

# URBICIDE AND PROPERTY UNDER ASSAD: EXAMINING RECONSTRUCTION AND NEOLIBERAL AUTHORITARIANISM IN A “POSTWAR” SYRIA

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## ABSTRACT

This Note places wartime activity in Syria such as real property seizures and mass demolition within the theoretical framework of *urbicide*. The wanton, widespread destruction and seizure of homes or public spaces in Syria is a distinct, intentional form of violence against the built environment of the country’s cities, one which is intended to forcibly impose an urban politics of separation and homogeneity. The Assad regime’s tactics in Syria and urbicidal conduct more broadly should not be seen as discrete destructive events—or even series of events—occurring during periods of direct hostilities, but ought to be interpreted expansively: as ongoing processes in which postwar reconstruction is not the solution to urban destruction but rather the *continuation* of such violence. A failure to account for the logic underlying urbicidal wars may result in post-conflict authoritarian practices of economic patronage and the selective recognition of property assets in ways that are themselves urbicidal in purpose and effect. This Note argues that current reconstruction orthodoxy and the international community’s focus on property restitution as a means to facilitate the return of refugees and internally displaced persons (“IDPs”) is misguided; “traditional” models of post-conflict property restitution fail to properly consider the linkages between methods of destruction and possibilities of future conflict, thus permitting urbicidal reconstruction and the persistence of authoritarianism.

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## INTRODUCTION

In early 2018, busloads of Syrians departed opposition-held eastern Ghouta in Syria for Idlib in the northwest as part of a surrender deal with President Bashar al-Assad's government.<sup>1</sup> Among them was an unnamed architect who fled with his family after joining street protests and posting anti-government material online.<sup>2</sup> Several months later, he was notified that his property had been seized and his assets frozen; as he told reporters, "[the government] left the people whose property they seized with nothing to return to, not even hope."<sup>3</sup> The architect was not alone. Thousands of Syrians have lost their property over the course of nearly eight years of fighting in Syria—some under security pretexts, while others have had their homes destroyed during protracted military campaigns against urban spaces. Others have mislaid property deed documents or have had theirs seized at Syria's borders while fleeing to safer countries.

This Note places this particular kind of wartime activity within the theoretical framework of *urbicide*, arguing that the wanton, widespread destruction and seizure of homes or public spaces in Syria is a distinct, intentional form of violence against the built environment of the country's cities, one which is intended to forcibly impose an urban politics of separation and homogeneity. Further, this Note demonstrates that urbicide should not be seen as a discrete destructive event—or even series of events—occurring during a period of direct hostilities, but ought to be interpreted expansively: as an ongoing process in which postwar reconstruction is not the solution to urban destruction but rather the *continuation* of such violence. A failure to account for the logic underlying urbicidal wars may result in post-conflict authoritarian practices of economic patronage and the selective recognition of property assets in ways that are themselves urbicidal in purpose and effect. This Note argues that current reconstruction

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1. See Peter Beaumont, *Rebels Strike Deal to Leave Eastern Ghouta, Say Assad Media*, GUARDIAN (Apr. 1, 2018), <https://www.theguardian.com/world/2018/apr/01/rebels-strike-deal-to-leave-eastern-ghouta-say-assad-media> [https://perma.cc/42HE-EDL7]; *Syria War: Rebel Evacuations from Eastern Ghouta Gather Pace*, BBC (Mar. 25, 2018), <https://www.bbc.com/news/world-middle-east-43530147> [https://perma.cc/LX3Z-CL87] (describing negotiations with the Syrian government and consequent evacuation).

2. Dahlia Nehme, *Syrian State Seizes Opponents' Property, Rights Activists Say*, REUTERS (Dec. 12, 2018), <https://www.reuters.com/article/us-mideast-crisis-syria-property/syrian-state-seizes-opponents-property-rights-activists-say-idUSKBN1OB0H3> [https://perma.cc/G7CS-44WB].

3. *Id.*

orthodoxy and the international community's focus on property restitution as a means to facilitate the return of refugees and internally displaced persons ("IDPs") is misguided; "traditional" models of post-conflict property restitution fail to properly consider the linkages between methods of destruction and possibilities of future conflict, thus permitting urbicidal reconstruction and the persistence of authoritarianism.

Part I of this Note briefly outlines the history of the war in Syria before reviewing existing literature on urbicide. It demonstrates how urbicidal logic has been deployed in Syria and for what purposes. Part II discusses the general "right" to property before specifically describing the housing, land and property ("HLP") rights of refugees and IDPs under international law. It also examines the property restitution mechanism adopted after the Bosnian war—which significantly influenced the development of international principles guiding postwar property restitution—and argues that, though this mechanism is widely viewed as a success, it was ill-equipped to combat the effects of the urbicidal war. Using case studies from Bosnia and Beirut, Part III advances the argument that postwar reconstruction in furtherance of urbicidal goals occurs in two ways: through the reconstruction of built environments of targeted cities in ways that promote and ensure homogenization, and through the selective capitalization and circulation of property assets. Finally, Part IV analyzes the likely trajectory of reconstruction in Syria and offers several suggestions to forestall total and irreversible property destruction—and thus the impossibility of return for refugees and IDPs—in the postwar period.

## I. A BRUTAL WAR

### A. It's Your Turn, Doctor: A Short History of the Syrian Civil War

Inspired by the populist political uprisings spreading from Tunisia to Egypt and Libya, in February 2011 a group of teenage boys wrote, "أجلك الدور يا دكتور" [it's your turn, Doctor]"—referring to President Bashar Assad, who had trained as an ophthalmologist in London—on the wall of their school in Dara'a, Syria.<sup>4</sup> Shortly thereafter, the boys

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4. Kelly McEvers, *Revisiting the Spark that Kindled the Syrian Uprising*, NPR (Mar. 16, 2012), <https://www.npr.org/2012/03/16/148719850/revisiting-the-spark-that-kindled-the-syrian-uprising> [<https://perma.cc/44FU-WLYF>].

were arrested, tortured, and several of them were forcibly disappeared.<sup>5</sup> Outraged parents and activists organized a protest for March 15, 2011, during which two civilian protestors were killed by Syrian security forces—sparking further demonstrations, an eleven-day siege of Dara'a in April 2011, and increased suppression of public gatherings and civil liberties.<sup>6</sup> As Ayman Abdel Nour, a prominent Syrian dissident and former political prisoner told *Time Magazine* reporter Rania Abouzeid, “[i]t is the start of a Syrian revolution unless the regime acts wisely and does the needed reforms. . . . [I]t will continue in all cities, even small groups, but the brutality the regime will use—it will show its Gaddafi face.”<sup>7</sup>

Nour’s words proved prescient. As calls for political reforms went unheeded, the Free Syrian Army (“FSA”) was formed in July 2011 to protect protestors from Syrian security forces and, eventually, to marshal rebel forces and Syrian Arab Army (“SAA”) defectors into military action against the Assad regime.<sup>8</sup> By 2012, a full-blown civil war between the FSA and the Assad regime had emerged, threatening the lives of millions of Syrians, throwing Syria’s neighbors into turmoil, and facilitating the spread of transnational terrorism.<sup>9</sup> Regional and international actors were quickly embroiled in the conflict for geopolitical and sectarian reasons: Lebanese militants aligned with Hezbollah—a political party and militia funded in large part by

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5. Layla Saleh, “*We Thought We Were Playing*”: *Children’s Participation in the Syrian Revolution*, 14 J. INT’L WOMEN’S STUD. 80, 86 (2013) (“Soon after the boys had written the revolutionary slogans . . . they were arrested, tortured, forced to confess, and give[] the name of other co-conspirators. Other boys turned themselves in, and then they disappeared.”).

6. *Id.* at 87; see also *Syrian Troops Start Withdrawal from Besieged City*, INDEPENDENT (May 5, 2011), <https://www.independent.co.uk/news/world/middle-east/syrian-troops-start-withdrawal-from-besieged-city-2279341.html> [<https://perma.cc/S3Q4-ZVYW>] (describing the initial evacuation of Syrians from Eastern Ghouta).

7. Rania Abouzeid, *Arab Spring: Is a Revolution Starting Up in Syria?*, TIME MAG. (Mar. 19, 2011), <http://content.time.com/time/world/article/0,8599,2060398,00.html> [<https://perma.cc/8FGV-DUYR>].

8. CHARLES LISTER, BROOKINGS INST. CTR. FOR MIDDLE EAST POLICY, THE FREE SYRIAN ARMY: A DECENTRALIZED INSURGENT BRAND 3 (2016), [https://www.brookings.edu/wp-content/uploads/2016/11/iwr\\_20161123\\_free\\_syrian\\_army1.pdf](https://www.brookings.edu/wp-content/uploads/2016/11/iwr_20161123_free_syrian_army1.pdf) [<https://perma.cc/NL2Q-CV9Z>].

9. *Id.* at 4.

Iran<sup>10</sup>—descended upon Syria on behalf of Assad’s forces,<sup>11</sup> while Iran’s rivals—including Saudi Arabia and Turkey—responded by funding and arming FSA forces.<sup>12</sup> Concurrently, as part of a proxy war with Iran, and as early as 2012, Israeli forces began conducting airstrikes against Assad-held military bases.<sup>13</sup> Contributing to the unfolding crisis, Russia, a staunch Syrian ally, supported the Assad regime both diplomatically and militarily, including repeatedly blocking any United Nations (“U.N.”) resolutions condemning Assad’s actions against the Syrian people or pressuring Assad to step down from the presidency.<sup>14</sup> Russia also provided material support, including weapons, and from 2015 on conducted airstrikes on anti-Assad targets, though nominally against the Islamic State of Iraq and al-Sham, better

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10. Zachary Laub, *Who’s Who in Syria’s Civil War*, COUNCIL ON FOREIGN REL. (last updated Apr. 28, 2017), <https://www.cfr.org/background/whos-who-syrias-civil-war> (on file with the *Columbia Human Rights Law Review*) (describing Syria as a “lifeline” for Hezbollah, “providing a pipeline for arms from Iran to Lebanon as well as areas to train. A hostile, Sunni-led successor regime [in Syria] could shut down that support; just as worrisome would be an anarchic Syria in which Sunni extremist groups could thrive.”). Similarly, a Sunni-led Syrian government would likely align with Saudi Arabia, ending Iran’s long-standing alliance with Syria and potentially giving rise to increased Sunni jihadist activity; see also Mona Yacoubian, *Syria’s Alliance with Iran*, U.S. INST. OF PEACE (May 1, 2007), <https://www.usip.org/publications/2007/05/syrias-alliance-iran> [<https://perma.cc/RQ98-KZHJ>] (“Syria’s alliance with Iran has proven to be quite durable. The alliance’s breadth has insured that the bilateral relationship is not merely a tactical ‘marriage of convenience.’”).

11. Wyre Davies, *Syria Conflict: Growing Signs of Hezbollah Role*, BBC (May 1, 2013), <https://www.bbc.com/news/world-middle-east-22369609> [<https://perma.cc/VJ5E-TXLJ>].

12. Jonathan Schanzer, *Saudi Arabia Is Arming the Syrian Opposition*, FOREIGN POL’Y (Feb. 27, 2012), <https://foreignpolicy.com/2012/02/27/saudi-arabia-is-arming-the-syrian-opposition/> [<https://perma.cc/B4F3-KLA8>] (“[A]ll . . . these Sunni states [e.g., Saudi Arabia, Qatar] now want the Assad regime to crumble because it is an ally and proxy of their sworn Shiite enemy, Iran . . . [D]epriving the Russians of a Middle Eastern toehold is an added bonus.”).

13. Sebastien Roblin, *How the (Proxy) War Between Iran and Israel Started*, NAT’L INT. (May 19, 2018), <https://nationalinterest.org/blog/the-buzz/how-the-proxy-war-between-iran-israel-started-25879> [<https://perma.cc/TG7M-GSMV>].

14. *Russia’s 12 UN Vetoes on Syria*, ARAB NEWS (Apr. 10, 2018), <http://www.arabnews.com/node/1282481/middle-east> [<https://perma.cc/TD3E-VSEL>]. For a discussion of Russia’s continued support of President Assad, see Pete Gadalla, *Seven Years of Syria’s Civil War: What Brookings Experts Are Saying*, BROOKINGS INST. (Mar. 29, 2018), <https://www.brookings.edu/blog/brookings-now/2018/03/29/seven-years-of-syrias-civil-war-what-brookings-experts-are-saying/> [<https://perma.cc/86GV-PBUB>].

known as ISIS.<sup>15</sup> The United States, under the leadership of then-President Barack Obama, called for Assad's ousting<sup>16</sup> but initially sought to limit its involvement in Syria. However, the rapid rise of ISIS also prompted U.S. military involvement in 2014.<sup>17</sup>

Syria, in the early years of its civil war, proved fertile ground for the Islamic State's expansion. Iraqi national Abu Bakr al-Baghdadi and a small group of his followers rapidly built a network throughout Syria, planting the seeds of Jabhat al-Nusra (al-Nusra Front), a Syrian-run Islamist militia that was intended to join other rebel groups fighting the Assad regime.<sup>18</sup> Beginning in late 2011, al-Nusra began setting off car bombs in Damascus,<sup>19</sup> produced sleek propaganda videos, and benefited from cash inflows and recruits from Saudi Arabia, Libya, Tunisia, the Gulf countries and Europe.<sup>20</sup> A year later, Baghdadi announced that al-Nusra Front and Iraq's branch of Al-

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15. See Alina Polyakova, *Russia Is a Great Power Once Again*, ATLANTIC (Feb. 26, 2018), <https://www.theatlantic.com/international/archive/2018/02/russia-syria-putin-assad-trump-isis-ghouta/554270/> [https://perma.cc/M3ZQ-FDHQ]; David Kenner, *What Russia Gave Syria*, FOREIGN POL'Y (June 21, 2012), <https://foreignpolicy.com/2012/06/21/what-russia-gave-syria/> [https://perma.cc/VJ9U-8UJ8].

16. Scott Wilson & Joby Warrick, *Assad Must Go, Obama Says*, WASH. POST (Aug. 18, 2011), [https://www.washingtonpost.com/politics/assad-must-go-obama-says/2011/08/18/g1QAelheOJ\\_story.html](https://www.washingtonpost.com/politics/assad-must-go-obama-says/2011/08/18/g1QAelheOJ_story.html) (on file with the *Columbia Human Rights Law Review*).

17. Though some American ground troops have been deployed, the United States' involvement in Syria has largely been limited to airstrikes with the support of international coalition partners, focusing primarily on eradicating the threat of ISIS rather than the ousting of Assad. John Ismay, *U.S. Says 2,000 Troops Are in Syria, A Fourfold Increase*, N.Y. TIMES (Dec. 6, 2017), <https://www.nytimes.com/2017/12/06/world/middleeast/us-troops-syria.html> (on file with the *Columbia Human Rights Law Review*); see also Madeline Conway, *Timeline: U.S. Approach to the Syrian Civil War*, POLITICO (Apr. 7, 2014), <https://www.politico.com/story/2017/04/timeline-united-states-response-syria-civil-war-237011> [https://perma.cc/79HB-9WMR] (describing the events leading up to the U.S.'s military involvement in Syria).

18. See generally *Nusra Front (Jabhat Fateh al-Sham)*, COUNTER EXTREMISM PROJECT, <https://www.counterextremism.com/threat/nusra-front-jabhat-fateh-al-sham> [https://perma.cc/486T-RR8P] (detailing the creation of al-Nusra Front by Abu Bakr al-Baghdadi and efforts taken by the group against the Assad regime).

19. Kareem Fahim, *Syria Blames Al Qaeda After Bombs Kill Dozens in Damascus*, N.Y. TIMES (Dec. 23, 2011), <https://www.nytimes.com/2011/12/24/world/middleeast/syria-says-suicide-bombers-attack-in-damascus.html> (on file with the *Columbia Human Rights Law Review*).

20. JOBY WARRICK, *BLACK FLAGS: THE RISE OF ISIS* 268 (2015).

Qaeda would be folded into a newly rebranded umbrella organization: ISIS.<sup>21</sup> Stepping into the relative governance vacuum in Syria, ISIS established quasi-governmental centers throughout Iraq and Syria, including regional governors, Shari'a advisers, military commanders and local services providers.<sup>22</sup>

By the end of 2016, roughly six years after “it’s your turn, Doctor” was scrawled on the wall of a boys’ school in Dara’a, Syria had splintered into factions. In northern Syria, Kurdish minorities and allied groups independently declared in 2016 the establishment of an autonomous zone in northeastern Syria<sup>23</sup> while ISIS controlled a wide swath of the middle of the country. Rebel groups, including the FSA, maintained pockets of territory around Idlib and Dara’a,<sup>24</sup> and the Assad regime continued to nominally govern the territory along Syria’s western border between Hama, Damascus, and the Jordanian border.<sup>25</sup> More than eleven million Syrians had been displaced from their homes, requiring urgent humanitarian assistance, and Syria’s cities lay in ruins.<sup>26</sup>

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21. *Id.* at 283. The merger was not universally accepted—al-Nusra leader Abu Mohammad al-Julani refused to accept the decision, though Baghdadi proceeded with ISIS’s creation after declaring that he “prefer[red] the command of Allah over the command that contravenes it.” Jabhat al-Nusra, under al-Julani’s leadership, persisted as al-Qaeda’s Syrian affiliate after ISIS’s emergence. *Id.* at 284–285; see also Hania Mourtada and Rick Gladstone, *Iraq’s Branch of Al Qaeda Merges with Syria Jihadists*, N.Y. TIMES (Apr. 9, 2013), <https://www.nytimes.com/2013/04/10/middleeast/Iraq-and-Syria-jihadists-combine.html> (on file with the *Columbia Human Rights Law Review*) (describing the first announcement of a merger between al-Nusra and Iraq’s branch of al-Qaeda).

22. ERIC ROBINSON ET AL., RAND CORP., WHEN THE ISLAMIC STATE COMES TO TOWN (2017), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1900/RR1970/RAND\\_RR1970.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1900/RR1970/RAND_RR1970.pdf) [<https://perma.cc/9WPZ-L4XF>].

23. *Syria Civil War: Kurds Declare Federal Region in North*, AL JAZEERA (Mar. 17, 2016), <https://www.aljazeera.com/news/2016/03/syria-civil-war-kurds-declare-federal-system-north-160317111902534.html> [<https://perma.cc/Y3B8-WSTK>].

