Arab Reform Initiative

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# Law n°10 on Reconstruction: A Legal Reading of Organized Mass Expropriation in Syria

*Arab reform initiative*

This paper presents a review of Law No. 10, issued by Syrian President Bashar al-Assad on 2 April 2018. It examines its content and the possible implications from a purely legal perspective and does not cover the political approaches that have been circulate since, despite their importance. The paper will put forward some preliminary observations before going into the details of the different implications of the law.

## Preliminary remarks on Law 10

The below observations are made from a purely legal and technical perspective, including enforcement mechanisms and tools, and do not take into account the political considerations and criticisms that have circulated in the media, despite the importance of the political context and the circumstances that surrounded the issuance of the law. Any legislation, on its own, is pointless if taken out of the context and circumstances that led to its promulgation, its objectives, and the mechanisms available to implement it.

The following three preliminary observations are to the point:

1. Law No. 10 is a slightly amended version of Legislative Decree No. 66 of 2012. This alone indicates that any issue in the Syrian constitutional system may be regulated by law – after being presented to the People's Assembly – or by a legislative decree issued under Article

113 of the 2012 Constitution, or even by a regulatory decree of the executive branch. This raises several questions about the Syrian legislative system in general.

**2.** Law No. 10 can only be read and interpreted, taking into account a number of legislative acts (laws, and legislative and regulatory decrees) issued in Syria over half a century relating to expropriation and urbanization, which in themselves do not include the minimum standards for the protection of property rights. It is sufficient, in this regard, to note the consecutive expropriation laws, the famous Law No. 60 of 1979, and the bureaucratic and administrative context of the enforcement of such legislation. Law No. 10, understandably, refers in some of its provisions to some of this legislation for its implementation.

- The expropriation law promulgated by Legislative Decree No. 20 of 1983 remains in effect – despite the amendment of the Constitution in 2012 and the removal of Article 8[1] thereof – and grants the right of public benefit which justifies expropriation for the purpose of constructing facilities for the Arab Socialist Baath Party and its affiliated popular organizations (Article 3(b)).
- Article 3 (a) of this law, which refers to Law No. 60 of 1979, allows for the expropriation for the purpose building popular housing projects or housing compounds for sale to military personnel or the families of the martyrs. This means that the purpose of the expropriation of a property is to sell it to another person, which is unacceptable in any legal system because it contradicts the notion of public benefit behind the expropriation.
- This same law allows the expropriating authority (i.e., public authorities) to appropriate - without compensation - a quarter of the area of the property (Article 31/1).
- The expropriation law also allows the deferral of the compensation payment for expropriation for up to five years from the date of the expropriation decision (Article 25/1), and the payment of such compensation by installments (Article 34/A).
- The expropriation law allows public entities - in case they have expropriated real estate properties but have not implemented public benefit projects on them – the right to transfer these properties to their ownership and the right to sell them (Article 35), in breach of the minimum standards of property rights. Indeed, this has been done by

[1] Article 8 of the old Syrian Constitution reads as the following: "The leading party in the society and the state is the Socialist Arab Baath Party. It leads a patriotic and progressive front seeking to unify the resources of the people's masses and place them at the service of the Arab nation's goals."

most public bodies with the aim of increasing their revenues. These public institutions have appropriated, or declared appropriated, a large number of properties for decades, and then sold them to investment companies under the justification of tourism investment and real estate development. Most such expropriations were made according to Law No. 60 of 1979, with the aim of urban planning. Article 3 of this law designated these properties – at the time of their expropriation -- agricultural estates and estimated their value at no more than ten times the value of their annual produce. This has resulted in the expropriation of a large number of properties at very low compensation rates, turning the entire process into some sort of confiscation.

- Finally, it is worth mentioning that expropriation decisions are final and are not subject to any appeal or review before a court (article 7/4).

