

All of this had a significant impact on the economy and trade movement in this region, affecting all the residents, either directly or indirectly. Many of them were compelled to engage in internal or external migration in search of alternative livelihoods. Thus, the plan advocated by the political security branch officer "Mohammed Talab Hilal" came to fruition, and the Baath Party included it in its conferences, implementing it through the legislative authority.

The real estate buying and selling activity within the designated border areas remained completely paralyzed until Decree No. 43 of 2011 was issued. At the beginning of the protests in Syria, the Syrian government issued Decree No. 43 on March 24, 2011, which modified the previously mentioned Decree No. 49 of 2008. This recent decree exempted properties within the zoning plan from the security licensing requirement,⁸⁴ effectively restoring their status to what it was before 2008. However, for properties outside the designated zones, the situation remained unchanged as per Decree No. 49 of 2008. In other words, filing a lawsuit concerning these properties remained prohibited unless the lawsuit was accompanied by the required security permit.

Conclusion

In this research, I examined the Syrian real estate legislation during a period that extends from the establishment of the Syrian state in 1920 until the beginning of the popular protests in March 2011. I discussed the general principles in civil law, which highlight the specificity of the right to property and the guarantees provided by the legislator for this real right, especially those offered by the real estate registration system. I also addressed the constitutional legislator's stance on the right to property ownership and the importance given to this right in accordance with international covenants and treaties. Subsequently, I moved on to study the exceptional legislations concerning the right to real estate property, which was issued after the Syrian civil law. I attempted to extract the political dimension in these legislations and the impacts and consequences it had on the inhabitants of the northern and eastern regions of Syria. Based on this study, several findings and recommendations were reached:

⁸⁴ Article 1 of Decree No. 43 of 2011 states the following: "It is not permissible to establish, transfer, modify, or acquire any real estate right on lands located in a border area or occupy them through leasing, investment, or any other means for a period exceeding three years, in the name or for the benefit of a natural or legal person, except with prior authorization. Lands located within regulatory plans are exempt from this restriction." The decree is available on the website of the "Syrian People's Council."

• **Findings:**

According to international covenants and treaties, the right to property is considered a sacred right that should not be violated, and every individual should be guaranteed this right without discrimination based on race, color, national origin, or ethnicity, in the enjoyment of the right to ownership.

In addition, the constitutional legislator has given special importance to the right to property ownership by explicitly mentioning it in the constitutions that were enacted in Syria. However, there was a significant shift in the constitutional legislator's stance regarding this right in the early 1950s when a nationalist and socialist trend emerged among the military leaders who governed Syrian policies. Property ownership was then considered a social function and a component of the national production, effectively denying the concept of the right itself.

On the other hand, in civil law, the legislator bestowed particular importance on the right to property, granting extensive powers to the property owner and providing legal protection. This was evident when the acquisition and transfer of this real right were linked to the act of registration in the real estate registry. The Syrian legislator's adoption of the real estate registration system is one of the strongest institutions protecting property rights, with the real estate ledger acting as the civil register for individuals.

However, it can be argued that the Civil Law has been deprived of its essence due to the overwhelming number of exceptional laws and decrees issued after the enactment of the Syrian Civil Law. Particularly, these special laws sometimes deprived Syrian citizens of ownership rights and restricted the powers of property owners in various ways. For instance, the case of foreigners in Al-Hasakah and their prohibition from property ownership, the Agricultural Reform Law that put a maximum limit on agricultural property ownership, the Land Distribution Law for confiscating farmers' lands, which prevented beneficiaries from managing the distributed land, and the Compulsory Acquisition Law that compelled individuals to relinquish their properties for public benefit. Lastly, the Law of Properties in Border Areas, which suspended real estate transactions unless approved by security authorities, thus restraining property owners' rights to manage their properties and citizens' right to ownership.

On the other hand, these exceptional laws and decrees with a political aspect discriminated between different regions and components of the Syrian people. They specifically targeted the northern and eastern regions of Syria and aimed to undermine the stability and livelihood resources of the Kurdish community through their application. The "Agricultural Land Reform Law," which set limits on agricultural land ownership, granted the state the right to seize surplus land beyond these limits and convert it into state properties. Subsequently, a significant portion of the seized lands in Al-Hasakah province was distributed to residents of Raqqa province, creating model farms and villages for them as compensation for the lands submerged by the Euphrates River. Meanwhile, the people of Al-Hasakah (especially the foreigners of Al-Hasakah) were in dire need of agricultural land to sustain themselves. Additionally, in most cases of previous expropriations, property owners were compensated in cash.

In the Law of Properties in Border Areas, we find discriminatory provisions that categorize the entire Al-Hasakah province as a border area without any justifiable reasons. This implies the suspension of any property transactions, whether buying or selling, in this predominantly Kurdish province, unless obtaining security approval. Obtaining such approval was virtually impossible for Kurdish citizens, as this law was used in a discriminatory manner based on ethnicity, particularly targeting Kurds, and political opinion in general.

Therefore, it can be said that these exceptional laws and decrees regarding property ownership are merely executive tools for implementing the plan advocated by the security officer "Mohammed Talab Hilal," which aligns with the directions and policies of the ruling party towards the region and its inhabitants. This is especially evident when considering the economic, social, and political impacts resulting from these laws, including (economic stagnation, difficulties in obtaining housing or agricultural land, undermining national belonging, changing the demographic structure, instability, internal and external migrations, and more).

• **Recommendations:**

1. Include the property issue as a part of any political agreement between the parties involved in the Syrian conflict. This inclusion should address not only the violations suffered by property rights due to the Syrian war but also the exceptional legislations that have been in place since the 1950s. Propose amendments to these legislations to eliminate all discriminatory provisions and reverse their adverse effects.
2. Rectify the situations resulting from the "Agricultural Reform Law" and provide compensation in kind (by distributing state-owned lands) to the descendants of those whose lands were seized by the state in the 1960s and 1970s.
3. Regarding the Law of Expropriation for Public Benefit, work on amending it to narrow down the concept of public benefit and limit expropriation to the administrative authority. Ensure that expropriation is accompanied by fair compensation that corresponds to the real value of the property, in accordance with the current constitutional provisions.
4. Amend the Law of Properties in Border Areas by eliminating the provision that categorizes the entire Al-Hasakah province as a border area. Instead, treat it like other provinces by defining a specific depth from the Turkish and Iraqi borders as the border area. Licensing for the sale of properties in border areas should be restricted to the administrative authority (by a decision from the governor or a local council within the property's administrative boundaries). Any refusal to grant a license should be subject to review and appeal before the competent judiciary.

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