24. Titwane & International Crisis Group, *Surviving in Syria’s ‘Forgotten Province’*, ATLANTIC (Aug. 2, 2018), <https://www.theatlantic.com/international/archive/2018/08/idlib-rebels-assad-syria/565160/> [<https://perma.cc/U585-B23U>].

25. Sam Heller & Avi Asher-Schapiro, *How Five Years of War Has Fractured Syria into at Least Four States*, VICE NEWS (Mar. 15, 2016), [https://news.vice.com/en\\_us/article/pa4xab/how-five-years-of-war-has-fractured-syria-into-at-least-four-states](https://news.vice.com/en_us/article/pa4xab/how-five-years-of-war-has-fractured-syria-into-at-least-four-states) [<https://perma.cc/ZPK5-4SUN>].

26. *Syria Emergency*, UNHCR (Apr. 19, 2018), <http://www.unhcr.org/en-us/syria-emergency.html> [<https://perma.cc/W4MR-PNHN>]. UNHCR reports that over 5.6 million people have fled Syria, while 6.6 million people are considered

## B. “Urbicide” and the Destruction of Syrian Cities

### 1. What is Urbicide?

Throughout the course of the war, Assad’s regime used several tactics against armed rebels and unarmed civilians, including medieval-style “siege” campaigns in which military forces cut off access to food and medical supplies, bombed health services providers and markets, and employed chemical weapons<sup>27</sup>—starving rebel forces and their families into either surrender or evacuation.<sup>28</sup> In combination with such attacks on civilians, the Assad regime has engaged in a strategic, protracted campaign of “urbicide.” A term that emerged from the scholarly discourse surrounding the Bosnian War and subsequent conflicts in Kosovo and Lebanon, urbicide refers to the destruction of an urban center’s built environment as well as its distinctive ideological and cultural features.<sup>29</sup> Bogdan Bogdanović, a former mayor of Belgrade, described urbicide as the “intentional attack on the human and inert fabric of the city with the intent of destroying the civic values embodied within it.”<sup>30</sup> Sometimes described as “place annihilation,” urbicide positions cities as more than just the site of conflict, but as

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internally displaced persons. *Id.* 13.1 million people are considered “in need” in Syria—more than half of Syria’s pre-war population. *Id.*

27. *Syria: A Year On, Chemical Weapons Attacks Persist*, HUMAN RIGHTS WATCH (Apr. 4, 2018), <https://www.hrw.org/news/2018/04/04/syria-year-chemical-weapons-attacks-persist> [https://perma.cc/V4JL-ZA9C].

28. *Syria/Russia: Airstrikes, Siege Killing Civilians*, HUMAN RIGHTS WATCH (Dec. 22, 2017), <https://www.hrw.org/news/2017/12/22/syria/russia-airstrikes-siege-killing-civilians> [https://perma.cc/3XG3-LKG6]. Restricting access to critical goods for civilians—such as food and medical supplies—is a breach of international humanitarian law. “While a besieging force may prevent the entry of weapons and food and other supplies destined for opposing armies, essential goods for civilians must be allowed.” *Id.*

29. See Andrew Herscher, *Urbicide, Urbanism, and Urban Destruction in Kosovo*, 10 *THEORY & EVENT* 4 (2007). The term “urbicide” was used as early as the 1950s and 1960s in the context of large-scale transformations in American cities. See Marshall Berman, *Emerging from the Ruins*, *DISSENT* (2014), <https://www.dissentmagazine.org/article/emerging-from-the-ruins> [https://perma.cc/4R42-LZWX] (reflecting on having “invented” the term urbicide, understood as the “murder of a city”).

30. ROBERT BEVAN, *THE DESTRUCTION OF MEMORY: ARCHITECTURE AT WAR* 133 (2006).

themselves the targets of extraordinary violence.<sup>31</sup> Stephen Graham writes that cities' "buildings, assets, institutions, industries, and infrastructures," as well as "their cultural diversities and symbolic meanings have long actually *themselves* been the explicit target for a wide range of deliberate, orchestrated attacks."<sup>32</sup> Using the Bosnian War as a lens through which to understand urbicide, Martin Coward writes, "[b]uildings are destroyed because they are the condition of possibility of urbanity. Since urbanity is constituted by heterogeneity, urbicide comprises the destruction of the conditions of possibility of heterogeneity."<sup>33</sup> That is, urban spaces are targeted both out of military necessity and to replace the distinctive feature of urbanity—pluralism—with homogeneity.

Some scholars argue that urbicide is inseparable from other acts of war (such as genocide, ethnocide or eliticide) and should not be viewed as a distinct form of intentional violence. Martin Shaw, for example, advocates for "understand[ing] both the destruction of buildings and the targeting of urbanity as *elements* of genocidal war."<sup>34</sup> In his view, genocide ought to be defined broadly as the targeting of a civilian population for destruction by armed force, a definition generous enough to include both violence against individuals and against the built environment in which they are situated.<sup>35</sup> However, distinguishing urbicide as its own distinct mode of state violence—though it may occur as part of a larger genocidal conflict—is, I argue in Part III, essential for understanding how cities are intentionally unmade in conflict *in order to* remake them after the cessation of hostilities.

In that regard, urbicide may also be evidenced in post-conflict "urban renewal," a "peacetime" process that ought to be seen as yet another form of state-sponsored violence—and the second phase of an urbicidal war. Of urban renewal processes, or "planning-based

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31. Stephen Graham, *Cities as Strategic Sites: Place Annihilation and Urban Geopolitics*, in *CITIES, WAR, AND TERRORISM: TOWARDS AN URBAN GEOPOLITICS* 31, 31 (Stephen Graham ed., 2004).

32. *Id.* at 32.

33. Martin Coward, *Urbicide in Bosnia*, in *CITIES, WAR, AND TERRORISM: TOWARDS AN URBAN GEOPOLITICS*, supra note 31, at 154, 155.

34. Martin Shaw, *New Wars of the City: Relationships of "Urbicide" and "Genocide"*, in *CITIES, WAR, AND TERRORISM: TOWARDS AN URBAN GEOPOLITICS*, supra note 31, 141, 148.

35. *Id.* In this view, the razing of cities is thus not anti-urbanism, per se, but unavoidable collateral damage or necessitated by military objectives.

urbicide,” as Graham describes it, “[s]tate-sponsored urban ‘regeneration’ is increasingly orchestrating the annihilation of whole districts of the poorer parts of cities . . . to sustain the hyper-profits for financial industries that come through real-estate speculation.”<sup>36</sup> If the “renewal” of cities in even conflict-free zones requires their unmaking and annihilation to advance neoliberal aims,<sup>37</sup> post-war redevelopment takes on additional significance, enabling actors—whether central to the conflict itself or not—to mobilize enormous power and capital to advance their political, military, or economic aims. Such reconstruction efforts thus represent a second, equally insidious form of urbicide.

Hiba Bou Akar examines the consequences of post-war spatial reconfigurations in Beirut, writing, “[b]eyond being resources or receptors for violence, the geographies of post-civil war Beirut show how space and violence have become mutually constitutive.”<sup>38</sup> She argues that the ever-present potential for reemergent conflict in Lebanon rises substantially from the efforts of the country’s sectarian groups to organize Beirut and its “peripheries” in “anticipation of future wars.”<sup>39</sup> Excluding other religious or ethnic groups from particular urban spaces, seizing hilltop positions for new construction projects, and shaping building and zoning laws are key components to these anticipatory urban renewal efforts; private construction companies, authorized by public officials, are responsible for their execution.<sup>40</sup> As seen in Beirut, in the post-war context, the reconfiguring of spaces through extensive redevelopment, often with substantial financial backing from the international community, cannot be seen as a morally or politically neutral activity. In the aftermath of violent conflict, as organizations and individuals rebuild

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36. Graham, *supra* note 31, at 43.

37. For the purposes of this Note, “neoliberalism” is understood as a political ideology—and economic project—intended to “re-establish the conditions for capital accumulation and to restore the power of economic elites.” DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 19 (2005). Laissez-faire capitalism, and not the state, is viewed as the means by which individual freedoms are best achieved. In particular, “strong property rights and private contracting rights are [privileged as] the best means to increase overall welfare, with the sole justification for ‘political intervention’ being to ‘correct market failures.’” David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, L. & CONTEMP. PROBS. 1, 6 (2014). Neoliberalism requires the privatization and/or commodification of state welfare programs, liberalizes trade, and seeks to bring all individuals within the reach of the “market.”

38. HIBA BOU AKAR, FOR THE WAR YET TO COME: PLANNING BEIRUT’S FRONTIERS 29 (2018).

39. *Id.* at 30.

40. *Id.* at 33–34.

urban spaces, they may also produce and reproduce sites of power, eliminate vestigial pockets of resistance, and preclude the establishment of durable, equitable peace.

## 2. Urbicide in Syria

In Syria, Assad's actions demonstrate how urbidal tactics may be used to consolidate power and usher in opportunities for homogenization. Human Rights Watch reported in January 2014 that the Syrian government had unlawfully razed thousands of primarily residential buildings in Damascus and Hama, two of Syria's largest cities. The report stated that "seven cases of large-scale demolitions documented in this report violated the laws of war either because they served no necessary military purpose and appeared intended to punish the civilian population, or because they caused disproportionate harm to civilians."<sup>41</sup>

In many cases, the intentional destruction of residential buildings with no military value was conducted under the guise of urban planning or renewal directives; in Hama, for example, pro-government sources justified the bulldozing of homes in a particular neighborhood—occupied largely by pro-opposition residents—as part of an effort to remove informal housing communities and to improve infrastructure in the city.<sup>42</sup> Similarly, in 2012, Assad signed Decree 66/2012 to "redevelop areas of unauthori[z]ed housing and informal settlements" in Damascus.<sup>43</sup> The order has since been used to initiate processes of reconstruction in areas formerly held by opposition forces,

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41. *Razed to the Ground: Syria's Unlawful Neighborhood Demolitions in 2012–2013*, HUMAN RIGHTS WATCH (2014), <https://www.hrw.org/report/2014/01/30/razed-ground/syrias-unlawful-neighborhood-demolitions-2012-2013> [<https://perma.cc/V4XM-GAA5>]. Human Rights Watch acknowledges that while some measures to protect military or strategic objectives (e.g., military airports) may be validly implemented, the destruction of residential buildings, often located quite far from these targets, appears to be disproportionate. *Id.*

42. *Id.*; for a complete story, see عبد الله الشيخ [Abdullah al-Sheikh], جربة هي الأولى من نوعها لمعالجة السكن العشوائي في وادي الجوز والمشاع الجنوبي بحماة *[An Experiment, the First of Its Kind, in Addressing Random Housing in Wadi Al-Jowz and the Southern Neighborhoods in Hama]*, SYRIAN ARAB NEWS NETWORK (Mar. 27, 2018), <https://www.sana.sy/?p=731538> [<https://perma.cc/AG2B-EQXF>].

43. Tom Rollins, *Decree 66: The Blueprint for al-Assad's Reconstruction of Syria?*, IRIN (Apr. 20, 2017), <https://www.irinnews.org/investigations/2017/04/20/decree-66-blueprint-al-assad%E2%80%99s-reconstruction-syria> [<https://perma.cc/EBB4-8PTY>].

such as Basateen al-Razi,<sup>44</sup> a southern neighborhood of Damascus, where a multi-million dollar project to develop 12,000 housing units is underway, funded through Damascus Sham—a holding company established by the Damascus Governorate.<sup>45</sup> While the motives behind such projects are disputed as either efforts to retroactively legitimize ethnic cleansing or merely to kickstart economic revitalization, the effect has been to remove thousands of Syrians—largely pro-opposition and Sunni Muslims—from their former homes without compensation or the provision of alternative shelter, likely to be replaced by wealthier, pro-government residents.<sup>46</sup>

The Assad regime also conducted a concerted campaign to destroy and, in some cases, falsify property records.<sup>47</sup> Land and property grievances significantly predate the war, in large part due to a set of conflicting land tenure and legal systems, both formal and informal.<sup>48</sup> Laura Cunial explains that Syria's land is "divided into two broad categories—state land (62 percent) and private land (38 percent) . . . [but] the underlying tenure system is pluralistic and includes a wider range of statutory, customary, Islamic and informal rights categories."<sup>49</sup> As little as 20 percent of state land was formally registered before the war (such as state farms rented to private individuals), while other open access properties remained

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44. Basateen al-Razi was a site of early protests against Assad's government in 2011. See Louisa Loveluck, *Syria is Ready to Court Investors, but Europe Wants to Prevent That*, WASH. POST (Jan. 23, 2019), [https://www.washingtonpost.com/world/middle\\_east/syria-is-ready-to-court-investors-but-europe-wants-to-prevent-that/2019/01/23/a40abe52-1e4b-11e9-a759-2b8541bbbe20\\_story.html](https://www.washingtonpost.com/world/middle_east/syria-is-ready-to-court-investors-but-europe-wants-to-prevent-that/2019/01/23/a40abe52-1e4b-11e9-a759-2b8541bbbe20_story.html) (on file with the *Columbia Human Rights Law Review*).

45. See Rollins, *supra* note 43.

46. *Id.*

47. See JIHAD YAZIGI, FRIEDRICH EBERT STIFTUNG, *DESTRUCT TO RECONSTRUCT: HOW THE SYRIAN REGIME CAPITALISES ON PROPERTY DESTRUCTION AND LAND LEGISLATION* 5 (2017), <http://library.fes.de/pdf-files/iez/13562.pdf> [<https://perma.cc/BT84-CQR5>].

48. See generally George Somi, *Syria Under Pinheiro: Reformulating Syrian Domestic Law for Decentralized Reconstruction*, 43 *BROOK. J. INT'L L.* 717, 717–55 (2018) (describing Syria's existing domestic law governing HLP rights).

49. LAURA CUNIAL, NORWEGIAN REFUGEE COUNCIL, *BRIEFING NOTE: HOUSING LAND AND PROPERTY (HLP) IN THE SYRIAN ARAB REPUBLIC* 5 (2016), <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf> [<https://perma.cc/N9L3-N6N3>].

unregistered.<sup>50</sup> Despite the creation of a land cadastre<sup>51</sup> during the French mandate (1923–1946), Syria has no centralized, national-level registry, and no records created before 2010 have been digitized.<sup>52</sup> In major urban areas, such as Damascus and Homs, between 40 and 50 percent of residents lived in unregistered settlements with no formal titles and, consequently, no security of tenure.<sup>53</sup>

Recognizing the fragility of claims to land and property assets, the Syrian government has, as noted by the German and Turkish Permanent Representatives to the United Nations, “systematically destroyed the land registry and cadastre records in opposition strongholds and in areas where it has regained control.”<sup>54</sup> For example:

In July 2013, the regime bombarded the building in Homs where land registry and cadastre records were kept. Similar incidents have been observed in Zabadani, Darayya and Qusayr. Following the destruction of records, the regime first forcefully displaced the local civilian population and then placed groups close to Damascus in those buildings. Among those groups were a number of militias from third countries.<sup>55</sup>

The calculated destruction of any existing land registries and property administration buildings—as well as the confiscation of any HLP documentation at military checkpoints, as has been reported—has the dual effect of weakening claims over any formal property assets by their original owners and enabling the transfer of land or property to other individuals, such as regime sympathizers, or commercial developers.<sup>56</sup>

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50. *Id.*

51. A land cadastre (sometimes spelled cadaster) is an official public record of real property, including details of ownership and property boundaries. *See Cadastral Maps*, FOOD & AGRIC. ORG. OF THE U.N., <http://www.fao.org/3/v4860e/v4860e03.htm> [<https://perma.cc/PG4U-AAWR>].

52. CUNIAL, *supra* note 49, at 5.

53. *Id.* at 6; *see also* YAZIGI, *supra* note 47, at 3 (providing additional detail on Syria’s historical land regime).

54. Permanent Rep. of Germany and Turkey to the U.N. Security Council, Letter dated 12 July 2018 from the Permanent Representatives of Germany and Turkey to the United Nations addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2018/700 (July 12, 2018).

55. *Id.*

56. CUNIAL, *supra* note 49, at 15. Note that, in an effort to prevent the wholesale erasure of land registries, organizations such as the Free Syrian Lawyers (“FSL”) have raced to digitize and preserve property deeds and other critical civil

In April 2018, the Assad regime extended Decree 66/2012 to the whole of Syria through Law 10; ostensibly intended to facilitate the redevelopment of abandoned or damaged urban properties,<sup>57</sup> the law requires that individuals must establish legal ownership or occupancy rights to any of their former properties within a year to obtain compensation.<sup>58</sup> Failure to demonstrate ownership within this period will result in expropriation without compensation.<sup>59</sup> For Syrians currently living outside of the country, whether in neighboring countries such as Lebanon or Jordan or farther afield in Europe, returning to Syria to demonstrate land ownership or customary occupancy is virtually impossible for physical safety and financial reasons. Even for those able to return to Syria or to move internally, the destruction of land administration buildings or lost documentation means few will be able to assert legally adequate claims to land.<sup>60</sup> Those who *are* able to provide proof of ownership are to receive shares in the “zone” slated for development and can either “1) receive a share of the profits from re-development; or 2) sell their shares in a public auction; or 3) create a company to invest in and develop the division. All the shareholders in a sector must agree to one option.”<sup>61</sup> With or

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paperwork held in opposition territory. See *Backing up Syria's Property Deeds, a Race to Save Precious Documents*, NAT'L (June 20, 2018), <https://www.thenational.ae/world/mena/backing-up-syria-s-property-deeds-a-race-to-save-precious-documents-1.742525> [<https://perma.cc/Q993-4MBR>].

57. SALAM SAID & JIHAD YAZIGI, FRIEDRICH EBERT STIFTUNG, *THE RECONSTRUCTION OF SYRIA: SOCIALLY JUST RE-INTEGRATION AND PEACE BUILDING OR REGIME RE-CONSOLIDATION?* 6 (2018), <http://library.fes.de/pdf-files/iez/14939.pdf> [<https://perma.cc/C8VK-XZ3H>] (Under Law 10, the government may “rebuild any house estimated by the government as being ‘massively damaged’ and confiscate the equivalent of 20 percent of privately-owned land to be used for public spaces and building infrastructure.”).