3. From a purely legal and technical angle, the timing of this legislation is questionable. If the objective is purely urban regulation, why had the government not previously regulated many of the areas in which there are informal settlements before they were created, or as they were emerging, or even after they had emerged? Dozens of conferences have been held over the last 20 years on this issue. Hundreds of studies and projects were presented, and dozens of experiments have been studied internationally.

The above question arises from a strictly technical legal point of view. Enforcement mechanisms and funds were more available in the past, and circumstances were more amenable. It is not surprising, then, that some raise the question of whether there are other factors to the timing of this legislation and of Decree 66 of 2012. The latter had limited effects, and the number of the property owners who had to leave their homes and become displaced was much smaller, which explains why it did not raise as many questions at the time.

## Legal aspects related exclusively to Law No. 10

This paper will make preliminary and cursory observations about Law No. 10 in the order in which its articles are arranged, attempting when appropriate to make connections between the relevant ones:

1. Units of local administration have no decision-making authority regarding the establishment of urban planning areas. The ability to make such decisions is strictly limited to the central authority (the President of the Republic, based on a proposal by the

Minister of Local Administration). This shows that these urban planning schemes are not open to the participation of concerned stakeholders.

Under Article 1, "A [Presidential] decree based on the proposal of the Minister of Local Administration and Environment shall create one or more urban redevelopment zones within the general organizational chart of the administrative units." This means that units of local administration and local community (local council) have no role in designating these urban areas, and property owners will not be consulted.

The local units' role is limited to implementation:

- The local administrative unit shall request, within one week from the date of the issuance of the decree establishing the urban redevelopment zone, from the Directorate of Real Estate Affairs, the Directorate of the Provisional Registry, or any other public authority that is authorized by its mandate to carry out the registration of property to prepare lists of the property owners that are identical to the property registry or the digital registry, including mortgage records. (Article 5/a).
- The local administrative unit shall form, by the decision of its chair, within one month from the date of issuing the decree to create the urban redevelopment area, one or more committees to identify and characterize the estates of the area; organize a detailed inspection of their contents (building, trees, plants); and carry out a social survey of the inhabitants in the relevant area. The Committee or Committees may rely on satellite images in their work. The decision to form the committee(s) shall determine the time-frame within which this work must be finished. (Article 5 / b).

In most cases, the *administration unit* refers to the governorate, which is generally the authority capable of implementation. The head of this unit is the governor, who is appointed by the central authority, not to mention concerns about local council elections. In any event, even the heads of the lower local units – who are supposed to be elected but are elected under a law that prevents competition – are appointed and dismissed by the central authority, with little attention to election results. The heads of the Latakia, Deraa, and Aleppo city councils are recent examples.

## 2. Article 5 (c) states:

"The local administrative unit shall form, by a decision of its chair, within one month from the date of the issuance of the decree to create the urban redevelopment area, one or more committees to identify and characterize the estates of the area; organize a detailed inspection of their contents (building, trees, plants), and carry out a social survey of the inhabitants in the concerned area. The

Committee or Committees may rely on satellite images in their work. The decision to form the committee(s) shall determine the time-frame within which this work must be finished".
What is the point behind the social survey of residents of the area? How is this related to urban organization? What will be the nature of the social survey (ethnicity, sect, gender, age...)? It is noteworthy that the social survey is mandatory.

This provision is strange to the context of the law and is considered intrusive. According to the standards of legislative procedures, this provision is a *rider* (in French, *Cavalier législatif*), that is, an apparently unrelated introduction of a legal text. It is an exploitation of the process of legislation to pass provisions confusingly, stealthily, and toward particular ends.

This is one of the most obvious and irreconcilable issues that could be used to challenge Law No. 10, since this text is inserted in the law on urban regulation although it is outside its context. It could be the most justifiable legal criticism that could be used to support political and media claims that Law No. 10 fits a pattern of demographic engineering.

