

Syria: The Constitution of the “Crisis” or the Crisis of the Constitution?

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ABSTRACT

The adoption of the Syrian Constitution of 2012 was a significant milestone in the trajectory of the Syrian crisis, which escalated into a multifaceted armed conflict of regional and international dimensions. It was viewed as a potentially important and influential step towards mitigating the profound deterioration that the country was experiencing at that time.

According to its supporters, the Syrian Constitution served its intended purpose by meeting popular demands and introducing radical amendments to the political system. It introduced political pluralism and, for the first time since the country's independence, established a mechanism for the direct election of the President by the people.

At the same time, the constitution faced significant criticism from its opponents, who argued that it did not adhere, either formally or procedurally, to the standards of transparency, popular participation and social inclusion that should be respected for any constitution to be deemed democratic. They also claimed that it did not bring anything new or different from what was already present in previous constitutions. Furthermore, they asserted that it failed to effectively implement the few new provisions it introduced, as subsequent constitutional, legislative, or practical measures rendered those new provisions devoid of substance, hindering their ability to bring about any meaningful change in the political landscape in Syria.

This paper seeks to address the above-mentioned political viewpoints surrounding the adoption of the Syrian Constitution from a constitutional perspective. It begins by analysing the circumstances under which the Syrian Constitution was adopted and the procedural mechanisms that were followed for its enactment. It then compares the provisions of the new constitution with those of the preceding constitution to determine the extent to which

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the former actually incorporated new constitutional provisions. Finally, it looks into the implementation of those new constitutional provisions, to determine the degree to which they have been effectively applied in practice, a full decade since the constitution came into effect.

The paper presents the contradictory viewpoints of both the supporters and opponents of the Syrian Government in a neutral manner. Regardless of the author's personal agreement or disagreement with these opinions, the goal is to provide the opportunity and space for the presentation and analysis of divergent perspectives in a calm manner. It is an attempt to foster a culture of "accepting differing opinions" despite not approving of them and regardless of one's stance, which is currently lacking in Syria across various domains, including the constitutional discourse. This has been the author's experience as a member of the Syrian Constitutional Committee representing the civil society bloc.

Keywords: *The Syrian Revolution, the constitutional crisis, public participation, implementing mechanisms, women's rights, new constitutional provisions, elections, constitutionality of laws.*

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INTRODUCTION

The constitution appears to be closely linked to all the crises that the Syrian State has experienced since its modern formation after separating from the Ottoman Empire following the Great Arab Revolt. Indeed, the majority of Syrian constitutions were drafted under extraordinary circumstances to address different crises faced by the nation – whether resulting from external occupation or internal coups d'état.

Modern Syrian history began with the collapse of the Ottoman Empire. On 2 July 1919, the Syrian Congress convened and adopted a resolution it addressed to the American Inquiry Commission. In it, it demanded that Syria's system of government be monarchical, civil, and parliamentary, that its provinces be governed on the basis of broad decentralization, and that the rights of its minorities be guaranteed. Then, on 6 March, the congress adopted a resolution to determine the state's form and establish a constitution. However, the Syrian Congress was unable to proceed with its mission, as Syria was placed under French Mandate. During that period, several constitutional projects were proposed, only some of which were implemented.

After gaining independence, the country entered a prolonged period of successive military coups, which had clear constitutional implications and repercussions. These coups resulted in the “suspension” of constitutional provisions on multiple occasions and the “tailoring” of constitutions to serve specific individuals or agendas.

Syrian constitutional history clearly reveals the extent of “military intervention,” whether through direct coups or indirect rule through political and constitutional processes. It demonstrates that the Syrian State has a long history of “unlawful” interference of the military in constitutional and political matters. Such interference has sought to justify the unjustifiable and shape constitutional systems to fit the ruler's whims, preferences, and personality. Throughout its modern constitutional history, the country witnessed various constitutional projects, including the 1949 Constitution following Husni Al-Zaim's coup, the 1950 Constitution following Sami Al-Hinnawi's coup, and the 1953 Constitution following Adib Al-Shishakli's coup. In 1958, the governments of Egypt and Syria signed an agreement that lay the foundations of unity between the two countries, and Syria became subject to the Constitution of Unity. After the separation in 1961, the country adopted a new interim constitution, coinciding with the rise of the Arab Socialist Baath Party to power. This period witnessed the adoption of several constitutions that marked a new stage and a partial departure from the concept of Western public law towards socialist political systems. The country was successively governed by the 1964 Constitution, the 1969 Constitution, the 1971 Constitution, and the controversial 1973 Constitution (given the manner in which it was enacted, its espousal of the ideology of the ruling Baath Party, its violation of the principle of separation of powers, and its effective elimination of political life in Syria by installing the ruling Baath Party as the “leading party of the state and society”). Amending its provisions, whether wholly or partially, became one of the main demands of the popular protests that began in 2011.