58. The law as initially written provided for a 30-day notification period. In November 2018, however, Syrian sources reported that the law had been amended to permit owners to establish legal ownership/occupancy rights within a year. See *Assad Amends Law 10, Giving Syrians a Year to Claim Their Property*, AL SHAHID (Nov. 15, 2018), <https://alshahidwitness.com/assad-law-syrians-property/> [<https://perma.cc/X374-GQKF>]. Reports that the law was withdrawn have not been substantiated.

59. *Q&A: Syria's New Property Law*, HUMAN RIGHTS WATCH (May 29, 2018), <https://www.hrw.org/news/2018/05/29/qa-syrias-new-property-law> [<https://perma.cc/YRX7-LFPX>].

60. *Syria: Residents Blocked from Returning*, HUMAN RIGHTS WATCH (Oct. 16, 2018), <https://www.hrw.org/news/2018/10/16/syria-residents-blocked-returning> [<https://perma.cc/QH7T-KM45>].

61. *Q&A: Syria's New Property Law*, *supra* note 59.

without compensation, Law 10 nonetheless requires any residents in redevelopment zones to vacate their homes.<sup>62</sup> As of this writing, the law has yet to be fully implemented but, given its weak due process protections and arbitrary implementation by Assad's government, the measure has been criticized as a violation of international law by international human rights monitoring groups.<sup>63</sup>

Taken together, these actions reflect a calculated strategy of urban destruction and forcibly-effected demographic changes. Syria's cities and, specifically, opposition strongholds are in ruins and their remaining residents are increasingly homogeneous—as intended. In a speech at a conference organized by the Ministry of Foreign Affairs and Expatriates, Assad boasted, “[I]t's true that we lost the best of our young men as well as our infrastructure, [which has been built] at great cost and sweat over generations, but in return we won a healthier and more homogenous society, in the literal sense.”<sup>64</sup> He went on to declare that such homogeneity is the basis for national unity—perhaps true, insofar as the unmaking of cities provides an opportunity for their remaking through particular, planning-based urbicidal mechanisms.

## II. PROPERTY, RESTITUTION, AND THE PROTECTION OF REFUGEES AND IDPS

As the above discussion of Assad's use of urbicidal tactics against civilian populations and spaces reveals, the ability to dictate the terms on which individuals or groups may inhabit, remain in, or return to certain spaces is of acute importance in the context of conflict. The following section further discusses the nature of property as an abstract political and legal institution—demonstrating that property, freedom, and sovereign power are inextricably linked—before examining the available legal protections for refugees and IDPs

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62. *Id.*

63. *Id.*; see also *Syria: New Property Law Punishes the Displaced and Could Obstruct Investigation of War Crimes*, AMNESTY INT'L (May 18, 2018), <https://www.amnesty.org/en/latest/news/2018/05/syria-new-property-law-punishes-the-displaced-and-could-obstruct-investigation-of-war-crimes/> [https://perma.cc/C4NT-EKHP] (discussing the impact of Law 10 on displaced Syrians and the investigation of war crimes).

64. عناوين خطاب الأسد! [*Headlines from Assad's Speech!*], RT ARABIC (Aug. 20, 2017), [https://arabic.rt.com/middle\\_east/894747-%D8%B9%D9%86%D8%A7%D9%88%D9%8A%D9%86-%D8%AE%D8%B7%D8%A7%D8%A8-%D8%A7%D9%84%D8%A3%D8%B3%D8%AF/#](https://arabic.rt.com/middle_east/894747-%D8%B9%D9%86%D8%A7%D9%88%D9%8A%D9%86-%D8%AE%D8%B7%D8%A7%D8%A8-%D8%A7%D9%84%D8%A3%D8%B3%D8%AF/#) [https://perma.cc/T7GR-H63T] (at min. 6:30). Note that “homogeneous” has been alternately translated as “harmonious” in some English publications, although “homogeneous” is a more faithful translation of “متجانسا”.

seeking to return to their homes of origin and property in the aftermath of war.

#### A. The Right to Property: An Absolute Right?

Property rights have long held a central place in political and legal philosophy; this Note will only briefly describe the contours of the ongoing discussion over the nature and scope of these rights. Colloquially, the right to property is understood as the absolute ownership or possession of an object, whether a movable, tangible object or intellectual property. Ownership includes the right to possess, use, and manage an object as well as the right to the “income of the thing, the right to capital, the right to security,” and the ability to determine when such ownership may be extinguished.<sup>65</sup> While the privileges of ownership are extensive, they are not absolute, but bounded by duties—primarily, the duty not to infringe on the rights of others.

The description of rights above pertains to private property rights—that is, the exclusive privileges to some object(s) that one individual has. However, property rights may also be held publicly, to be administered through government or collective ownership. It is important to recognize that whether property is controlled under full private ownership or by public authorities is a fundamentally political question, and one which implicates both the relationship between an object and a person *and* the relationship between persons. Many scholars have articulated the concept of “dead capital” to assert that the establishment of exclusive, private ownership rights is key to alleviating widespread poverty; as the thinking goes, because some objects are not adequately documented as under the primary control of an individual,<sup>66</sup> they cannot be “readily turned into capital” or used as collateral for loans.<sup>67</sup> If undercapitalization is the problem, the solution is obvious: to transform the potential value of an object into capital by “representing [it] in writing—in a title, a security, a contract, and in

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65. A.M. Honoré, *Ownership*, in OXFORD ESSAYS IN JURISPRUDENCE 107, 113 (A. D. Guest ed. 1961).

66. These assets could include informally held or occupied housing, unregistered businesses, livestock or crops, and a whole host of other resources nominally possessed by individuals yet unrecognized or undocumented by some central authority. See HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 6 (2000).

67. *Id.*

other such records.”<sup>68</sup> In the housing sector in particular, giving the poor legal title to their land and homes—sovereign ownership of property—would, the thinking goes, naturally enable them to access the broader capital market.<sup>69</sup>

That property rights are essential for facilitating particular kinds of investments and transactions is largely undisputed. However, the belief that property rights are essential to the exercise of individual freedom<sup>70</sup> is both overly simplistic and ahistorical, and elides the fact that securing property rights for one party has often entailed the dispossession of another.<sup>71</sup> The recognition of private property rights imposes new, hierarchical relationships between individuals, often to the detriment of the supposed beneficiaries of capitalization. Where property use may have once been negotiated communally, formal property rights are necessarily mediated by and through a central authority—almost always the state. In other words, though “property” is on the one hand some kind of quantifiable good, the “right” to property also requires exposure and submission to state oversight and control—whether the state is allocating them or merely acting as their enforcement mechanism, it is central to the distribution of property rights.<sup>72</sup> The freedoms afforded by private property rights are thus

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68. *Id.* at 49.

69. *Id.* at 6.

70. *See, e.g.*, D. Benjamin Barros, *Property and Freedom*, 4 N.Y.U. J.L. & LIBERTY 37, 37 (2009) (arguing that private property provides individuals with a zone of privacy and autonomy).

71. Though De Soto assumes the capitalization of the assets of the poor is itself sufficient to usher in the end of poverty, the shift from communal land tenure regimes to a system of individual titling may reduce the access of women, minorities or other groups to property. *Id.* at 52–54; *see also* Pranab Bardhan, *Institutional Economics of Development: Some General Reflections*, in INSTITUTIONAL MICROECONOMICS OF DEVELOPMENT 15, 18 (Timothy Besley & Rajshri Jayaraman eds., 2010) (“For example, the rights of enclosure in England eliminated the traditional land use rights of many poor villagers . . . in South America . . . property rights in land were often bestowed on people who were politically influential but not necessarily good farmers.”).

72. *See* Ananya Roy, *Urban Informality: Toward an Epistemology of Planning*, 71 J. AM. PLANNING ASS'N 147, 152 (2005). As Roy notes, though “property” is on the one hand some kind of quantifiable good, it is also a “set of relationships between the owner of some thing and everyone else’s claim to that same thing.” *Id.* at 153. Charles Bonaventure Marie Toullier once stated, “without the ties of property it never would have been possible to subordinate men to the wholesome yoke of the law.” PIERRE-JOSEPH PROUDHON, WHAT IS PROPERTY? 60 (Donald R. Kelley & Bonnie G. Smith eds. & trans., Cambridge Univ. Press 1994) (1840).

fundamentally relational; recognizing this dynamic is essential in considering the role property and, relatedly, property restitution play in facilitating the return of refugees and IDPs to their countries of origin.

## B. The Right of Return and to Property Under International Law

### 1. Protections for Refugees and IDPs Under International Law

The right of refugees and IDPs to return voluntarily to their country or place of origin is unequivocally protected under international law. The Universal Declaration of Human Rights (UDHR) declares that “[e]veryone has the right to leave any country, including his own, and to return to his country,”<sup>73</sup> while the International Covenant on Civil and Political Rights’ (ICCPR) freedom of movement provisions similarly enshrine the right to return, stating that “[n]o one shall be arbitrarily deprived of the right to enter his own country.”<sup>74</sup> Entering into force some years later, the 1951 Convention Relating to the Status of Refugees<sup>75</sup> and its 1967 protocol, the Protocol Relating to the Status of Refugees,<sup>76</sup> outlines the obligations of States concerning refugees, the basic minimum standards for the treatment of refugees and, perhaps most importantly, the non-derogable principle of non-refoulement, which prohibits the expulsion or return of refugees to countries where they fear serious threats to their lives or freedom.<sup>77</sup>

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73. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 13(2) (Dec. 10, 1948) [hereinafter UDHR].

74. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 12(4), S. Exec. Doc. E, 95-2, 999 U.N.T.S. 171 (1967); *see also* CCPR General Comment No. 27: Article 12 (Freedom of Movement), UN Human Rights Comm., UN Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999) (clarifying the special relationship between an individual and the state from which he or she is originally from).

75. Convention relating to the Status of Refugees, *adopted* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

76. Protocol relating to the Status of Refugees, Oct. 4, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

77. Syria has not ratified either the 1951 Convention or its 1967 Protocol. Given that the refugees in question here are themselves Syrian, the fact that Syria has not ratified the Convention or Protocol is somewhat inconsequential; the Convention and Protocol regulate the treatment of individuals who have fled their home countries to seek sanctuary in a second country. Neither treaty specifically covers the treatment of internally displaced persons, who are still subject to the

While these multilateral treaties guarantee the right of return to one's country or place of origin, they are silent on the particular rights of returnees with respect to property—specifically, the right of return to one's pre-conflict home or, in the alternative, the right to just compensation for the loss of one's home.<sup>78</sup> However, over the course of the 1990s and early 2000s, in the wake of conflicts in Eastern Europe and the Middle East, the United Nations High Commissioner for Human Rights (OHCHR) and other UN human rights bodies reexamined the relationship between the right of return and property restitution. In 1998, the OHCHR's Sub-Commission on the Prevention of Discrimination and Protection of Minorities specifically reaffirmed the “right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish.”<sup>79</sup> The Sub-Commission also emphasized that international freedom of movement principles equally include the right of protection *against* being compelled to return to one's home or place of habitual residence.<sup>80</sup>

## 2. The Pinheiro Principles

In 1998, the UN Secretary-General's Special Representative on Internally Displaced Persons issued the “Guiding Principles on

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laws of their home state. See *Frequently Asked Questions About the 1951 Refugee Convention*, UNHCR (June 1, 2001), <https://www.unhcr.org/news/stories/2001/6/3b4c06578/frequently-asked-questions-1951-refugee-convention.html> [https://perma.cc/96WP-LLE8]. However, Syria has ratified the ICCPR and has clearly violated its obligations to both refugees and IDPs, including the right to life, to liberty, and of freedom of movement. See *Living Under Siege: The Syrian Arab Republic*, OHCHR (Feb. 2014), <https://www.ohchr.org/Documents/Countries/SY/LivingUnderSiege.pdf> [https://perma.cc/J2LP-8QW7].

78. Note that Article 17 of the Universal Declaration of Human Rights does broadly guarantee the right to property and prohibits the arbitrary deprivation of property. See UDHR, *supra* note 72, art.73, art. 17.

79. UN Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations High Commissioner for Human Rights Res. E/CN.4/Sub.2/Res/1998/26 (Aug. 26, 1998); see also Committee on the Elimination of Racial Discrimination, General Recommendation No. 22, UN Doc. A/51/18, annex VIII at 127 (1996) (providing that all refugees and displaced persons ought to be able to return to their homes of origin, that States are obliged to ensure that such return is voluntary, and that, upon return, refugees and displaced persons should have any property of which they were deprived restored to them or compensation where return of such property is not possible).

80. *Id.*

Internal Displacement,” a non-binding set of principles that obligate State officials to establish the conditions for voluntary return of displaced persons with special attention to the recovery of property and personal belongings, or compensation.<sup>81</sup> While this report was focused primarily on the protection of IDPs, it decisively focused international attention on the essentiality of housing and property restitution considerations in any post-conflict repatriation schemes, culminating in the 2005 “Principles on Housing and Property Restitution for Refugees and Displaced Persons,” better known as the “Pinheiro Principles.”<sup>82</sup> Though non-binding, the Principles explicitly outline the rights afforded to refugees and IDPs, including that “all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”<sup>83</sup> The Principles also mandate that States “take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process,”<sup>84</sup> or, where States are unwilling or unable to implement such measures, that they must “request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.”<sup>85</sup> The Pinheiro Principles are an important recognition of the central role that the resolution of property disputes plays in facilitating the equitable, peaceful return of refugees

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81. Francis M. Deng (Representative of the Secretary-General on Internally Displaced Persons), *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/ADD.2 (Feb. 11, 1998); see also Francis M. Deng (Representative of the Secretary-General on Internally Displaced Persons), *Report on Internally Displaced Persons*, U.N. Doc A/54/409 (Sept. 29, 1999) (highlighting developments subsequent to the Representative to the Secretary-General’s report; most notably, an institutional framework and research agenda).

82. The Principles were written by Paulo Sérgio Pinheiro, the UN’s Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons.

83. Paulo Sérgio Pinheiro (Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons), *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, art. 2.1, U.N. Doc. ECN.4/Sub.2/2005/17 (June 28, 2005) [hereinafter Pinheiro Principles].

84. *Id.* art. 12.3.

85. *Id.* art. 12.5.

(and IDPs) to their countries of nationality or former homes. However, the Pinheiro Principles and the property restitution efforts undertaken both prior and subsequent to their publication fail to distinguish between modes of displacement and property expropriation. As such, these efforts are vulnerable to critique on two fronts. First, the Principles and past property restitution mechanisms have assumed that the high-quality returns<sup>86</sup> of refugees and IDPs would naturally follow the adjudication of property rights through administrative means. However, as the following Section will demonstrate, in the aftermath of an urbicidal conflict in which homogeneity has been forcibly imposed upon a place and population, such administrative processes may merely strengthen the property rights of majority populations at the expense of the minority. Second, as this Note will discuss in Part III, in an urbicidal conflict, because the built environments of cities are destroyed, the simple return of refugees and IDPs to their pre-existing homes is practically impossible.

### C. A “Traditional” Property Restitution Mechanism

The property restitution mechanism deployed in Bosnia after a devastating conflict preceded the Pinheiro Principles’ publication by nearly a decade. However, both reflect the assumption that a postwar return to heterogeneity—that is, political, social or religious reintegration—and the return of refugees and IDPs may be facilitated through administrative and quasi-judicial means. The following Section examines this assumption and demonstrates that a reliance on such processes may, in fact, implicitly sanction and advance the urbicidal logic of the preceding war, all while permitting urbicidal reconstruction to proceed unimpeded.

#### 1. Bosnia’s Urbicidal Civil War

The Bosnian war was a protracted inter-ethnic conflict—prompted by the disintegration of Yugoslavia—between nationalist Croat, Serb and Bosniak (Bosnian Muslim) forces. In 1995, after three years of civil war, fatalities were estimated at between 90,000 and

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86. For a discussion of what this Note describes as “high-quality” returns of refugees and IDPs, see Megan Bradley, *Back to Basics: The Conditions of Just Refugee Returns*, 21 J. REFUGEE STUD. 285, 285–304 (2008).

300,000 individuals.<sup>87</sup> Bosniak residents of Sarajevo and Mostar, besieged by Bosnian Serb and Bosnian Croat forces, were particularly impacted by the war—civilians were fired upon in public spaces such as schools, libraries, and hospitals, or fell victim to one of the several hundred thousand mortar shells dropped into Sarajevo.<sup>88</sup> In all, an estimated 42 percent of Bosnia’s housing stock was destroyed over the course of the war, rendering the return of refugees and IDPs virtually impossible.<sup>89</sup> Bosnia’s architectural and cultural landmarks were also targeted for destruction throughout the course of the war, including the country’s mosques, libraries, public markets, and churches.<sup>90</sup> Martin Coward argues that the logic of such targeted violence was essential to Serb and Croat ethnic cleansing campaigns, writing “the destruction of urban fabric is the destruction of a common space, and the attendant possibility of sharing such space.”<sup>91</sup> The scale of the destruction of Bosnia’s urban fabric by the end of the war had eliminated most common spaces and a significant portion of former housing. This all but foreclosed the possibility of heterogeneity and multiculturalism—exactly what urbicide is intended to do.

## 2. The Dayton Peace Agreement and Annex 7

The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, better known as the Dayton Peace Agreement or “DPA,” formally ended the war and split Bosnia into two parts: the Republika Srpska (primarily for ethnic Serbs) and a Bosniak-Croat

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87. Alan Taylor, *20 Years Since the Bosnian War*, ATLANTIC (Apr. 13, 2012), <https://www.theatlantic.com/photo/2012/04/20-years-since-the-bosnian-war/00278/> [https://perma.cc/6CL4-X8LB].

88. Joel Br, *The Shell that Changed the Bosnian War*, WASH. POST (Feb. 5, 1995), <https://www.washingtonpost.com/archive/politics/1995/02/05/the-shell-that-changed-the-bosnian-war/766277f0-7cf1-4f4e-97cf-050388496e9b/> (on file with the *Columbia Human Rights Law Review*).

89. CHARLES KENDALL & PARTNERS LTD., NEED OF SOCIAL HOUSING IN BOSNIA-HERZEGOVINA 4 (2008), <http://www.mhrr.gov.ba/PDF/Izbjeglice/2.%20Needs%20of%20%20Social%20Housing%20in%20Bosnia%20and%20Herzegovinapdf.pdf> [https://perma.cc/L3TB-CNJS].

90. Hamza Preljević, *Bosnia and the Destruction of Cultural Heritage*, 4 EUR. J. CULTURAL & POL. SOC. 373, 373–75 (2017).