In most countries, riders (*Cavalier législatif*) are unconstitutional, as stipulated in the first paragraph of Article 45 of the French Constitution, in addition to a number of constitutional provisions in the United States, Germany, and Spain, among other countries.

Had the law used phrases such as an "owners survey" determined through proof of ownership, a "tenant survey" determined through leases, or a process to identify "rights-holders with a real estate interest (pledge of real estate or easement)," i.e. survey processes that have legal aspects, the survey would have been justified. However, stipulating a social survey has no relationship whatsoever with the law.

This cannot be justified by saying that the intention is not demography, but only real estate-related. The phrase is clear and conclusive and cannot be interpreted through executive instructions.

## 3. Article 6 (a) states:

" Within one month of the decree establishing the urban redevelopment zone, the administrative unit shall, through a declaration published in at least one local newspaper, in one of the audio-visual media, on its website, and on its wall bulletin board, call on owners and holders of rights in-kind to claim their rights. The aforementioned, and/or any person who is related to the properties in the designated urban zone, whether owner, guardian, or agent, may apply to the administrative

unit within 30 days from the date of the announcement, with an application specifying his residence within the administrative unit, together with supporting documents, or copies of such documents, proving their rights of ownership, if any. In case they do not have these documents, they must note in their applications the [exact] locations, boundaries, and shares they own, and the legal and legitimate category of the property or rights they claim, in addition to all the lawsuits they have brought or outstanding suits against them."

As shown above, the announcement should take place within one month of the issuance of the decree designating the urban redevelopment zone, and the claimants will have another 30 days. This means that claimants have 60 days altogether to prepare all the documents and/or evidence of their rights to the property in the designated area. In light of administrative complexities and the required approvals from the security services, this period seems - in principle - very short.

If we add to this the reality that many owners have been displaced, have had to leave the country, have died, were killed, or were prosecuted under the anti-terrorism laws, the situation becomes more difficult.

Furthermore, this process will be almost impossible if one considers that most areas targeted for urban redevelopment are informal settlements in the first place, where properties are not registered in the Real Estate Registry. The only proof of the existence of such properties are utility bills (water, electricity and telephone) or unofficial documents signed between the parties involved in their purchase. The original owner of the property - mostly agricultural - may have been dead for decades, and their inheritors cannot be identified; they themselves may have the right to claim the property, in addition to the succeeding de-facto owners. This means that the devolution of estate for the properties will need to operate on two levels: the original owners and the succeeding de-facto owners/inhabitants. It is well known that such process will require years to complete.

This process will be even more compounded due to widespread corruption in administrative departments trusted to implement the law, where documents, certificates, and invoices can be obtained to prove the right of those who are not the real owners. Corruption can sometimes happen in properly registered properties in a real estate registry, let alone in unregistered real estate areas which the law is targeting for urban redevelopment.

In short, the process to prove ownership to local authorities is a problem even for those who have all the time they need, so how can the owners do it in such a short period? To this is added the rights that emerge from this new law.

## 4. Article 8 states:

"Experts will be elected to advise property owners in the designated area. The administrative unit will issue a public invitation in at least one local newspaper to those whose habitation is specified to elect their representatives. The election will be decided by a majority of those who respond to this invitation, which will specify the place and timing of the election. If property owners in the designated area fail to respond to the call to elect their representatives in the Valuation Committee, the Chair of the First Degree Civil Court of the province shall appoint the two above mentioned experts.

Given that Law No. 10 is an amendment to Decree 66 of 2012, and makes referrals to it, Article 7 of Decree 66 concerning valuation of property in the urban redevelopment areas states that:

“The value of the real estate of the designated area is to be estimated according to its current status including its buildings, constructions, trees and plantations, with rights in kind and rights claimed, and with a fair valuation based on its real value and on the foundations provided for in Article 10 of this Legislative Decree by a committee formed by the Governor and comprised of one Judge with the rank of counsellor, appointed by the Minister of Justice, as president; two experts in the real estate appraisal named by the Minister of Housing and Urban Development, as members; and two experts representing the owners, as members.”