The current Syrian Constitution, which was adopted in 2012, does not deviate from the intertwined relationship between the constitution and crises in Syria. Its enactment is closely linked to the events that have unfolded in the country since March 2011, when the protests began as a popular movement and quickly escalated into an armed conflict of regional and international dimensions. The repercussions of these events are still ongoing, even after over a decade has gone by since they began.

This paper analyses and assesses the Syrian Constitution that was adopted less than a year after the beginning of the protests in Syria, with the aim of addressing the crisis that the country was facing. Its purpose is to determine whether the new constitution served indeed as an instrument and means to resolve the Syrian crisis or if it constituted an additional factor complicating the crisis and pushing it towards the trajectory it followed after the constitution was adopted.

To attempt to answer this fundamental question and clarify whether the Syrian Constitution of 2012 served as a tool to resolve the Syrian crisis or as an additional factor complicating it, this paper will first delve into the circumstances and context in which that constitution was issued. It will then analyse its content and compare it to the preceding constitution. Lastly, it will examine the implementation of the new constitution and explore the reasons for its success or failure after more than a decade since its adoption.

This paper relies on a range of relevant sources from that time period, in addition to interviews conducted with individuals associated with and involved in that period. It seeks to offer a balanced presentation of various opinions and perspectives while conducting an objective critical evaluation of the events that took place at the time. The descriptive approach is followed to describe the events that occurred during that period to allow for a thorough analysis. The legal analytical approach is further employed to analyse different legal opinions and perspectives and evaluate them objectively.

I. ASSESSMENT OF THE COMPLIANCE OF THE SYRIAN CONSTITUTION OF 2012 WITH THE PRINCIPLES OF LEGITIMACY AND PUBLIC PARTICIPATION

For many decades and on a global scale, constitutions remained “elitist” documents issued by the governing authority for the people to comply with and submit to without any discussion or participation, and often without any public knowledge of the content of their rules and provisions.

This “top-down” approach to constitution-making conflicts with the very essence and purpose of a constitution, understood as a social contract that regulates the relationship between the components of the nation, as well as between the state and its citizens and residents.¹ As a result, subsequent political, democratic, and human rights

¹ Ibrahim Daraji, *Constitutional Options for Syria* (Beirut: ESCWA, 2017), 75.

developments broke with that approach, such that constitution-making ceased to be the prerogative of the ruler, or a task reserved for parliaments, constituent assemblies, constitutional jurists, or the state. Rather, the participation of various societal forces in constitution-making has become a reality imposed by an expanded understanding of the content and scope of the democratic rights of the people, as an international right recognized by international law, and an ethical duty for both citizens and state officials.²

In the following subsections, we will discuss the extent to which the drafting and adoption of the Syrian Constitution of 2012 took into account the principles of legitimacy and public participation.

A. THE ESTABLISHMENT OF THE COMMITTEE FOR DRAFTING THE CONSTITUTION

In response to the demands of the protesters (according to government supporters) or with the aim of circumventing those popular demands (according to its opponents' conviction), the President of the Republic issued Presidential Decree No. 33 on 15 October 2011, establishing the National Committee for Drafting a Constitution for the Syrian Arab Republic, in preparation for its approval in accordance with constitutional rules. The decree specified a period of four months from its issuance date for the committee to complete its work. The decree initially listed the names of 29 individuals, including only three women, but the number was later reduced to 28 due to the withdrawal of one of its members upon their appointment. Human rights lawyer Mazhar Al-Anbari was appointed as the chairman of the committee.

The criticism by the opposition and independent human rights organizations focused on the method of appointing the committee that drafted the constitution. According to their viewpoint:

As a matter of principle, the constitution should have been drafted by an elected constituent assembly representing various political orientations, economic and social groups, and diverse segments of Syrian society. This would ensure that the constitution caters to the interests and aspirations of everyone. This assembly would lay the foundations of the constitutional project and then appoint a committee of experts, academics, and legal professionals to draft and prepare it. Subsequently, after a sufficient period of dialogue and discussion, it would be put to a popular referendum.³

However, this is not how the Syrian Constitution was drafted. It was drafted by a committee appointed by the President, consisting solely of loyalists, the majority of whom represented a single segment of society. Consequently, the opposition Coordination Body,⁴ for example, considered the constitution to have been written "... without the participation of any of the numerous political forces in the country, except for the experienced followers of the regime in the Progressive National Front, and without the involvement of any nationally respected and trusted

² Yasmine Farouk Abou El-Enein and Nadia Abdel-Azim, *Participation and Building Community Consensus in the Constitution-making Process* (Cairo: Social Contract Center, 2013), 5.