91. Martin Coward, *Urbicide and the Question of Community in Bosnia-Herzegovina* 6 (Oct. 1, 2001) (unpublished Ph.D. thesis, University of Newcastle-upon-Tyne), <https://theses.ncl.ac.uk/dspace/bitstream/10443/1759/1/Coward%2001.pdf> [https://perma.cc/HCR9-6GVU].

Federation.<sup>92</sup> Among the DPA's most significant features is Annex 7, which both recognizes the right of return for displaced persons and "set[s] out a clear policy preference for reversing ethnic cleansing through the facilitation of return."<sup>93</sup> Article 1 of Annex 7 states:

All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.<sup>94</sup>

To give effect to Article 1, the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) was established under Annex 7.<sup>95</sup> Designed to make property title or occupant rights determinations through a fast-track administrative process, the CRPC was led by three international and six national commissioners appointed by the European Court of Human Rights; its decisions were binding, could not be contested, and prevailed over any inconsistent findings at the lower court or local administrative level.<sup>96</sup> The CRPC was given broad investigatory powers, including unrestricted access to

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92. UNCHR, AFTER THE WAR WAS OVER 8 (2005), <http://www.unhcr.org/433bde34.pdf> [<https://perma.cc/HBA6-M4MM>]; see also Rhodri C. Williams, *Post-Conflict Property Restitution in Bosnia: Balancing Reparations and Durable Solutions in the Aftermath of Displacement*, BROOKINGS INST. (Dec. 5, 2006), <https://www.brookings.edu/on-the-record/post-conflict-property-restitution-in-bosnia-balancing-reparations-and-durable-solutions-in-the-aftermath-of-displacement/> [<https://perma.cc/DVW7-MBY7>] (discussing property restitution in Bosnia and, specifically, policy preferences in the Dayton Peace Agreement for reversing ethnic cleansing through the facilitation of return).

93. See Williams, *supra* note 92. Williams notes that "ethnically motivated attacks on civilian populations . . . [led to] the population of Bosnia [being] thoroughly 'unmixed' and polarized into homogeneous ethnic statelets by the end of the war." *Id.* As such, the DPA was especially concerned with the "minority returns," or the "return of those among the displaced who now found their ethnicity to be in the numerical minority in their areas of origin." *Id.*; see also Inmaculada Serrano, *Property Rights and Reconstruction in the Bosnian Return Process*, 50 FORCED MIGRATION R. 18, 18 (2015) (critiquing the CRPC for failing to take a rights-based approach to property restitution and reconstruction).

94. Permanent Representative of the U.S.A. to the U.N, Letter dated 29 November 1995 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General, Annex 7, art. 1, U.N. Doc. A/50/79C (Nov. 30, 1995).

95. Serrano, *supra* note 93, at 19.

96. Catherine Phuong, *At the Heart of the Return Process: Solving Property Issues in Bosnia and Herzegovina*, 7 FORCED MIGRATION R. 5, 5 (2000).

official land records as well as the authority to invalidate any property transfers made under duress.<sup>97</sup> While the CRPC investigated claims individually, its Commissioners adopted decisions en masse through plenary sessions.<sup>98</sup>

Though its mandate was straightforward, the CRPC faced significant challenges. Even where it made final determinations and claimants were in possession of a CRPC certificate, lack of local enforcement mechanisms and parallel processes ongoing at local housing offices threatened the CRPC's credibility and significantly frustrated implementation.<sup>99</sup> Further, local authorities intent on maintaining ethnic separation often refused to execute eviction orders and, under legislation passed in the Federation and Republika Srpska in 1995 and 1996, many refugees' and IDPs' claims to property or occupancy were extinguished.<sup>100</sup> By 1997—two years after the cessation of hostilities—of the 1.3 million refugees living abroad, only 208,000 had returned (often not to their own homes).<sup>101</sup> Similarly, of the over one million internally displaced Bosnians, only 153,000 had returned to their homes, largely to areas controlled by their own ethnic group;<sup>102</sup> only 45,500 individuals had returned to areas in which they were a minority.<sup>103</sup> The majority of those yet to return to their pre-war homes would be ethnic minorities if and when they chose to return. In addition to concerns over these so-called “minority returns,” other infrastructure issues remained: despite international investment in housing reconstruction (up to \$400 million), many properties remained in ruins or occupied by displaced persons of different ethnicities.<sup>104</sup>

In light of these challenges, a coordinated group of international organizations developed a Property Legislation

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97. *Id.*; see also Leopold Von Carlowitz, *Settling Property Issues in Complex Peace Operations: The CRPC in Bosnia and Herzegovina and the HPD/CC in Kosovo*, 17 LEIDEN J. INT'L L. 599, 601 (2004) (stating the CRPC “had the power to disregard ‘any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing.’”).

98. Von Carlowitz, *supra* note 97, at 602.

99. *Id.* at 603.

100. *Id.*

101. INT'L CRISIS GROUP, *MINORITY RETURN OR MASS RELOCATION?* i (1998), <https://d2071andvip0wj.cloudfront.net/minority-return-or-mass-relocation.pdf> [<https://perma.cc/CM5M-KMBK>].

102. *Id.*

103. *Id.* at ii.

104. *Id.* at 7–8.

Implementation Plan (“PLIP”) in 1999, overseen and administered by the CRPC. Under this plan, the CRPC was empowered to implement a number of measures, including “the establishment of property commissions throughout the country to investigate the prewar accommodation of current occupants; systematic monitoring; sanctioning or prosecuting officials obstructing return; the training of, and allocation of sufficient resources to, housing authorities; and a large-scale information campaign on the options of current occupants.”<sup>105</sup> An international representative was appointed to monitor the implementation of the PLIP in each of the country’s municipalities.<sup>106</sup> However, no compensation mechanism was ever implemented, despite Annex 7’s provisions for a lost property compensation fund.<sup>107</sup>

The CRPC is often cited as a model for other post-conflict contexts, particularly those characterized by ethnic cleansing or mass displacement. Indeed, insofar as the resolution of around 93 percent of all claims could be considered successful, sustained international pressure and oversight under the PLIP *did* improve outcomes.<sup>108</sup> However, much less attention has been paid to how property restitution efforts taken by the CRPC merely reified (or exacerbated) many of the ethnic and socio-economic divisions that prompted the initial conflict, effectively preempting the possibilities of urban plurality in the “new” Bosnia and Herzegovina. For example, an estimated 75 percent of returned property was sold or exchanged shortly after its reclamation, often from the hands of minority community members to majority members.<sup>109</sup> That owners who transferred their property to majority members were compensated for this exchange does not mitigate the fact that, in many cases, these

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105. Von Carlowitz, *supra* note 97, at 605. Under the PLIP, the ability to remove obstructionist officials was key to improved outcomes.

106. THE SYRIA JUSTICE AND ACCOUNTABILITY CENTRE, RETURN IS A DREAM: OPTIONS FOR POST-CONFLICT PROPERTY RESTITUTION IN SYRIA 25 (2018), <http://syriaaccountability.org/wp-content/uploads/Property-Restitution.pdf> [https://perma.cc/UM9V-GVDY].

107. Von Carlowitz, *supra* note 97, at 605.

108. *Id.*

109. ANTHONY OBERSCHALL, CONFLICT AND PEACE BUILDING IN DIVIDED SOCIETIES: RESPONSES TO ETHNIC VIOLENCE 213 (2007); *see also* Gearóid Ó Tuathail & John O’Loughlin, *After Ethnic Cleaning: Return Outcomes in Bosnia-Herzegovina a Decade Beyond the War*, 99 ANNALS ASS’N AM. GEOGRAPHERS 1045, 1049–52 (2009) (discussing the demographic factors that contributed to whether Bosnians sold, leased, or returned to their prewar homes).

sales were conducted under coercive, discriminatory, and, in some cases, outright unsafe conditions.<sup>110</sup> Individuals given the “right” to return to property chose to sell their assets and recompose themselves into “ethnically divided and self-enclosed sectors . . . [in] a process of ‘clustering’ whereby ethnic groups tend to feel protected by enclosing themselves.”<sup>111</sup> In the end, even communities in which a substantial percentage of property had been nominally returned to its previous owners or occupants under the CRPC eventually underwent significant demographic change.<sup>112</sup>

Perhaps inevitably, within their de facto segregated communities, antagonisms arose between ethnically-separated community members; additionally, local institutions, particularly geographically-bounded institutions such as schools, became sites of separation and homogeneity.<sup>113</sup> In spite of the High Representative Wolfgang Petritsch’s optimistic prediction that “the vast majority of Bosnians and Herzegovinians—particularly the young—do not want to live in mono-ethnic ghettos, but accept the Western European principle of multi-ethnic, ‘live and let live,’ despite the terrible war,”<sup>114</sup> given ongoing ethnocratic<sup>115</sup> projects at the political level, many minorities chose not to return to their pre-war communities and homes at all.<sup>116</sup>

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110. Mats Berdal, Gemma Collantes-Celador & Merima Zupcevic Buzadzic, *Post-War Violence in Bosnia and Herzegovina*, in *THE PEACE IN BETWEEN: POST-WAR VIOLENCE AND PEACEBUILDING* 74, 85–87 (Mats Berdal & Astri Suhkre eds., 2012).

111. Inés Aquilué & Estanislao Roca, *Urban Development After the Bosnian War: The Division of Sarajevo’s Territory and the Construction of East Sarajevo*, 58 *CITIES* 152, 156 (2016).

112. *Id.*

113. OBERSCHALL, *supra* note 109, at 214 (describing the “dominant attitude” . . . that “everyone should be educated in his/her own culture, language, and history . . . thus minority children, including children of minority returnees, were expected to learn according to the majority . . . if they attended the local schools or, as was more typical, be bussed to their own, often inferior, schools.”)

114. GERALD TOAL & CARL T. DAHLMAN, *BOSNIA REMADE: ETHNIC CLEANSING AND ITS REVERSAL* 257 (2011).

115. For a discussion of “ethnocratic regimes,” see Oren Yiftachel & As’ad Ghanem, *Understanding ‘Ethnocratic’ Regimes: The Politics of Seizing Contested Territories*, 23 *POL. GEO.* 647, 647 (2004) (describing ethnocratic regimes as ones which promote the “ethnicization of contested territory and power apparatus. . . . [S]ix ‘regime bases’ . . . constitute a hegemonic regime core, including: immigration and citizenship, land and settlement, the role of the armed forces, the legal system, the flow of capital and public culture.”)

116. Some studies estimate that only a third of the total number of displaced persons and refugees returned to their homes; the International Housing

In the face of urbicidal war and given the resultant deep societal cleavages, the post-war procedural restitution of property in Bosnia merely strengthened—and formalized—the HLP rights of majority populations at the expense of minority individuals. Two decades after the war’s conclusion, it is evident that the quality of returns was poor and that the rights created under the CRPC and PLIP were not durable or particularly meaningful for a significant number of Bosnians.<sup>117</sup> As this Note discusses in the following Part, the privatization of public housing and donor-funded reconstruction—both of which facilitated ethnic-based cronyism—further complicated the return of refugees and IDPs and entrenched the war’s urbicidal outcomes.

### III. RECONSTRUCTION: A NECESSARY SECOND PILLAR OF THE RIGHT TO RETURN?

Though the CRPC preceded the Pinheiro Principles’ publication, both reflect the fundamental assumption that widespread urban destruction is incidental—that is, merely collateral damage—rather than central to the conflict in question. Property restitution mechanisms, such as the Bosnian mechanism, are premised on this being true, and thus fail to consider that intentional urban destruction lies at the heart of urbicidal conflicts.<sup>118</sup> War-waging regimes employ

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Verification and Monitoring Unit (HVM) found that in 20% of cases, reconstructed properties lay empty. See Deniz Sert, *Reversing Segregation? The Property Restitution Process in Post-War Bosnia*, 10 ETHNOPOLITICS 219, 225 (2011).

117. Berdal, Collantes-Celador & Buzadzic, *supra* note 110, at 88–89. (“Conventional figures [on ethnic reintegration] . . . can be misleading, as ‘no international organization or government agency has precise figures on how many Bosnians, after reclaiming their houses or flats—or receiving reconstruction assistance—then decide to sell or exchange them and relocate elsewhere.’”) *Id.* at 88. However, the authors note that “in Kupres Municipality, for example, an estimated 90 per cent of properties reclaimed were subsequently sold or exchanged. In Sarajevo Canton, half (around 10,000) of the apartments repossessed are thought to be uninhabited.” *Id.* at 89.

118. To some extent, the Pinheiro Principles do contemplate the possibility of total property destruction, but views compensation as the remedy in such cases. For example, Principle 21.1 states that refugees and IDPs have “the right to full and effective compensation as an integral component of the restitution process. . . . when the remedy of restitution is not factually possible.” Pinheiro Principles, *supra* note 83, art. 21.1. “Compensation” can be broadly construed—perpetrators may provide victims with money or other assets equal to the value of the loss suffered. However, as the Principles note, compensation is a

urbicidal tactics *in order to* carry out large-scale reconstruction projects after the formal cessation of hostilities. Whether undertaken by the ruling regime or international community, unlike in the aftermath of conflicts that result in mass displacement but leave built structures and infrastructure relatively unharmed,<sup>119</sup> creating the conditions for the return of refugees and IDPs after urbicidal conflicts does require extensive rebuilding.

In such conflicts, an exclusive focus on the establishment of property restitution mechanisms is both theoretically and practically misguided; though the Pinheiro Principles only passingly contemplate the utter destruction of housing, land, or property such that restitution is factually impossible,<sup>120</sup> this Note argues that urbicidal logic, and urbicidal wars themselves, ought to be viewed as an eminently important aspect of modern conflict. Globalization, dense contemporary city-building practices, and intense insurgency and protests rooted in urban spaces all suggest that the city will be increasingly situated at the crossroads between neoliberal strategies of accumulation and targeted violence. Consequently, it is essential to recognize if and when urbicidal logic has been deployed in a conflict.

The following Part advances the argument that property restitution mechanisms are ill-equipped to redress the consequences of an urbicidal war, given the critical role postwar reconstruction plays in furthering urbicidal goals. By the point at which the Pinheiro Principles are implemented after a conflict, rapid reconstruction may

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disfavored remedy for many reasons: the establishment of a compensation fund may be a prohibitively expensive endeavor, calculating appropriate levels of compensation is complicated and political, and payment mechanisms are easily manipulated to induce former occupants or owners to relinquish their claims to property. *See generally* INT'L ORG. FOR MIGRATION, PROPERTY RESTITUTION AND COMPENSATION: PRACTICES AND EXPERIENCES OF CLAIMS PROGRAMS (2008), [http://publications.iom.int/system/files/pdf/property\\_restitution\\_compensation.pdf](http://publications.iom.int/system/files/pdf/property_restitution_compensation.pdf) [<https://perma.cc/LVY3-V8LB>] (explaining that compensation should only be provided in lieu of restitution when restitution is not possible or not feasible).

119. *See generally* Claire Felter & Danielle Renwick, *Colombia's Civil Conflict*, COUNCIL ON FOREIGN REL. (Jan. 11, 2017), <https://www.cfr.org/backgrounder/colombias-civil-conflict> [<https://perma.cc/LE2V-8LB7>] (explaining, for example, that though Colombia's civil war, which spanned for more than half a century, was fought in large part over land and property disputes, the conflict was defined more by kidnappings, drug trafficking, and heavy use of landmines than wholesale property destruction).

120. Pinheiro Principles, *supra* note 83, art. 21.2 ("States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal.").

have changed the facts on the ground such that the return of refugees and IDPs to their former homes is all but impossible. This occurs in two ways: first, through the reconstruction of built environments of targeted cities in ways that promote and ensure homogenization, and second, through the capitalization of previously informal assets and their selective distribution. In particular, this Note examines case studies from both Bosnia and Beirut to demonstrate how, in the post-conflict period, powerful elites and private actors leverage authoritarian patronage networks to initiate neoliberal construction projects that provide lucrative opportunities for capital accumulation. This Note then briefly illustrates how urbicidal regimes selectively capitalize certain assets to further these urbicidal projects.

## A. Advancing Urbicidal and Political Transformations Through Reconstruction

### 1. Neoliberalism and Authoritarianism

Neoliberal projects transform cities and restructure economies.<sup>121</sup> They may also reflect—or prompt—major shifts in modes of national governance: as economic and political interests are ever more tightly integrated, democratic norms necessarily fall to the wayside, giving rise to patronage networks which both rely on and legitimize authoritarian regimes.<sup>122</sup> The transformation towards and reproduction of authoritarian practices often occurs through the creation of new institutional arrangements which remove authority from the hands of formally appointed government officials in favor of either private sector actors or hybrid public-private institutions.<sup>123</sup> Governments become accountable to their investors, and the “urban space is reshaped more by the logic of the market than by the needs of its residents.”<sup>124</sup> As a result, power is decentralized and dispersed

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121. For this Note’s working definition of “neoliberalism,” see *supra* note 37.

122. See KOENRAAD BOGAERT, GLOBALIZED AUTHORITARIANISM: MEGAPROJECTS, SLUMS, AND CLASS RELATIONS IN URBAN MOROCCO 15–16 (2018) (when the “interests of ruling domestic elites and (global) economic elites increasingly intertwine,” new political arrangements arise, in which “market requirements define and justify the (authoritarian) mode of government”).

123. *Id.* at 91. This process is often described as one of “accumulation by dispossession,” in which the transfer of publicly owned services (such as water or public transportation) to private enterprises reduces democratic accountability and disenfranchises or excludes significant segments of the population. *Id.* at 104.

124. *Id.* at 142.

across an alliance of interest groups, state agents, and their private partners; none are susceptible to conventional modes of democratic or social pressure, though together they exercise disciplinary oversight and dominance.

Both authoritarianism and the privatization of urban spaces and public functions can certainly exist or occur outside of the context of open conflict or in the aftermath of any particular conflict.<sup>125</sup> However, urbicidal wars and urbicidal reconstruction particularly lend themselves to authoritarianism: regimes which seek to quell dissent and ensure their political legitimacy utilize urbicidal spatial practices to simultaneously eliminate threatening spaces of heterogeneity and consolidate support among elite loyalists. In the postwar period, urbicidal reconstruction ensures that the structures that previously housed heterogeneous populations are replaced with new roads and infrastructure, urban megaprojects, and exclusive housing communities—a new form of enclosing the commons, conducted under the guise of urban redevelopment and all erected by regime supporters. The “new” city and the particular social relations that characterize it and define the lives of its residents are thus visibly represented by its postwar construction. The following case studies of Bosnia and Beirut illustrate this phenomenon.