In other words, the evaluation committee is composed of a majority appointed by the governor. If the owners of real estate do not participate (which is most likely to happen, as most are small owners and can only meet after proving their ownership, the difficulty of which is mentioned above), these two members will be appointed by the Chair of the First Degree Civil Court.

It should be noted that this law, contrary to Decree 66, does not deny the right to appeal against the decisions. However, the appeals, in accordance with Article 10, cannot halt the procedures for the implementation of the urbanization of the area. “The Review Chamber in the provincial Civil Court of Appeals decides on the appeals against the committee’s decisions in a final decision,

within a period not exceeding 30 days from the date of registration of the appeal. The appeal shall not stop procedures for the creation of the urban zone."

Taking into account the slow pace of litigation and the periods specified for the decision, the court will not comply with them, as in previous laws under normal circumstances. As it happens, the procedures given to the owners to defend their rights to estimate their properties can be rendered meaningless.

## 5. Article 20 (a) reads:

"The administrative unit shall set up, by a decision of the Minister of Local Administration and the Environment, a special fund for each urban redevelopment area to cover and finance all the expenses set forth in Article 19 of Legislative Decree No. 66 of 2012 as amended in accordance with the provisions of this Law, and the construction of social and alternative housing and all expenses of the area."

Paragraph (b) of the same Article adds: "The Fund shall be financed from… revenues resulting from the swap or participation contracts concluded by the Board of the Administration Unit, for the purpose of supporting the fund, with relevant legal persons in exchange for ownership of shares in the organizational divisions of the administrative unit and the value of the shares sold in public auction ".

This means in practice that the law allows the administrative unit to enter into swap or participation contracts with legal persons whose nature has not been specified, to leave the space open for all possibilities. They are assigned shares in urban redevelopment area. In this way, the administration unit is acting as a private owner of the designated area, which raises the following question: is the ownership of the designated area not that of the actual owners? On what legal basis does the administrative unit conclude such contracts?

## 6. Article 21 states:

"A: All land required for the completion and implementation of the following shall be appropriated for free, in accordance with the general organizational and the detailed plan:

1) routes, parks, parking lots, and public amenities, including public centers, schools, hospitals, clinics, health centers, fire stations, places of worship (mosques and churches), public libraries, cultural centers, public places, sports stadiums, social welfare centers,

drinking water pumping stations, and community support centers. The land for these amenities will be handed over without compensation to the relevant authorities, which have the responsibility to build the needed amenities.

2) The parcels allocated to the administrative unit [will be used] to construct social housing and housing units for those whose houses will be demolished, and those with low-income, and to cover the expenses mentioned in Article 19 of Legislative Decree No. 66 of 2012, as amended in accordance with the provisions of this law.

B: The appropriations indicated in items 1 and 2 of paragraph (a) of this Article shall not allow the percentage of floor area allocated to the owners of the designated area to be less than 80% per each square meter of the area of land, as determined by the economic feasibility study and the ratified urban redevelopment plan."

This provision represents a free expropriation. As a part of the legislative policy on land expropriation and urban regulation, it does not respect the minimum standards for the protection of property rights. As mentioned in the preliminary notes, Article 31/1 of the expropriation Law promulgated by Legislative Decree No. 20 of 1983 allows the expropriating public bodies to appropriate - free of charge - a quarter of the area of the property acquired.

In fact, the legal adaptation of what was called in Law 10 "free appropriation" is a simple confiscation, as there is – legally and constitutionally – no legal terms such as “appropriation”. What the law and the constitution (even in the Constitution of 2012) does include in relation to money is either expropriation or confiscation.

In reality, appropriation means the abolition of private property without any compensation. In terms of legal narrative, this amounts to confiscation. It is the condemnation of property and the abolition of ownership without compensation, which is prohibited by the current Syrian Constitution. Article 15 (c) of the Constitution states: " Confiscation of private property shall not be imposed without a final court ruling." While article 15 (d) allows for private property confiscation, it does so only in cases of “the necessities of war and public disasters by law and against fair compensation.” However, the confiscation carried out in accordance with Law 10 shall not be compensated.

Such action cannot be considered expropriation because expropriation happens against fair compensation and follows certain procedures. Article 15 (c) of the Constitution states: " Private ownership shall not be removed except in the public interest by a decree and against fair compensation according to the law."

In short, appropriation has no constitutional basis, including in the 2012 Syrian Constitution.

It should also be noted that the term "community support centers" used in Article 21 as a justification for uncompensated appropriation, is a loose umbrella term that can be used by the administrative unit to include anything. The same is true of the land allocated for the construction of “housing units for those whose houses will be demolished, those with low-income, and social housing.” This too is an open and broad category, not limited to housing units demolished in the designated area, but also includes people with limited income and social housing. These objectives cannot be categorized under the so-called public benefit that is customary in expropriation. Rather, they will move the ownership from private owners to different private owners. This reminds us of an infamous Law in the memory of most Syrians – Law 60 of 1979, which allows the expropriation of someone’s property to give it away to someone else.

In brief, owners will lose up to 20% of their property value without any return.

- Article 22 includes a change in the nature of ownership in the designated area (i.e., the local unit). The article states: "A: The designated redevelopment area shall be considered a legal entity that shall replace all property owners and owners of rights therein."

The new owner of the urbanized area becomes the legal entity represented by the local administrative unit, replacing – albeit temporarily - owners of property and those with rights to the land. The question that arises here is: What is the basis for this substitution, which takes place without the consent of the owners and without them delegating the legal personality and its representatives, especially that this process is non-participatory and does not take in consideration the perspectives of the owners nor consults them?

The text also contains a change in the nature of ownership from ownership restricted at least to specific shares, to joint ownership, based on shares, which places small owners in a weak legal position, especially in light of the options placed before them in Article 29 of this law.

This constitutes a rights violation according to the 2012 Constitution which stipulates that the property of an administrative unit cannot displace private property. The same is true of the change in the nature of property, except in the case of expropriation or confiscation. Therefore, this text cannot be read except in this framework. And it is not possible to rely on the notion that the transfer of property to the local administrative unit to replace private ownership is temporary.

The same applies to paragraph (c) of the same article, which reads: “All parcels of the designated redevelopment area shall be held in common by the owners and the owners of rights [on it]. Its parcels shall be registered at the Property Registry under the ownership of the local administrative unit, until they are ultimately registered under the names of their owners, according to the options specified in Article 29 of the legislative Decree 66 of 2012, amended by the provisions of this law.”

This simply means that ownership, which will be temporarily transferred to the redevelopment area (i.e. the administrative unit) shall be transferred and registered in the name of the owners only according to the painful options of Article 29 of this law.

Paragraph F of Article 30 of Law 10 reads: "No natural or legal person shall have the right to possess or dispose of any shares in the redeveloped parcels held in common through trading, buying or waiver, after the formation of the urban redevelopment area as per the rules of Legislative Decree 66 of 2012 and the rules of this law, which would allow more than one of the redeveloped parcels. In this sense, ‘disposing of’ property includes selling it, offering it as a gift, lending it temporarily, waiving its ownership, changing ownership of the shares, using property as collateral, or granting any insurance agreement or collateral or power of attorney on it that might lead to the possession of the property. Any such act shall be considered absolutely invalid during the implementation of legislative Decree 66 of 2012 and the provisions of this law.”