## 2. Reconstruction and Privatization in Bosnia

The CRPC was specifically created to facilitate the transition of property from wartime occupiers to previous owners or habitual occupants. However, as previously noted, an estimated 42 percent of Bosnia’s housing stock was destroyed over the course of the war, rendering the return of refugees and IDPs practically impossible.<sup>126</sup> Massive reconstruction and privatization efforts were consequently conducted in tandem with the CRPC’s adjudicative processes. The initiation and implementation of capital projects in Bosnia should be properly viewed as a second phase of the country’s urbicidal war; urban planning, widescale construction, and other conventional practices of

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125. For example, structural adjustments in Morocco were made under the pretext of urban revitalization and poverty alleviation, in line with Washington Consensus-era neoliberal developmentalism. Myriam Catusse, *Morocco’s Political Economy: Ambiguous Privatization and the Emerging Social Question*, in *THE ARAB STATE AND NEO-LIBERAL GLOBALIZATION: THE RESTRUCTURING OF STATE POWER IN THE MIDDLE EAST* 185–218 (Laura Guazzone & Daniela Pioppi eds., 2009).

126. CHARLES KENDALL & PARTNERS LTD., *supra* note 89.

urbanization were leveraged by privileged local elites to extend the war's processes of homogenization.

As international actors such as the World Bank and International Monetary Fund sought to create a stable market economy in Bosnia, many local elites who commanded the war and played a key role in its structural violence against Bosnia's cities were, paradoxically, identified as partners in the creation of private sector operations and transfer of assets from public to private ownership.<sup>127</sup> One critical component of these efforts was the virtual elimination of all socially owned housing. A legal concept developed prior to the war, "socially owned property belonged to all members of the [former] Yugoslav society and it was the society which delegated the right of disposal over such socially owned property to the Yugoslav Federation."<sup>128</sup> While some private ownership of residential property was permitted under this system, land always remained in social ownership, and other restrictions applied.<sup>129</sup> After this war, in line with neoliberal thinking, socially owned property was transferred to private ownership and new housing was rapidly constructed—the rights to which were allocated primarily to supporters of the political ruling class and along ethnic lines.<sup>130</sup> For example, Gerald Toal and Carl T. Dahlman note:

The [Republika Serbska] land allocation policy was a boon for local authorities who could now openly engage in ethnic consolidation in direct view of PLIP officers. . . . The policy was putatively transparent and nondiscriminatory, but implementation was left to the [municipality], which did whatever was most expedient for its local ethnocratic clique. Sometimes, this meant simply following the policy to secure ethnic majorities, but it was just as easily corrupted to give better lots to politically connected families.<sup>131</sup>

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127. Volkan Gültekin, *Neoliberal Recipes to the Post-Conflict Bosnia-Herzegovina: The Case of Privatizations* 37–38, (Feb. 2011) (unpublished M.A. thesis, Middle East Technical University), <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=7D2728AC1E4E49B7EC234574FDC545A7?doi=10.1.1.633.9351&rep=rep1&type=pdf> [<https://perma.cc/NG6P-BNBQ>].

128. UN-HABITAT, *HOUSING AND PROPERTY RIGHTS: BOSNIA AND HERZEGOVINA, CROATIA AND SERBIA AND MONTENEGRO* 17 (2005).

129. *Id.*

130. TOAL & DAHLMAN, *supra* note 114, at 250.

131. *Id.*; see also Timothy Donais, *The Politics of Privatization in Post-Dayton Bosnia*, 3 *SOUTHEAST EUR. POL.* 3, 5 (2002) (discussing how privatization in Bosnia

Put simply, in addition to the uneven restoration of property along ethnic lines under the CRPC, privatization and housing reconstruction crystallized the urbicidal impacts of the war. Despite considerable international efforts to combat ethnic cleansing, the operative assumption underlying both the CRPC and reconstruction efforts—that ostensibly neutral administrative processes, market forces, and substantial foreign investment would eventually flatten the housing market and facilitate equal return of refugees and IDPs to their pre-war homes—has not been borne out in practice.

Today, continuing inter-ethnic conflicts and corruption in Bosnia stem, in part, from “the narrow approach taken to reconstructing Sarajevo. By viewing the city largely in physical terms, international and national groups failed to restore institutions, curb corrupt practices, and counter nationalist political movements that benefited from the complex political structures created by the 1995 Dayton Accords.”<sup>132</sup> International actors were well aware of the driving ethnonationalism of the war itself and merciless targeting of Bosnia’s cities. Still, they failed to recognize that hurried construction and attempts to achieve numeric targets—such as the adjudication of 100 percent of claims under the CRPC’s mandate—was not enough to create the conditions for the sustainable return of refugees and IDPs, let alone to rebuild the web of social connections and histories that had defined the more heterogenous pre-war country.<sup>133</sup> The fact that implementation of due process protections, even with extensive international oversight, is not itself sufficient to undo urbicide’s effects, has troubling implications for the durable resolution of urbicidal conflicts. As the *New York Times* reported in November 2019, “Bosnia’s divisions offer a dark lesson in how, once cleaved apart by fear and fighting, communities can stay splintered long after many people have

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in the postwar period “raised immediate concerns about the ethnicization of the process. . . . [Efforts to ensure] fairness for all ethnic groups . . . proved unable to effectively prevent privatization from becoming another battlefield in Bosnia’s ongoing ethnic conflict.”).

132. Galen Lamphere-Englund, *Rebuilding Sarajevo*, ALEPPO PROJECT (July 2015), <https://www.thealeppoproject.com/wp-content/uploads/2015/10/Rebuilding-Sarajevo-Full-report-HD.pdf> [<https://perma.cc/4KGZ-ES6T>].

133. See Rodolfo Toè, *Census Reveals Bosnia’s Changed Demography*, BALKAN INSIGHT (June 30, 2016), <https://balkaninsight.com/2016/06/30/new-demographic-picture-of-bosnia-finally-revealed-06-30-2016/> [<https://perma.cc/ZEX5-E39W>]; see also John O’Loughlin, *Inter-Ethnic Friendships in Postwar Bosnia-Herzegovina: Socio-Demographic and Place Influences*, 10 RACE & CLASS 26 (2010) (describing the continued ethnicization of Bosnian social and political life).

forgotten what it was that pushed them apart.”<sup>134</sup> The war has remained inscribed in the landscape of Bosnia’s cities, through both zones of separation between different ethnic groups—reinforced by invisible norms, physical barriers and new construction—and new iconography representing the dominant politics of ethnonationalism.<sup>135</sup>

### 3. Urbicidal Reconstruction in Beirut’s Central District

The symbiotic relationship between neoliberalism, authoritarianism, and postwar urbicidal reconstruction is even more clearly demonstrated in Beirut, Lebanon, where, as a devastating civil war wound down,<sup>136</sup> processes of privatization and dispossession were rapidly initiated. The city’s historical *souk* (or, the Beirut Central District, “BCD”), situated at the heart of Beirut and adjacent to the city’s sea port, government institutions and many residential homes, was destroyed in the war. Reconstructing the souk was seen by many within the Lebanese government as essential to establishing a durable peace in Lebanon. For example, the president of the governmental Council for Development and Reconstruction (“CDR”) warned that without rapid reconstruction the “[souk] would remain *haba wa daba* (“threat of chaos”)” and be a “political and social bomb ready to explode at any minute.”<sup>137</sup> Further, in the face of an urbicidal war, the restoration of the souk was touted as a means to restore the space for

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134. Andrew Higgins, *In Bosnia, Entrenched Ethnic Divisions Are a Warning to the World*, N.Y. TIMES (Nov. 19, 2018), <https://www.nytimes.com/2018/11/19/world/europe/mostar-bosnia-ethnic-divisions-nationalism.html> (on file with the *Columbia Human Rights Law Review*).

135. See TOAL & DAHLMAN, *supra* note 114, at 267. The authors describe the changes in Zvornik, a city in the Republika Serbska, between 1992 and the peak of minority returns in 2002, writing “the saturation of public space by iconography demarcating it as Serbian territory [was chilling for returnees]. Zvornik’s mosques, many from the Ottoman period, had been destroyed . . . New Orthodox churches had been built. Graffiti marked apartments with Četnik tags and the ubiquitous interlocking Cyrillic *c*’s.” *Id.*

136. The Lebanese civil war lasted from 1975 to 1990. See *Lebanese Profile—Timeline*, BBC NEWS (Apr. 25, 2018), <https://www.bbc.com/news/world-middle-east-14649284> [<https://perma.cc/G966-PV88>].

137. Before the war, one in three workers in Beirut were employed in the souk; unlike Beirut’s peripheries, which had become increasingly sectarian (with Christians residing in the eastern half of the city and Muslims in the western half), the city center was notably diverse. See Tamam Mango, *Solidere: The Battle for Beirut’s Central District 3* (Feb. 2004) (unpublished S.B. thesis, Mass. Inst. of Tech.), <https://dspace.mit.edu/handle/1721.1/30107#files-area> [<https://perma.cc/Q98K-XTHX>].

heterogeneous mixing in Beirut. The souk “drew together Lebanese from all social classes and sectarian communities, rendering it the heart of the city and nation and a strong symbol of sectarian coexistence. Its immediate reconstruction would constitute definitive evidence, at home and abroad, of the war’s end.”<sup>138</sup> Laden with political symbolism, rebuilding Beirut’s center and erasing the ugly history of the war was an immediate priority.

Solidere (short for the “Société Libanaise pour le Développement et la Reconstruction de Beyrouth”), a Lebanese joint-stock company incorporated in 1994, was created in response to both widespread support for the reconstruction of the souk district and persuasive clamoring among the Lebanese financial elite for the implementation of neoliberal urbanist policies in the country. These elites argued that “given the existence of ‘traditional’ property practices, relations between the tens of thousands of right holders were far too complex for the government to handle.”<sup>139</sup> Further, they argued that the destruction of property registers during the war and general disarray of municipal and national HLP institutions meant that the government was ill-suited to conduct any reconstruction activities;<sup>140</sup> as the thinking went, “only market rationality could insulate the reconstruction of the BCD [Beirut Central District] from political polarization and traditional government inefficiencies.”<sup>141</sup>

Rafiq al-Hariri, a Saudi-Lebanese billionaire, was appointed Lebanon’s first post-war prime minister in 1992 with the support of the United States and Saudi Arabia.<sup>142</sup> Just before Hariri’s appointment, the Lebanese government passed Law 117 after being sufficiently

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138. *Id.*

139. *Id.* at 176.

140. *Id.*

141. *Id.* (internal citations omitted).

142. A businessman first and politician second, al-Hariri shared the market-oriented vision of other Lebanese elites and, prior to his ascendancy to the Lebanese government, had drafted the legal and financial plans for what would become Solidere. See Heiko Schmid, *Privatized Urbanity or a Politicized Society? Reconstruction in Beirut After the Civil War*, 14 EUR. PLAN. STUD. 365, 369 (2006). Hariri owned OGER Liban, a private engineering firm, which played a key role in 1983 plans to reconstruct Beirut’s center. Fadel el-Shalaq, the company’s head, would, at the end of the civil war, be appointed leader of the Council for Development and Reconstruction—the autonomous governmental organization charged with rebuilding Lebanon’s damaged infrastructure. Saree Makdisi, *Laying Claim to Beirut: Urban Narrative and Spatial Identity in the Age of Solidere*, 23 CRITICAL INQUIRY 660, 670 (1997).

convinced (in part by Hariri himself) that it was unable to reconstruct the Beirut Central District on its own. Law 117 created the legal framework for a private Real Estate Holding Company (“REHCO”) that would have exclusive expropriation rights over the Beirut Central District, encompassing the historical souk and surrounding area.<sup>143</sup> Under Law 117, all properties located within the designated reconstruction area were to be treated as one development block, whether previously owned by one or more private owners or formerly designated as a public space—that is, all affected land was automatically converted into private property held by the REHCO.<sup>144</sup> The law’s proponents argued that, given the significant damage to the entirety of the BCD, a single company was best positioned to carry out reconstruction efforts, rather than dividing the district into discrete areas managed by distinct firms.<sup>145</sup> Shortly after the law’s passage, Solidere emerged as the sole rightsholder in downtown Beirut.<sup>146</sup>

By its formal incorporation in 1994, Solidere had acquired land from over 40,000 landowners<sup>147</sup> in the city center—a remarkable transfer of land and property rights from many private owners to one hybrid public-private entity.<sup>148</sup> Additionally, even prior to Solidere’s

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143. Makdisi, *supra* note 142, at 672.

144. Mango, *supra* note 137, at 47. To some extent, the government was insufficiently positioned to reconstruct Beirut’s center. As Mango notes, redeveloping the city center would require “the restoration of 4.4 million square meters of urban space.” *Id.* “By one estimate . . . more than 40% of the existing buildings in the BCD area were beyond repair. Water, sewage, electricity, and roads required a complete overhaul. The total infrastructure costs for the center were estimated to be approximately U.S. \$1.5 billion.” *Id.* at 40.

145. *Id.* at 47.

146. Solidere’s creation under Hariri, viewed retrospectively, seems inevitable, given that the head of Hariri’s private engineering firm was appointed the leader of the Council for Development and Reconstruction. See Makdisi, *supra* note 142, at 670. Though Law 117 makes no mention of Solidere, its passage is often cited as the point at which “Solidere was signed into existence.” See Mango, *supra* note 137, at 57.

147. Some estimates place the number of landowners at as high as 250,000 individuals because, under Lebanese law, lessors and their descendants as well as actual property owners and their descendants may have proper claims to property. Mango, *supra* note 137, at 52.

148. *Id.* at 15. Solidere is neither fully private nor fully public. Prime Minister Hariri (and later his family) maintained a significant stake in the company, which is “incorporated as a private business, listed on the stock exchange, but . . . also enjoys special powers of compulsory purchase and regulatory authority, giving it the mandate to manage the city centre like a mini-fiefdom.” Oliver Wainwright, *Is Beirut’s Glitzy Downtown Redevelopment All that It Seems?*,

creation or the approval of a publicly-vetted reconstruction plan, the government conducted significant demolition activities. Saree Makdisi notes that the “explosives used in each [demolition] were far in excess of what was needed for the job, thereby causing enough damage to neighboring structures to require their demolition as well. Thus, for each building ‘legitimately’ demolished several other buildings were damaged beyond repair, declared hazards, and then demolished themselves.”<sup>149</sup> In effect, following an urbicidal war, Beirut’s elites commissioned ongoing urbicidal acts to virtually guarantee the necessity of private reconstruction activities.

Solidere *did* rebuild downtown Beirut. The streets of “Saifi Village,” as the downtown’s artist community is known, have been “impeccably restored to their beaux-arts glory, with colonnaded pavements and beautifully carved stonework . . . reviving the fusion of French colonial and Levantine vernacular.”<sup>150</sup> Nearby, Beirut Souks, a \$300 million retail mall built on the site of Beirut’s historical souk, offers shopping at an array of the world’s most sought-after designer stores.<sup>151</sup> A \$500 million luxury residential complex in the same neighborhood is described as a “vertical village of 130 living experiences,” each of which will cost potential owners more than \$13 million.<sup>152</sup> Similar complexes remain under construction even today.<sup>153</sup>

While Solidere could honestly assert that it had rehabilitated Beirut’s central district, in so doing it had erased both any evidence of the civil war and, many argue, the soul of the city. The new structures erected in the central district are “unavoidably Disney in tone. These new pseudo-historic streets recall their former selves, but they have been reincarnated as upmarket doppelgängers, precious replicas of what had been the well-worn and well-loved blocks of these lower-class neighbourhoods.”<sup>154</sup> Instead of recreating spaces for heterogeneous mixing in the heart of Beirut, Solidere transformed the old souk area into an unrecognizably expensive neighborhood, devoid of familiar

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GUARDIAN (Jan. 22, 2015), <https://www.theguardian.com/cities/2015/jan/22/beirut-lebanon-glitzy-downtown-redevelopment-gucci-prada> [https://perma.cc/TC4K-73BF].

149. Makdisi, *supra* note 142, at 673–74.

150. Wainwright, *supra* note 148.

151. *Id.*

152. *Id.*

153. *Id.*

154. Wainwright, *supra* note 148.

cultural landmarks.<sup>155</sup> Further, many homes and offices in the BCD remain for sale or are left unoccupied by their foreign (primarily Gulf and Saudi) owners for the majority of the year.<sup>156</sup>

In the absence of affordable housing in the city center after Solidere's intervention, Beirut's poor and middle-income populations were pushed into the city's peripheries—spaces which are “constructed as zones of conflict and contestation, where fear of future local or regional violence actively shapes both the lived present and imagined future.”<sup>157</sup> Left without public urban space in the BCD in which to mix and cohabitate, and having organized themselves along religious lines, with west Beirut becoming predominantly Muslim, and east Beirut predominantly Christian, Beirut's residents continue to live and work in distinct, separate districts of the city; sectarian identities, as a consequence, have been “fixed in time and space.”<sup>158</sup> Rather than heal the wounds of the civil war and the sectarian grievances underlying the conflict, Solidere's efforts ensured the permanence of the mass displacement of Beirut's inner-city residents into *de facto* zones of segregation and, consequently, the ever-present potential for reemergent conflict.

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155. As Lebanese architect Mona Hallak said, “[d]owntown should have soul. It should be alive. . . . But what we have is a culture-free ghost town for the rich.” Hugh Naylor, *Beirut Rebuilt Its Downtown After the Civil War. Now It's Got Everything Except People*, WASH. POST (Jan. 1, 2015), [https://www.washingtonpost.com/world/middle\\_east/beirut-rebuilt-its-downtown-after-the-civil-war-now-its-got-everything-except-people/2014/12/31/3b72e8b5-1951-409e-8b3d-1b16275d7f3d\\_story.html](https://www.washingtonpost.com/world/middle_east/beirut-rebuilt-its-downtown-after-the-civil-war-now-its-got-everything-except-people/2014/12/31/3b72e8b5-1951-409e-8b3d-1b16275d7f3d_story.html) (on file with the *Columbia Human Rights Law Review*).

156. Dana Khraiche, *Beirut's Ghost Apartments Are Haunting the Economy*, BLOOMBERG (Nov. 1, 2018), <https://www.bloomberg.com/news/articles/2018-11-02/beirut-s-ghost-apartments-are-haunting-the-economy> (on file with the *Columbia Human Rights Law Review*) (“Permanently-drawn curtains on the city's empty luxury high-rises and dust gathering over shuttered storefronts in the Beirut Souks mall offer a glimpse of the economic gloom gathering over one of the world's most indebted countries.”). A recent survey conducted by Lebanese researchers at the American University of Beirut found that more than 25% of buildings built in Beirut after 1996 remain vacant. Abby Sewell, *Despite Vacancies, Housing Prices Remain High*, DAILY STAR (Jul. 29, 2019), <http://www.dailystar.com.lb/Business/Local/2019/Jul-29/488555-despite-vacancies-housing-prices-remain-high.ashx> [<https://perma.cc/B9QX-FTTE>]; IFI at Beirut (@ifi\_aub), TWITTER (Jul 29, 2019, 3:25 am), [https://twitter.com/ifi\\_aub/status/1155741133265412096?s=12](https://twitter.com/ifi_aub/status/1155741133265412096?s=12) [<https://perma.cc/6EK9-ERMW>].

157. BOU AKAR, *supra* note 38, at 19.

158. *Id.* at 165.

Of course, Solidere was neither exclusively responsible for Beirut's transformation nor the sole beneficiary of a neoliberal approach to postwar construction. More generally, the Lebanese government, led by Hariri, oversaw the formation of an "unholy alliance between state powers and the predatory aspects of finance capital . . . [creating] a 'vulture capitalism' dedicated to the appropriation and devaluation of assets."<sup>159</sup> Beyond Solidere, a constellation of religious-political and hybrid public-private organizations capitalized upon the lucrative possibilities for capital accumulation presented by postwar construction activities. Hezbollah,<sup>160</sup> for one, recognized that the majority of construction would necessarily occur in Shi'a-majority areas in Beirut. In addition to state funding for these construction projects, "[t]he emerging [Lebanese] Shi'a fraction of the bourgeoisie [living in diaspora] . . . converged around these capital flows, utilizing them as a means of deepening their [capital] accumulation opportunities."<sup>161</sup> By investing in Beirut's reconstruction—thus rendering itself financially essential to the capital projects enterprise—Hezbollah also played a part in dictating the terms of Beirut's changing built environment and in articulating new sectarian meaning in the city's neighborhoods.

Today, religious-political and public-private organizations, developers, landowners and other power brokers wield enormous influence in Lebanon, all without democratic public oversight and impervious to visible accountability mechanisms. Consequently, the "new" city—and the "new" country—are governed by landowning cartels of sorts, all of which understood the civil war and post-war reconstruction as fundamentally about the contestation of Lebanon's socio-spatiality. While phase one of Beirut's urbicidal war may have formally ended in the 1990s, phase two marches on, as the partition and destruction of Beirut's built environment is mediated through the capital markets and informed by foreign investors.

Why does this matter? One might reasonably suppose that privatization of particular functions, including reconstruction, is a natural by-product of brutal and enormously expensive

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159. David Harvey, *The 'New' Imperialism: Accumulation by Dispossession*, 40 *SOCIALIST REG.* 63, 72 (2004).

160. Hezbollah is a both a political organization in Lebanon and a Shi'a religious and social movement. See *Hezbollah's Influence in Lebanon*, COUNTER EXTREMISM PROJECT (April 2018), <https://www.counterextremism.com/hezbollah-in-lebanon> [<https://perma.cc/LQ3A-VEMB>].

161. JOSEPH DAHER, *HEZBOLLAH: THE POLITICAL ECONOMY OF LEBANON'S PARTY OF GOD* 79 (2016).

wars—governments in tatters, with few resources, can hardly be expected to undertake large-scale reconstruction, as Solidere’s proponents had argued in Lebanon. However, private reconstruction efforts in the wake of an urbicidal war, left unchecked, inevitably and often explicitly further the war’s original aims: ensuring the permanent displacement of heterogeneous individuals in favor of regime-aligned, homogenous groups.

#### B. Formalizing Informal Assets in Urbicidal Contexts

The physical act of reconstruction, and its imposition of homogeneity on an urban landscape, cannot occur without the forcible “capitalization” of the urban poor and subsequently, if not perversely, their exclusion from capital markets. Such capitalization processes are commonly thought of with regards to slum dwellers and development initiatives aimed at harnessing the hidden assets of the urban poor.<sup>162</sup> However, capitalization also occurs through the process of postwar reconstruction. In order to effect the adjustments in the built environment discussed in the preceding Section, the often-informal assets of previous residents in areas targeted for urbicidal reconstruction—generally, the urban poor or dissidents, as the case may be—must be seized. These assets are then legally transferred to members of the ethnic, racial or otherwise majority group in power, allowing for the imposition of homogeneity above and beyond the effects of rapid, artificial gentrification and segregation, as seen in Bosnia and Beirut.

If, in the normal course of capitalist urbanization, the legalization of property rights makes the previously undocumented assets of the poor “visible and accessible to the more powerful players in the market such as property and real estate developers”<sup>163</sup> and, in so doing, renders those assets as the “means through which the reorganization and accumulation of wealth is carried out,”<sup>164</sup> the market integration of certain individuals is of acute significance in the context of an urbicidal war. As this Note has discussed, there is a mutually constitutive relationship between the aims of an urbicidal war and postwar reconstruction: urbicidal wars seek to create the conditions for the remaking of a city, and the remaking of the city to some extent requires the urbicidal war. However, the physical imposition of a transformed built environment—including the

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162. See *supra* Part II.A.

163. KOENRAAD BOGAERT, *supra* note 122, at 234.

164. *Id.*

elimination of public spaces as potential laboratories of dissent—is just one component of the reconstruction process. Precluding the formation of durable property rights accessible to large swathes of the city’s former population, and thus foreclosing the possibility of meaningful return for refugees and IDPs at the close of hostilities, is a second component. Make no mistake: monopolistic property rights *are* often established out of informal land tenure regimes after war, but these rights run only to particular individuals and organizations.

Note that this process of capitalization ought to be distinguished from the procedural allocation of property rights that occurred in Bosnia under the restitution mechanism established under the DPA or envisioned by the Pinheiro Principles. The administrative processes at work in Bosnia effectuated through the DPA fundamentally sought to restore property to its original habitual occupants or owners for their permanent future occupancy, albeit to little success. In the event of reconstruction after an urbidal war, however, the capitalization of previously informally or communally held property assets is often about the restructuring of *power* and reallocation of rights, mediated through the ruling regime, to favor “desired” (homogeneous) residents and groups. *This* particular process of capitalization was visible in both Bosnia and Beirut—in Bosnia, through the transition from socially owned housing to private housing, and in Beirut, vis-à-vis Solidere’s compensation scheme and the conversion of all land within the BCD into private property held by the REHCO. That such measures were legal does not mitigate their urbidal purpose. Recall that property is both a physical good and an abstraction; “property” has claim-making authority insofar as formalizing a property asset makes visible a person’s preexisting and future relationship to a place or thing. In Bosnia, and Beirut, the selective granting of such claim-making authority was an integral part of the urbidal war and urbidal reconstruction.<sup>165</sup>

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165. For another example of this process, see generally Sabri Jiryis, *The Legal Structure for the Expropriation and Absorption of Arab Lands in Israel*, 2 J. PALESTINE STUD. 82 (1973) (discussing how the Israeli government has legalized its expropriation mechanisms). In light of the contested nature of claims to sovereignty in Israel and the Occupied Palestinian territories, the selective capitalization of property assets has been essential to the Israeli state-building project.

### C. Reconsidering the Pinheiro Principles and Postwar Reconstruction

It is essential to recognize that conflicts may be structured around urbicidal violence, and that reconstruction can be leveraged to achieve the permanent elimination of heterogeneous private and public spaces of urban mixing. As Parts II and III of this Note demonstrate, a failure to be attentive to the urbicidal elements of a particular conflict and the implementation of Pinheiro-style administrative mechanisms may facilitate post-conflict urbicidal antagonism and destabilize prospects for durable peace. Any post-conflict efforts to set the conditions for the return of refugees and IDPs must consider in what ways urbicidal logic circulated through a conflict—and to what end, for States, and particularly authoritarian regimes, have recognized that they may employ the rights discourse endorsed by the Pinheiro Principles to enforce and entrench sovereign power.

As the war in Syria in its current form winds to a shaky close, Syrian political entities and allies have adopted a reconstruction discourse that nominally welcomes the return of refugees and IDPs in exchange for normalization of the regime. However, as Part IV argues, there are significant risks of either adopting an approach to property restitution that comports with the Pinheiro Principles or refusing to partake in reconstruction activities absent political transition in Syria. As Assad oversees processes of capital accumulation and urbanization, ahead of the political resolution of the underlying conflict, he may well ensure the unassailability of an authoritarian reality in Syria that precludes certain political outcomes.

## IV. ASSERTING AUTHORITARIANISM THROUGH SYRIA'S BUILT ENVIRONMENT

### A. The Current State of Affairs in Syria

By the end of 2016, where Part I's description of the war in Syria left off, Syria was indeed splintered into factions.<sup>166</sup> By 2019, however, the Assad regime had successfully regained control of much of Syria. Syria's four largest cities—Damascus, Homs, Hama, and Aleppo—are now under the government's hold, and Assad's forces control Syria's border with Lebanon, the country's southern border,

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166. Heller and Asher-Schapiro, *supra* note 25, at 6.

and have reopened land access to Iraq.<sup>167</sup> Idlib, a northwestern province of strategic importance, is the last remaining major swath of territory still controlled by rebel groups; various sources estimate that there are between 20,000–100,000 fighters in the province.<sup>168</sup> While a September 2018 agreement between Turkey and Russia was intended to forestall a full-scale military assault on Idlib by Syrian and Russian forces,<sup>169</sup> a ceasefire agreement brokered between anti-government armed groups in early January 2019 allowed Hayat Tahrir al-Sham to consolidate its control in the province, threatening to destabilize the de-escalation agreement.<sup>170</sup> By early to mid-2019, intensive fighting had resumed in Idlib, with Assad’s forces, backed by Russian air power, “determined to retake control of all of Syria.”<sup>171</sup> Schools, hospitals, and homes have been heavily targeted in this most recent campaign, and

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167. ARON LUND, SYRIA’S CIVIL WAR: GOVERNMENT VICTORY OR FROZEN CONFLICT? 39 (2018), <https://www.foi.se/rest-api/report/FOI-R--4640--SE> [<https://perma.cc/3E9C-T4Q4>].

168. Fighters include members of Hayat Tahrir al-Sham (formerly Jabhat al Nusra, referred to as “HTS”), the National Liberation Front (a Syrian rebel coalition affiliated with the Free Syrian Army and supported by Turkey), Hurras al-Din (an insurgency group affiliated with al-Qaeda), and the Turkistan Islamic Party (a largely Chinese Uighur-dominated militant group). Reality Check Team, *Syria: Who’s in Control of Idlib?*, BBC NEWS (Sept. 7, 2018), <https://www.bbc.com/news/world-45401474> [<https://perma.cc/JU7E-32ZF>].

169. On September 17, 2018, Turkey and Russia agreed to establish a 15-to-25-kilometer buffer zone in Idlib and to oversee the removal of all heavy weaponry from the zone. Omer M. Karasapan, *The Idlib Agreement and Other Pieces of the Syrian Puzzle*, BROOKINGS INST. (Sept. 17, 2018), <https://www.brookings.edu/blog/future-development/2018/09/17/the-idlib-agreement-and-other-pieces-of-the-syrian-puzzle/> [<https://perma.cc/7WZZ-MWAZ>].

170. Zouhir Al Shimale, *Syria’s Idlib Province Seized by HTS Militants After Deal with Rebels*, MIDDLE EAST EYE (Jan. 10, 2019), <https://www.middleeasteye.net/news/hardline-militants-seize-control-syrias-idlib-province-after-deal-rebels-217538802> [<https://perma.cc/7W65-M7TJ>].

171. Vivian Yee, *Cease-Fire in Syria’s Idlib Province Is at Risk After Extremists Take Over*, N.Y. TIMES (Jan. 26, 2019), <https://www.nytimes.com/2019/01/26/world/middleeast/syria-war-idlib.html> (on file with the *Columbia Human Rights Law Review*). Turkey, for its part, remains highly invested in both staunching the flow of refugees from Idlib into Turkey and preventing Kurdish forces from retaking nearby Afrin or joining Syrian government forces in a campaign against Irbid. See Carlotta Gall & Anne Barnard, *Syrian Rebels, Backed by Turkey, Seize Control of Afrin*, N.Y. TIMES (Mar. 18, 2018), <https://www.nytimes.com/2018/03/18/world/middleeast/afrin-turkey-syria.html> (on file with the *Columbia Human Rights Law Review*); Guney Yildiz, *Turkey’s Idlib Fears as Syria Offensive Looms*, BBC NEWS (Sept. 10, 2018), <https://www.bbc.com/news/world-middle-east-45474937> [<https://perma.cc/T2MV-3H5B>].

more than 1,000 civilians were reportedly killed between late April and September 2019.<sup>172</sup>

As the Assad regime has consolidated its control over much of Syria, foreign powers are increasingly jockeying for influence, including Russia, Turkey, Iran, Israel, and the United States. For one, the withdrawal of American troops from Syria, announced by President Donald Trump's administration first in late December 2018 and again—more meaningfully—in October 2019, threatens to embolden ISIS and enable its resurgence<sup>173</sup> and has created space for a Turkish offensive against the Kurds in northeastern Syria.<sup>174</sup> America's withdrawal also cedes authority to Russia, who is “now seen by many as the region's indispensable power” and has thus far permitted

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172. UN: *More than 1,000 Civilians Killed in Syria over 4 Months*, AL JAZEERA (Sept. 4, 2019), <https://www.aljazeera.com/news/2019/09/1000-civilians-killed-syria-4-months-190904094645974.html> [<https://perma.cc/4CJY-HWZW>].

173. Barbara Starr, *Pentagon Warns ISIS Likely to Retake Territory in Syria After US Withdraws*, CNN (Feb. 1, 2019), <https://www.cnn.com/2019/02/01/politics/pentagon-syria-isis-warning/index.html> [<https://perma.cc/D68E-J8FH>]; see also Eric Schmitt, Alissa J. Rubin, & Thomas Gibbons-Neff, *ISIS Is Regaining Strength in Iraq and Syria*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/us/politics/isis-iraq-syria.html> (on file with the *Columbia Human Rights Law Review*) (discussing increased ISIS activity in Syria); Patrice Taddonio, *Report Warns ISIS Is “Resurging” in Syria After Trump Ordered a Partial Troop Withdrawal*, FRONTLINE (Aug. 8, 2019), <https://www.pbs.org/wgbh/frontline/article/report-isis-resurging-syria-trump-troop-withdrawal/> [<https://perma.cc/D63F-2TJA>]. An August 2019 report by the Department of Defense's Inspector General noted that “[d]espite losing its territorial ‘caliphate,’ the Islamic State in Iraq and Syria (ISIS) solidified its insurgent capabilities in Iraq and was resurging in Syria.” U.S. DEP'T OF DEFENSE, OPERATION INHERENT RESOLVE, REPORT TO THE UNITED STATES CONGRESS 2 (2019), [https://media.defense.gov/2019/Aug/06/2002167167/-1/-1/1/Q3FY2019\\_LEADIG\\_OIR\\_REPORT.PDF](https://media.defense.gov/2019/Aug/06/2002167167/-1/-1/1/Q3FY2019_LEADIG_OIR_REPORT.PDF) [<https://perma.cc/8QR6-S57B>].

174. Lara Seligman, *Tensions Spike as Turkey Threatens Syria Offensive*, FOREIGN POL'Y (Aug. 6, 2019), <https://foreignpolicy.com/2019/08/06/tensions-spike-as-turkey-threatens-syria-offensive-kurds-sdf-ypp-isis/> [<https://perma.cc/2F5Q-Z28Z>]. The fate of the Kurdish semi-autonomous zone in northeastern Syria remains unclear. Despite the U.S. role in establishing a security mechanism to prevent any Turkish military activity against Kurdish forces in Syria, President Trump's October 6th announcement withdrawing American troops from this region has unexpectedly reignited localized conflict. Eric Schmitt, Maggie Haberman & Edward Wong, *President Endorses Turkish Military Operation in Syria, Shifting U.S. Policy*, N.Y. TIMES (Oct. 7, 2019), <https://www.nytimes.com/2019/10/07/us/politics/trump-turkey-syria.html>. (on file with the *Columbia Human Rights Law Review*).

continued brutality from the Assad regime.<sup>175</sup> Further, a growing Iranian presence in Syria as Assad forcibly reimposes control over the country may increase the risk of Israeli airstrikes on Iranian targets in Syria, triggering Iranian reprisals.<sup>176</sup>

Wading into this mix are private and state-backed companies, and wealthy foreign individuals, all of whom have recognized that the second phase of Syria's war is on the horizon: urbidal reconstruction. In all, after nearly eight years of fighting, enormously costly damage has been inflicted in Syria. In a 2017 report, the World Bank estimated that 27 percent of housing stock was fully damaged in Syria, with another 20 percent partially damaged.<sup>177</sup> Total economic losses are estimated at more than \$388 billion, and an estimated \$120 billion is needed to restore critical infrastructure, homes, and other physical objects.<sup>178</sup> More than half of Syria's population (calculated according to a 2010 census) has either fled the country entirely or is internally displaced.<sup>179</sup> As the international community reconciles itself to the

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175. *The Fate of Syria Is Now in Russia's Hands*, ECONOMIST (Jan. 3, 2019), <https://www.economist.com/leaders/2019/01/05/the-fate-of-syria-is-now-in-russias-hands> [https://perma.cc/A7DP-K78J]. Facing a full-fledged Turkish incursion after President Trump's October 6th announcement, the SDF requested military assistance from Assad's forces almost immediately; Russian troops have joined Assad's soldiers, filling the vacuum left by the American withdrawal. Ben Hubbard, Anton Troianovski, Carlotta Gall & Patrick Kingsley, *In Syria, Russia Is Pleased to Fill an American Void*, N.Y. TIMES (Oct. 17, 2019), <https://www.nytimes.com/2019/10/15/world/middleeast/kurds-syria-turkey.html> (on file with the *Columbia Human Rights Law Review*). Both of President Trump's announcements notwithstanding, American troops still remain in Syria, now largely in southern Syria. *Id.*

176. Center for Preventive Action, *The Top Conflicts to Watch in 2019: Syria*, COUNCIL ON FOREIGN REL. (Jan. 10, 2019), <https://www.cfr.org/blog/top-conflicts-watch-2019-syria-0> [https://perma.cc/CMW5-XQJD]; see also Liz Sly & Loveday Morris, *U.S. Troop Withdrawal from Syria Is 'A Dream Come True for the Iranians'*, WASH. POST (Dec. 21, 2018), [https://www.washingtonpost.com/world/us-troop-withdrawal-from-syria-is-a-dream-come-true-for-the-iranians/2018/12/21/472b316a472b316a-04b2-11e9-958c-0a601226ff6b\\_story.html](https://www.washingtonpost.com/world/us-troop-withdrawal-from-syria-is-a-dream-come-true-for-the-iranians/2018/12/21/472b316a472b316a-04b2-11e9-958c-0a601226ff6b_story.html) (on file with the *Columbia Human Rights Law Review*).