Article 28 of Legislative Decree No. 66 of 2012, which refers to redevelopment areas, in turn, provides for the freezing of the disposal of ownership of units in these areas before one year from the registration of the unit as property in the Governorate’s Registry of Shares. The article states:

a) The shareholders of the regulated real estate units held in common have the right, within a year of the announcement of the final table of the distribution of shares, to trade ownership of shares in whole or in part, and to document the actions in the registry.

b) The rights connected to the shares are not transferred until after they have been recorded in the registry of shares in the governorate of Damascus; disposals to someone else cannot be challenged except from the date of the recording in the registry, and it is forbidden for the governorate of Damascus to pursue the procedure of registration if doing so violates the rulings of this Legislative Decree.

c) On behalf of the fund of the region, the province of Damascus collects, from the seller or the one making the waiver5‰ of the nominal value of all of the shares sold, waived or requested to be divided for each operation, and, no less than 200 Syrian pounds for each request, in addition

to all of the taxes and monetary duties due according to the rulings of the laws and the monetary systems in effect."

And here it must be pointed out that it is not possible to put any restrictions on property (according to the 2012 Constitution) except in the case of expropriation or confiscation. To that is added the procedures and duties imposed upon the management and disposal of the property.

## 7. Article 29:

"A: The parcels are distributed, and their ownership transferred and recorded in the real estate registry within three options according to the will of the owners of the shares of regulated parcels with ownership in common.

First choice: Allocation of the parcels.

Second choice: Participation in the establishment of a joint company according to the effective law of companies, or the law of real estate investment and development for constructing and selling and investment in parcels.

Third choice: Sale in auction."

This article places the owners before difficult choices, especially since most of them are smallholders. In reality, the options are an "Usine à gaz" (to use the French expression), meaning a system that cannot be understood and operated rationally, is likely to explode because of its contents, and is able on its own to breach the rights of the property owners, given its procedures, costs, and the lack of guarantee of its results.

Likewise, these choices place smallholders (and most of the regulated areas that are likely to be improved will comprise areas in which most of its owners are smallholders) in terms of the outcome at the mercy of real estate investment companies, because of:

- The inability of owners to meet the conditions of the first option, meaning the allocation of parcels (which requires the distribution of large portions and is impossible for smallholders) within a year, knowing that allocation is subject to the agreement and discretion of the local administrative unit.

- The inability to meet the conditions of the second option, which leave one with the third option, i.e. to distribute according to provisions of Article 32 of Legislative Decree 66 of 2012 with a decision from the Minister of Public Works and Housing, based on a recommendation from the Executive Office of the council of the Administrative Unit, in the following cases:

  1) The inability to establish a company.

  2) The failure to realize the goal of the second option for social, cultural, or economic reasons.

  The conditions and procedures to establish a joint company are nearly impossible for smallholders, and therefore:

  - They will be subjected to the third option, "sale at auction" by the local administrative unit, with all the devaluation that this entails, not to mention the possible corruption. This ought to be called the necessary choice for disposal of property, based on the likelihood of this outcome.

For this reason, it was stated earlier that this article entails painful choices, noting that the mentioned paragraph - "The failure to realize the goal of the second option for social, cultural, or economic reasons" - gives the executive office of the local administrative unit a delegated discretionary decision (more than a mere discretionary authority) to refuse the second choice. Who determines the social, cultural, and economic reasons? And what are the standards for making this determination?

- **Article 38 states:**

"A committee headed by the Minister of Local Administration and Environment is formed with the following membership:

- The Minister of Public Works and Housing.
- The Governor.
- The president of the administrative unit.
- A legal expert named by the president of the committee.

This committee manages the treatment of all of the subsidiary issues that were not stipulated by Legislative Decree 66 of 2012, and the rulings of this law, and takes all of the necessary measures to implement it in a way that does not contravene its rulings."

This text openly - though indirectly - reveals the weakness of the legislator and his inability to treat all of the issues related to the most important right, the right of property, which in most countries is treated by a law. This text gives a committee (from the executive authority) the mandate to treat issues (which are called subsidiary) but have not been organized or defined, which means that the committee has been given - by the ruling of this law - the authority to legislate in an issue related to an important right that ought not be regulated except by law.

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