177. WORLD BANK GROUP, *THE TOLL OF WAR: THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE CONFLICT IN SYRIA* 22 (2017), <https://www.worldbank.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria> [https://perma.cc/3C9X-HSE7].

178. *The Latest: UN Says Civil War Has Cost Syria \$388B in Damage*, AP NEWS (Aug. 9, 2018), <https://www.apnews.com/aa0aaa2c44cd430196f572227b45c150> [https://perma.cc/7XAU-DJJP].

179. THE TOLL OF WAR, *supra* note 177, at 47.

inevitability of Assad's continued hold on the Syrian government—even as military activity persists in portions of Syria—attention has now turned to addressing the damage to Syria's infrastructure and facilitating the return of the Syrians who fled from their homes. As observed in the case studies discussed earlier, military-strategic considerations and foreign and domestic interests virtually ensure that, in the absence of a meaningful political transition in Syria, Assad and his allies will make every effort to entrench the homogeneity of urban spaces in the country, leveraging urbicidal reconstruction strategies to do so.

## B. Urbicidal Reconstruction in Postwar Syria: A Prediction

### 1. Urban Megaprojects in Syria's Major Cities

As previously discussed, the work of dismantling the “city” in Syria—a heterogeneous space of mixing, protest, and civic participation—has been one of the key components of the civil war; this is no coincidence, given that insurgency arose in Syria's cities before engulfing the country's peripheries. Reports from Syria now describe its cities variously as “apocalyptic,”<sup>180</sup> “perhaps the closest thing to hell on Earth,”<sup>181</sup> and “wasteland[s] of flattened buildings, concrete rubble and bullet-pocked walls.”<sup>182</sup> The return of refugees or IDPs to their homes of origin, particularly for those from Syria's major cities, is consequently, and by design, practically impossible.<sup>183</sup> It is incontrovertible that a massive rehabilitation effort is required. However, thus far, many major actors in the international community have voiced skepticism about the wisdom of financing necessary reconstruction projects absent a meaningful political transition. For

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180. Sheena McKenzie, *How Seven Years of War Turned Syria's Cities into 'Hell on Earth,'* CNN (Mar. 15, 2018), <https://www.cnn.com/2018/03/15/middleeast/syria-then-now-satellite-intl/index.html> [https://perma.cc/R9HG-5JZT].

181. *Id.*

182. Samuel Osborne, *Aleppo: 3,000 to Leave Destroyed Syrian City After Evacuations Stalled for a Day*, INDEPENDENT (Dec. 16, 2016), <https://www.independent.co.uk/news/world/middle-east/aleppo-evacuation-3000-syria-city-war-pro-assad-leave-stall-for-day-a7489096.html> [https://perma.cc/8PXH-9VY8].

183. Additional obstacles to return remain, including the risk of forcible conscription, mines and unexploded ordnance, and a lack of documentation. See *UN Says 250,000 Refugees Could Return to Syria in 2019*, AL JAZEERA (Dec. 11, 2018), <https://www.aljazeera.com/news/2018/12/250000-refugees-return-syria-2019-181211134022694.html> [https://perma.cc/U3B3-JCR3].

example, the EU has stated that it “will be ready to assist in the reconstruction of Syria only when a comprehensive, genuine and inclusive political transition, negotiated by the Syrian parties to the conflict on the basis of UNSCR 2254 and the 2012 Geneva Communiqué, is firmly under way.”<sup>184</sup> Similarly, in the fall of 2018, the United States announced its withdrawal of spending on civilian aid, citing the defeat of ISIS and stating that contributions from American allies such as Saudi Arabia would offset any resulting shortfall in funding for reconstruction.<sup>185</sup>

In the absence of assertive intervention from the United States and its European counterparts, Russia, Iran, and the Assad regime itself wield enormous influence in the reconstruction process.<sup>186</sup> Russia has urged Western countries to drop sanctions against Syria and prominent Syrian leaders; however, Russia’s “diplomatic offensive [is] based on two fragile premises: a new Assad-led climate of stability to permit the return of almost six [million] refugees from outside Syria, which should in turn unlock an EU-led financing of Syrian reconstruction.”<sup>187</sup> In other words, while Western countries seek to link reconstruction funds to a political settlement in Syria, Russia has used the promise of refugee return as a carrot in an attempt to elicit such funding from countries fundamentally opposed to Assad’s continued stranglehold on the government. That Russia’s diplomatic efforts have yielded no results thus far is of little consequence to either Russia or

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184. Swed. Ambassador to the U.N. Olof Skoog, *EU8 Joint Statement on Syria*, (Oct. 17, 2018), <https://www.government.se/statements/2018/10/eu8-joint-statement-on-syria/> [<https://perma.cc/5YU6-8YXS>]. See S.C. Res. 2254 (Dec. 18, 2015) (calling for a ceasefire and political settlement in Syria through formal negotiations; also, requiring free and fair elections to be held under U.N. supervision); U.N. Secretary-General, Identical Letters dated July 5, 2012 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, U.N. Doc A/66/865 (Jul. 6, 2012) (calling for the establishment of a transitional governing body in Syria that could include both members of the current administration and opposition groups).

185. Krishnadev Calamur, *The U.S. Will Spend Billions in Syria—Just Not on Rebuilding It*, ATLANTIC (Aug. 20, 2018), <https://www.theatlantic.com/international/archive/2018/08/us-syria/567895/> [<https://perma.cc/U37Z-YMGA>].

186. Richard Salame, *The Syrian War is Still Raging, But the Battle over Reconstruction Has Already Begun*, NATION (Sept. 5, 2018), <https://www.thenation.com/article/the-syrian-war-is-still-raging-but-the-battle-over-reconstruction-has-already-begun/> [<https://perma.cc/PC2Y-NUFP>].

187. David Gardner, *Russia Launches a Diplomatic Offensive on Rebuilding Syria*, FIN. TIMES (Aug. 21, 2018), <https://www.ft.com/content/e89d42f0-a539-11e8-8ecf-a7ae1beff35b> (on file with the *Columbia Human Rights Law Review*).

Assad, given that foreign money has begun flowing into Syria's major urban areas, and as investors from within Syria and outside are rapidly registering companies and securing lucrative contracts—particularly in the construction sector.<sup>188</sup> Without the threat of Western funds entering Syria in the near future,<sup>189</sup> Assad and his allies can ensure that all reconstruction projects occur under their control; consequently, they are free to erect the same modes of authoritarian control visible in Lebanon, in particular.

Decree No. 66<sup>190</sup> and Law 10<sup>191</sup>—both briefly described in Part I—and Decree No. 19 are essential to this process.<sup>192</sup> Promulgated in May 2015, Decree No. 19 authorizes towns and cities to “create private holding companies to manage urban or regional assets and properties . . . [including] building infrastructure, issues construction permits, and managing the financial transactions of towns or governorates. . . . subsidiaries that may be wholly owned by the private

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188. Loyalist Syrian businessmen and countries supportive of the Assad regime have benefited from reconstruction contracts as early as 2017. See Bethany Allen-Ebrahimian, *Syrian Reconstruction Spells Juicy Contracts for Russian, Iranian Firms*, FOREIGN POL'Y (Oct. 20, 2017), <https://foreignpolicy.com/2017/10/20/syrian-reconstruction-spells-juicy-contracts-for-russian-iranian-firms-china-civil-war/> [<https://perma.cc/VM3Q-5PLZ>] (“In August [2017], companies from almost two dozen countries flocked to Syria for the Damascus International Fair. . . . [I]t essentially declared the country open for business again. . . . [C]ompanies from countries that fought Assad’s regime aren’t invited.”) It was reported that, following the Fair, deals worth at least €850 million were secured, benefiting the Russian firms promised priority in rebuilding Syria. See Joseph Daher, *Militias and Crony Capitalism to Hamper Syria Reconstruction*, OPENDEMOCRACY (Sept. 5, 2017), <https://www.opendemocracy.net/north-africa-west-asia/joseph-daher/militias-and-crony-capitalism-to-hamper-syria-reconstruction> [<https://perma.cc/7ARB-6F7F>].

189. The EU faces a dilemma—whether to fund reconstruction in an effort to prevent the political outcomes this Note predicts, thereby legitimizing Assad to some extent, or to refuse to fund any reconstruction altogether. The origin of funds for these projects is critical, as funding sources susceptible to international oversight or sanctioning may help prevent the urbidical outcomes predicted here.

190. Rollins, *supra* note 43.

191. Q&A: *Syria's New Property Law*, *supra* note 59, at 1.

192. It is worth noting that some journalists, including the *Syria Context's* Emma Beals, have noted that “[a]ll the bluster about Law 10 is a distraction from the fact that very few properties will even need to have this applied as they will be destroyed long before it is needed.” Emma Beals (@ejbeals), TWITTER (June 10, 2019, 6:35 AM), <https://twitter.com/ejbeals/status/1138031880928931840> [<https://perma.cc/EBB4-8PTY>].

sector would implement these tasks.”<sup>193</sup> Under the auspices of these decrees, hybrid public-private enterprises such as the Damascus Sham<sup>194</sup> company have been established. Owned by prominent businessmen with deep connections to Assad<sup>195</sup> who have proved largely unsusceptible to Western sanctions, given their close connections to Russia and Iran, these enterprises’ developments, such as Damascus Sham’s flagship megaproject—Marota City—continue apace. Located in Basateen al-Razi, one of the first sites of protest in Damascus’ outskirts, Marota City is intended as a luxury mixed-use apartment and retail complex.<sup>196</sup> Notably, protests in Basateen al-Razi

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193. Maha Yahya, *The Politics of Dispossession*, CARNEGIE MIDDLE EAST CTR. (May 9, 2018), <https://carnegie-mec.org/diwan/76290> [<https://perma.cc/B63L-EUTX>].

194. Rollins, *supra* note 43.

195. Among Damascus Sham’s most visible majority owners is Rami Makhlof, Assad’s cousin and one of the wealthiest men in Syria. Though Makhlof is the target of longstanding U.S. Treasury and EU sanctions, neither sanctioning regime has proved particularly meaningful, given his ownership of Syriatel, one of only two licensed mobile phone companies in Syria and other lucrative income streams generated through connections with Iran and Russia. Younes Ahmed, *Syria’s Businessmen Invest in Post-War Reconstruction*, ARAB WKLY. (May 5, 2016), <https://thearabweekly.com/syrias-businessmen-invest-post-war-reconstruction> [<https://perma.cc/VV6N-B9SE>]. In 2017, it was reported that the United Nations paid more than \$18 million in telecommunications and security contracts to companies with ties to Assad, including Makhlof. See Kambiz Foroohar, *How Assad’s Allies Got \$18 Million from the UN*, BLOOMBERG (Aug. 1, 2017), <https://www.bloomberg.com/news/articles/2017-08-01/what-sanctions-assad-allies-got-18-million-in-un-syria-payouts> (on file with the *Columbia Human Rights Law Review*). Makhlof was reportedly a target of anti-government protests in Dara’a; some protestors chanted, “[w]e’ll say it clearly, Rami Makhlof is robbing us.” *Bashar al-Assad’s Inner Circle*, BBC News (July 30, 2012), <https://www.bbc.com/news/world-middle-east-13216195> [<https://perma.cc/P5K4-D5YE>]. Recent stories from Syria suggest that Makhlof has fallen out of favor with Assad; some reports indicate that Makhlof has been placed under house arrest and that his assets have been seized at the request of Russian authorities. These stories have not been conclusively verified. See Nick Grinstead, *Makhlof No More? Russia Is Calling in the Debts in Syria*, OPENDEMOCRACY (Sept. 6, 2019), <https://www.opendemocracy.net/en/north-africa-west-asia/makhlof-no-more-russia-calling-debts-syria/> [<https://perma.cc/8JTQ-VEJP>]. Samer Foz is a second Syrian businessman and prominent investor in the Company, and one of eleven executives sanctioned by the EU in early January 2019. Foz has entered into a joint venture with the government to construct several luxury towers within Marota City. Loveluck, *supra* note 44.).

196. *Luxury Marota City Project Shows Blueprint for Syria’s Rebuilding Plans*, ARAB NEWS (Nov. 5, 2018), <http://www.arabnews.com/node/1399411/middle-east> [<https://perma.cc/TH4N-AYLR>].

were quickly suppressed, and the area was largely left untouched by Assad's forces.<sup>197</sup> As seen in Beirut, however, all residents were evicted and the area fully razed—again, this project's construction is both contingent on, and is the final cause of, the former residents' expulsion. Once completed, the once-pro-opposition settlement will, in all likelihood, house only regime-aligned individuals, and the wealth generated by the project will circulate among Assad supporters and foreign investors.<sup>198</sup>

Marota City is one of many similar urban megaprojects planned throughout Syria, including Homs Governorate's "Homs Dream," a project spearheaded by the Syrian Investment & Development Corporation, a private company which describes itself as "based in Damascus [with offices] across UAE, Russia and US," and which seeks to "initiate . . . capital intensive long and medium run projects, aiming and deliver[ing] strong returns and enhance[d] diversification within [the] Syrian economy."<sup>199</sup> The project is planned for the center of Jouret al-Shayah, an opposition stronghold.<sup>200</sup> In another example, Al-Haidarieh, a neighborhood in Aleppo, has been rezoned as a park; all remaining homes are being rapidly destroyed.<sup>201</sup> These projects, among others, are problematic on their face: designated for construction in areas formerly inhabited primarily by opposition forces, many of which have been virtually abandoned after years of fighting, capital megaprojects will irreversibly transform neighborhoods. Refugees and IDPs permitted to return to Damascus, Homs, Aleppo and Syria's other cities who find high-end luxury retail complexes, parks, or other quasi-public spaces in the stead of their

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197. *Id.*

198. See Joseph Daher, *The Paradox of Syria's Reconstruction*, CARNEGIE MIDDLE EAST CENTER (Sept. 4, 2019), <https://carnegie-mec.org/2019/09/04/paradox-of-syria-s-reconstruction-pub-79773> [<https://perma.cc/34MH-GDAS>]; see also Mahmoud Al-Lababidi, *Damascus Businessmen: The Phantoms of Marota City*, EUR. UNIV. INST. (April 2019), [http://medirections.com/images/dox/MED\\_2019\\_07\\_EN.pdf](http://medirections.com/images/dox/MED_2019_07_EN.pdf) [<https://perma.cc/F8XL-LZWU>] (describing in detail the businessmen behind the Marota City development).

199. SYRIAN INVESTMENT & DEV. CORP., SIDC AT A GLANCE, <https://www.syrian-investment.com/about-us/> [<https://perma.cc/2GNZ-GD63>].

200. See THE SYRIA INSTITUTE & PAX, NO RETURN TO HOMS: A CASE STUDY ON DEMOGRAPHIC ENGINEERING IN SYRIA 34 (2017), [http://syriainstitute.org/wp-content/uploads/2017/02/PAX\\_REPORT\\_Homs\\_FINAL\\_web\\_single\\_page.pdf](http://syriainstitute.org/wp-content/uploads/2017/02/PAX_REPORT_Homs_FINAL_web_single_page.pdf) [<https://perma.cc/YQK8-NK8Y>].

201. Emma Beals (@ejbeals), TWITTER (June 10, 2019, 6:37 am), <https://twitter.com/ejbeals/status/1138032497625915394> [[perma.cc/E7QH-E5YG](https://perma.cc/E7QH-E5YG)].

formally or informally held land will, in the absence of affordable housing, be pushed into the “peripheries”<sup>202</sup>—areas of contestation, inequality, and dissent. Demographic change and the potential for continual conflict and unrest in informal settlements outside of Syria’s cities will be forcibly imposed in tandem.

The Assad regime, the individuals behind the hybrid public-private companies established in Syria’s governorates, and Russian and Iranian funders stand to benefit enormously from this arrangement. As seen in Beirut, accumulation by dispossession disperses power across tightly controlled, inaccessible networks of investors and authoritarian state agents. In Syria, this process will simultaneously circulate wealth and resources between Assad and domestic and foreign cronies, as well as secure the status of the Assad regime as Syria’s sovereign power. It is worth noting that, unlike in Bosnia and Lebanon, where reconstruction also furthered urbidal goals, there is no political transition in sight in Syria, and the government has long displayed neoliberal proclivities. As such, the roots of processes of capital accumulation described in this Section are much deeper and more impermeable to international intervention, and these urbidal projects are likely to be completed much more quickly, with little resistance.

## 2. Selectively Capitalizing Property Assets in Syria

Compounding the challenges described above, the Assad regime has already imposed a number of mechanisms to control who may rebuild destroyed homes or assert legal claims to property. Law 10 is an example of the legal dispossession of private property assets and their conversion into state-held property. Some individuals affected by Law 10 may have formally registered their title to land; however, logistical challenges, such as obtaining security clearance to return to Syria from abroad (opening themselves up to surveillance by the state) may still preclude their ability to reclaim their property.<sup>203</sup> In other cases, land was informally held, title documents were lost as owners fled in the face of the conflict, or land registries were destroyed by Assad’s forces.<sup>204</sup> Whether owners are practically unable to demonstrate ownership or were never in possession of real title to land, Law 10 permits the regime to selectively capitalize assets and undertake property transfers; in June 2018, for example, under the

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202. BOU AKAR, *supra* note 38, at 6, 17–19.

203. Q&A: *Syria’s New Property Law*, *supra* note 59.

204. *Id.*

auspices of Law 10, “loyalist forces seized the crops from several agricultural fields in Northwestern Hama . . . The Shabiha [a loyalist militia] informed the locals that the Syrian government will apply Law number 10 and seize all lands whose owners are abroad (and displaced within Syria’s borders).”<sup>205</sup> Similarly, in November 2018, the “Syrian regime began again with the bombing and demolition of a number of houses in . . . al-Qaboun in the countryside of Damascus in accordance with Law No. 10.”<sup>206</sup> The Assad regime used prolonged siege techniques in al-Qaboun, a rebel-held neighborhood in eastern Damascus, eventually succeeding in prompting the surrender and forced evacuation of many of the neighborhood’s residents in 2017.<sup>207</sup> Those who remained after the 2017 expulsion were finally removed in November 2018, when “the regime forced dozens of families to evacuate and leave their homes in preparation for the resettlement of Iranian and other Lebanese Hezbollah members in the area.”<sup>208</sup> The removal of rebel sympathizers and replacement with foreign Assad supporters is homogenization in its plainest form. Unsurprisingly, in July 2019, the Damascus Governorate formally approved the redevelopment of al-Qaboun under Law 10.<sup>209</sup>

In both of these examples, the Assad regime intends to—or has already—capitalized the assets in question and put them into circulation in furtherance of urbicidal homogeneity and the future construction of capital megaprojects. This process is certain to accelerate under Law 10, and under Decree No. 11, which voids all real estate transactions in areas outside of the Assad government’s control.<sup>210</sup> As Salam Said and Jihad Yazigi note, “at first glance,

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205. Abd Allah Al Darwesh, *Loyalist Forces Seize Crops in Hama Under New Law*, SMART NEWS AGENCY (June 3, 2018), <https://smartnews-agency.com/en/wires/299800/loyalist-forces-seize-crops-in-hama-under-new-law> [https://perma.cc/JN5N-PNQT].

206. *Depending on Law No. 10 the Syrian Regime Blows Up More Houses in Al-Qaboun Neighborhood*, SYRIA CALL (Nov. 27, 2018), <http://nedaa-sy.com/en/news/10014> [https://perma.cc/9HEY-5PAQ].

207. *Rebels Leave Qaboun as Army Advances in Damascus*, AL JAZEERA (May 14, 2017), <https://www.aljazeera.com/news/2017/05/rebels-leave-qaboun-army-advances-damascus-170514050445948.html> [https://perma.cc/VB4J-GJKC].

208. *Depending on Law No. 10, supra* note 207.

209. Syria Report (@TheSyriaReport), TWITTER (July 16, 2019, 7:22 AM), <https://twitter.com/TheSyriaReport/status/1151089803385016320> [https://perma.cc/R4MX-PPEA].

210. Barry & Ghossoun, *Legislative Decree on Holding Registration Real Estate Rights in Rem at Closed Real Estate Offices Due to Security Situation*,

[Decree No. 11] appears to be a positive development for the protection of property rights and the prevention of falsifications and fraud in the absence of functional state institutions.”<sup>211</sup> However, the neutral application of this law requires neutral arbiters—given the widespread corruption in Syria, including within the country’s judiciary, it is unlikely that such a law will operate in any way other than to nullify political opponents’ claims to property. Additional measures, such as a 2015 decree that all real estate sales must be conducted with the permission of the security and intelligence branches, further impede access to the market by regime opponents.<sup>212</sup> Recently, the Assad regime has also utilized a relatively unknown anti-terrorism law to reach the assets, including real estate, of individuals accused of crimes against the state.<sup>213</sup> While individuals’ assets are initially frozen under the law (preventing their sale or commercial use), once authorized seizures are executed, the state will sell the assets in question by auction.<sup>214</sup> Opposition activists and individuals who fled opposition-held territory have reportedly been targeted; according to Reuters, “lists circulating online—which rights groups believe to be accurate—show that hundreds of such [seizure] orders have been made, affecting potentially thousands of people.”<sup>215</sup>

It is no coincidence that the prior property rights of individuals in opposition-held areas are targeted under these and other policies. Assad has made his disinterest in facilitating the return of refugees and IDPs clear—disallowing them to capitalize their property assets for their own purposes, after having destroyed land registries throughout the country, is a critical part of the effort to ensure the permanence of Syria’s demographic changes. Whether residents have been displaced by the war, forcibly evacuated by government forces after lengthy siege campaigns, or are the targets of asset seizure orders, their property assets may be dispossessed without process and

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SYRIAN ARAB NEWS AGENCY (May 5, 2016), <https://sana.sy/en/?p=76470> [<https://perma.cc/9FH9-NFG9>].

211. SAID & YAZIGI, *supra* note 57, at 6.

212. *Id.* (“Today, displaced people from East Ghouta need the permission from the so-called ‘Party Committees,’ meaning committees of Baath Party members, to return to their houses.”)

213. Nehme, *supra* note 2; see also Emma Graham-Harrison, *Assad Demolishes Refugee Homes to Tighten Grip on Rebel Strongholds*, *GUARDIAN* (June 8, 2019), <https://www.theguardian.com/world/2019/jun/08/syria-demolishes-homes-grabs-territory> [<https://perma.cc/B82A-8E2X>] (citing civil society concerns that Assad is using reconstruction to further dispossess opponents).

214. See Nehme, *supra* note 2; Graham-Harrison, *supra* note 213.

215. See Nehme, *supra* note 2; Graham-Harrison, *supra* note 213.

selectively re-capitalized into state property—property which is, in turn, deployed towards the creation of urban megaprojects or commission of population transfers. The ultimate result of this selective capitalization process is homogenization.

### 3. The Weaponization of Reconstruction

As many scholars have noted, neoliberalism is not a new phenomenon in Syria. Assad, through a tightly controlled network of business elites, has long integrated the functions of the state with capitalist processes and privatization. In 2013, Caroline Donati wrote, “Syrian authoritarianism rests on patronage networks established throughout the different institutions of the Ba’thist state. It is these clientelist links and personal allegiances, and not the coercive apparatus alone that have secured for the Assad regimes their exceptional longevity.”<sup>216</sup> In part, the 2011 uprisings were a direct consequence of the deep inequality that rises from practices of patronage.<sup>217</sup> Despite years of violent opposition to the status quo, however, Assad’s urbicidal war has all but ensured that the centrality of patronage networks in this postwar period will persist, absent (highly unlikely) political transition. Having inscribed the violence of the conflict in the country’s largest cities, driving their residents either out of Syria entirely or into its farther corners, Assad is presently seizing the opportunity to “legally” dispossess property and to funnel these assets through patronage networks, towards the construction of urban megaprojects. It is critical to view these activities as both the second phase of Syria’s urbicidal war, and as a conscious effort by Assad to reassert his sovereign authority vis-à-vis Syria’s business elite. That is, the projects of superimposing homogeneity over the map of Syria and laundering money and influence through the closed channels of Assad’s patronage networks are mutually constitutive.

The probable trajectory of the country’s postwar reconstruction is toward entrenched neoliberal authoritarianism and ethnic consolidation. As seen in the other conflicts discussed in this Note,

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216. Caroline Donati, *The Economics of Authoritarian Upgrading in Syria*, in *MIDDLE EAST AUTHORITARIANISMS: GOVERNANCE, CONTESTATION, AND REGIME RESILIENCE IN SYRIA AND IRAN* 35, 36 (Steven Heydemann & Reinoud Leenders eds., 2013).

217. *Id.*; see also HEIKO WIMMEN, *CARNEGIE ENDOWMENT FOR INT’L PEACE, SYRIA’S PATH FROM CIVIC UPRISING TO CIVIL WAR* (2016), [https://carnegieendowment.org/files/CEIP\\_CP290\\_Wimmen\\_Final.pdf](https://carnegieendowment.org/files/CEIP_CP290_Wimmen_Final.pdf) [<https://perma.cc/35N5-B6BD>] (describing how the 2011 uprisings were originally about political, economic, and social grievances rather than sectarianism).

postwar urbicidal reconstruction supports the shift towards a political economy which privileges clusters of business elites and regime interest-holders, all of whom are invulnerable to democratic oversight and, to a large extent, are without susceptibility to traditional sanctioning by the international community. In a country whose pre-conflict political economy largely dovetails with this description, like Syria, and where the ruling regime has not been deposed, it is exceedingly likely that these pre-war political and economic norms are only strengthened. Given this, and as urbicidal reconstruction in Syria progresses unimpeded, leaving the urban poor—specifically, the anti-regime poor who either never left their homes or now attempt to return—outside of the capital market, there is marked potential for continued conflict and long-term destabilization in the region.

### C. An Opportunity to Intervene—Or Failure to Do So

What is to be done? Addressing the refugee and IDP crisis is an immediate priority for the international community. Unsurprisingly, it is clear that the Assad regime has very little appetite for facilitating the return of refugees and IDPs to the country, let alone to their homes of origin. Though countries playing host to thousands of Syrians face domestic pressures to incentivize refugees to return home, the conditions in Syria remain treacherous for Assad's opponents. Reports from early 2019 note that “those who [return to Syria] . . . are finding the persecution that caused them to flee has not gone away. Some Syrians who have returned have disappeared into the country's notorious prison system, a stark reminder of the dangers the country's former refugees face.”<sup>218</sup> Other refugees and IDPs face the risk of punishment for draft evasion,<sup>219</sup> fear landmines and other unexploded ordnance,<sup>220</sup> or are hesitant to return based on lack of livelihood opportunities.<sup>221</sup> However, housing-related issues are, as this Note has described, likely the greatest obstacle to the mass return of refugees and IDPs.<sup>222</sup> As Assad continues the forcible imposition of

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218. Anchal Vohra, *A Deadly Welcome Awaits Syria's Returning Refugees*, FOREIGN POL'Y (Feb. 6, 2019), <https://foreignpolicy.com/2019/02/06/a-deadly-welcome-awaits-syrias-returning-refugees/> [https://perma.cc/2P52-RENF].

219. UNHCR LEBANON, *A LONGING TO GO HOME, IN SAFETY AND DIGNITY* 15–16 (2018), <https://data2.unhcr.org/fr/documents/download/63310> [https://perma.cc/7Y6F-TWX4].

220. *Id.* at 18.

221. *Id.* at 19–20.

222. *Id.* at 16–17.

new urban arrangements throughout Syria, these challenges are ever more pressing for the international community.

Political maneuvering—namely, dangling the promise of reconstruction funds in return for the safe return of refugees and IDPs—has proved unsuccessful. This is not likely to change in the near future. Similarly, the sanctioning of individuals who play a critical role in advancing urbicidal reconstruction is generally ineffectual, given their diverse income streams and extensive use of shell companies to bypass sanctions.<sup>223</sup> Above all, it is clear that Assad is not interested in the postwar creation of a property restitution mechanism as envisioned by the Pinheiro Principles; on the contrary, as discussed, Assad has enacted a series of legislative measures intended to expropriate property. Given these constraints, it appears that options for international intervention are limited.

However, this Note offers three possible avenues for intervention. First, it is essential to exert pressure on foreign investors and companies considering supporting urbicidal reconstruction projects in Syria. While the Syrian individuals and public-private enterprises directly responsible for construction may be impervious to sanctioning regimes, given the high costs of rebuilding in Syria, foreign direct investment is needed. For example, though Western countries have publicly declared that they refuse to provide funds in the absence of a political transition, China has pledged \$2 billion to support reconstruction.<sup>224</sup> Unlike Syria's government, China's government is sanction-sensitive; consequently, pressure may be exerted on China to prevent the flow of cash injections into the Syrian economy. Sanctions may also be effective as a foreign policy tool vis-à-vis Iran. Similarly, Western countries could target private companies contemplating involvement in the Syrian reconstruction process. Though Assad has, by design, tightly controlled both the means and modes of reconstruction thus far, Western countries may tighten the financial

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223. See Robert Cusack, *Paradise Papers Reveal How Assad's Cousin Used Front Companies to Bypass U.S. Sanctions*, NEW ARAB (Nov. 6, 2017), <https://www.alaraby.co.uk/english/indepth/2017/11/6/how-rami-makhloufs-front-companies-helped-bypass-us-sanctions> [https://perma.cc/D9TU-3XN9].

224. Analysts have noted that the United States' planned withdrawal of troops from Syria may slow the pace of investment in Syria. See Liu Zhen, *U.S. Withdrawal from Syria Leaves China's Plans for Investment up in the Air*, *Analysts Say*, SOUTH CHINA MORNING POST (Dec. 29, 2018), <https://www.scmp.com/news/china/article/2179957/us-withdrawal-syria-leaves-chinas-plans-investment-air-analysts-say> [https://perma.cc/6QRC-LQZE].

screws by making the proposition of financing reconstruction unpalatable to potential donors. Such sanctions must be damaging enough to outweigh the potentially lucrative benefits of involvement in Syria.

Second, recognizing the inherent limitations of sanctioning regimes, and given recent discussion among some European countries about the possibility of contributing some reconstruction funds despite the EU's stated position on the issue,<sup>225</sup> international actors should develop a plan to fund reconstruction efforts led by parties in areas deemed less politically sensitive or of lesser instrumental value to Assad. Some commentators speculate that Assad will not attempt to rebuild in non-loyalist parts of Syria; while this Note submits that this argument is misguided, given that Assad seeks to preclude the return of his political opponents, it does appear that rural Syria will be left relatively untouched in the immediate postwar period. In an effort to facilitate the return of Syrians from less urban parts of the country, and to close the certain socioeconomic inequality gap that will reemerge as business elites profit from reconstruction, international donors should identify trusted local partners to whom money can be distributed in an organized, transparent manner. Though such a solution may not reach the locus of urbicidal efforts in Syria, facilitating the return of individuals across the country will produce significant pockets of heterogeneity, threatening the Assad regime's future capacity to maintain authoritarian control.

Third, with an eye towards the negotiation of a peaceful political transition at some future point, it is essential that the international community gathers near-complete information on land usage and property ownership prior to the conflict. Most Syrian refugees in diaspora and IDPs have access to mobile phones. This Note proposes the creation of a mobile application which leverages open source GIS data to permit Syrians to lodge claims to property and denote former public spaces throughout the country. Reliable high-resolution satellite imagery of Syria from before and after the war is widely available and can be overlaid with data collected from application users to inform any property restitution mechanism established under the Pinheiro Principles. Though by this point

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225. Joost Hiltermann, *Talking About Syrian Post-War Reconstruction*, INT'L CRISIS GROUP (Feb. 10, 2018), <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/talking-about-syrian-post-war-reconstruction> [https://perma.cc/V5XS-T4TJ].

urbicidal reconstruction may have advanced to the degree that complete property restitution is impossible, an Internet-based mechanism which permits community members to virtually negotiate their former spaces and engage in investigation and interpretation of the war may nonetheless aid in future transitional justice efforts.<sup>226</sup>

These interventions are merely suggestions. In any case, it is imperative that the international community recognize the perils of funding large-scale, urbicidal reconstruction through the Assad regime—namely, that such reconstruction advances Assad’s stated goal of achieving a homogeneous society. It is equally critical to understand that a refusal by the United States and Europe to fund reconstruction may enhance neoliberal authoritarianism in Syria by enriching Assad and his cronies and elevating the Assad government as the country’s sovereign authority.

#### CONCLUSION

President Bashar al-Assad’s urbicidal war on Syria’s cities continues, even as direct hostilities and insurgency draws to a close. Postwar urban transformations conducted in the name of “urban renewal” threaten to fully foreclose the possibility of the return of Syrians displaced by the war; further, the Assad regime has consciously adopted urbicidal reconstruction methods as part of a broader strategy to ensure the survival of what this Note has termed neoliberal authoritarianism in the country. Syria’s political economy has long been defined by tightly controlled patronage networks. Prior to the war, the Assad regime centralized and ensured its authority by privileging particular business elites who in turn conducted and profited off of illicit economic activities in exchange for political fidelity. In this post-war period, as the regime seeks to reassemble this authoritarian coalition and reassert its sovereign authority over the entirety of Syria, reconstruction provides ample opportunity for both rewarding political cronies and ensuring that no economic activity may take place outside of the regime’s control. Reconstruction, and particularly urban megaprojects, furthers uricide by rapidly transforming particular urban spaces such that they are no longer accessible to their former (heterogeneous) residents. These

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226. This is unlike Beirut, where the scale and speed of Solidere’s transformation of Beirut’s center precluded collective discussion of and arrival at a shared understanding of the urban violence inflicted throughout the war. *See generally* AKAR, *supra* note 38.

construction projects occur in tandem with the selective capitalization of assets—property formerly held or used by diverse populations is seized, re-capitalized into state property or transferred into private hands. In Syria, the assets of groups that fled the conflict or were forcibly evacuated after siege campaigns may be—and are being—dispossessed without process or recourse. Taken together, the result of these reconstruction processes will be homogenization and deepening inequality in Syria.

Urbicidal reconstruction and its relationship to neoliberalism and authoritarianism is not a new phenomenon. This Note has traced the development of this relationship as made legible in the post-conflict period in Bosnia and Beirut, where it is evident that postwar reconstruction played a critical role in constructing segregated zones of contestation and dispossession—inflaming grievances that contribute to ongoing conflict and enabling the persistence of anti-democratic, authoritarian regimes. As such, it is essential that international actors seeking to address housing and property issues in postwar contexts identify when and how urbicidal logic has been deployed throughout the course of the war. As observed in Bosnia, a failure to do so, resulting in the implementation of an administrative mechanism that is insufficiently attentive to the ways reconstruction consciously precludes property restitution, merely advances the homogenizing thrust of urbicide.

In Syria, a property restitution mechanism administered jointly by local and international actors may be effective if and when political transition is negotiated. However, in this post-conflict period of rapid reconstruction and continued dispossession, attention should primarily be paid to: (1) limiting the amount of foreign money flowing into Syria for reconstruction; (2) supporting local actors in reconstruction in areas outside of Assad's direct control or immediate interest; and (3) supporting the documentation of refugees' and IDPs' HLP claims, even as safety and security concerns limit their ability to return to Syria. These measures may be insufficient on their own to prevent the use of reconstruction to reconstitute Syria's repressive and neoliberal prewar political economy. However, it is essential nonetheless to attempt to imagine how the effects of urbicide may one day be undone, and how durable property rights may be mediated through a governmental regime concerned with social justice and inclusion, not homogenization.