³ Hussein Oueidat, "[On the Syrian Constitutional Draft](#)," *Al-Bayan*, 25 February 2012.

⁴ Coalition of nationalist, socialist and communist parties in Syria led by the Arab Socialist Baath Party.

public figure with a general human rights background.”⁵ However, there were some who were of the opinion that the committee did include certain individuals who were outside the official ruling system and some figures referred to at the time as the internal national opposition, specifically the “National Front for Change and Liberation,” which formed an alliance between the People’s Will Party and the Syrian National Socialist Party.

One of the appointed members of the committee tasked with drafting the constitution – human rights lawyer Abdulhay Al-Sayed – was of the former opinion. He submitted his resignation immediately upon his appointment to the committee. In a handwritten letter addressed to the committee’s chairman, he stated, “I learned about my appointment as a member of the National Committee for Drafting the Constitution of the Syrian Arab Republic through the media,” further adding, “Considering the importance of the constitution as a fundamental document that regulates public life in the country, especially at the current phase, as a legal professional, I believe that the optimal way to draft the constitution is through deliberation in a constituent assembly, as Syria has known in different constitutional periods. Based on this, I excuse myself from participating in its work.”⁶

It is worth noting that there are other opinions sustaining that there are two globally accepted and practiced methods for drafting a constitution. The first method involves the election of a constituent assembly to draft the constitution. The second method involves the selection of legal experts to prepare the initial draft of the constitution, which is then submitted to a general referendum. According to this viewpoint, the first method is undoubtedly more democratic, but it is not necessarily the best, as the election of a constituent assembly may result in the formation of an assembly composed of individuals who are not legal experts and may be lacking in independence and objectivity, especially in developing countries where personal criteria may outweigh objective criteria. In contrast, the second method is less democratic but more effective in the Syrian context, particularly if the members of the drafting committee are renowned for their objectivity, independence, and legal expertise, provided that there is a public discussion of the constitutional provisions before they are put to a referendum.⁷

In summary, according to its critics, the constitution-making process was not based on transparent participation. It was based on a presidential decree that completely disregarded the existence of other social, political, trade union, and professional forces that have a role and interest in participating in the drafting of a genuine constitution that determines the state of the country as a whole, and not just the state of the ruling authority.

As for the supporters of the constitutional process as it was carried out, there is no official narrative justifying it. However, the monitoring and analysis of the official handling of how the committee was established and the announced positions of the participating entities in the constitution-making process indicate that “participation”

⁵ Statement issued by the National Coordination Body on the “referendum on the alleged new constitution,” Executive Office, Damascus, 26 February 2012.

⁶ [Letter](#) submitted by human rights activist Abdulhay Al-Sayed to the President of the Constitution Drafting Committee, Mazhar Al-Anbari, two days after he was appointed a member of that committee.

⁷ Moussa Mitri, “Legal Observations on the Draft Constitution”, *Baladuna*, 15 February 2012.

was considered to have been achieved. This is because the majority of the real stakeholders effectively participated in the process, as civil society “is not limited to non-governmental organizations and human rights groups alone.” It also includes trade unions, professional associations, and political parties. All of these entities participated in the drafting committee, which included representatives of the ruling Baath Party and other allied parties within the Progressive National Front, as well as representatives of the Bar Association, Farmers’ Union, Syrian Workers’ Union, and the head of a civil society organization.⁸

This “quasi-official” narrative affirms that several criteria were considered in selecting and appointing the members of the drafting committee, including “expertise and pluralism.” The committee included independent individuals as well as representatives of existing political parties and those allied with the ruling Baath Party. The fact that the majority of committee members were affiliated with the ruling Baath Party was deemed “natural and logical” due to the party’s strength and widespread presence in the Syrian political arena.⁹

However, this opinion is contradicted by other human rights perspectives that assert that the constitution-making process was not participatory at all. They argue that it was carried out through a presidential decree without taking into consideration the existence of other social, political, union, or professional forces that have an interest in participating in the formulation of a genuine constitution that determines the overall state of the country and not just the state of the ruling authority.

Those opinions argue that civil society played no role, either in the drafting of the 2012 Constitution or of the preceding constitutions, due to the absence of a “real civil society in Syria over the past fifty years.” This is attributed to the fact that “the Law on Associations in Syria prohibits and imposes restrictive and impossible security conditions on the establishment and formation of a genuine civil society, merely allowing for associations playing service, medical, and social roles linked to specific entities or religious institutions such as mosques or churches to exist.”

This also applies to political parties, as their establishment was not permitted, and their existence limited to the ruling Baath Party, which was considered “the leader of the state and society,” in addition to a restricted number of parties affiliated with it under the umbrella of the Progressive National Front.¹⁰ Consequently, licensed political parties respond to specific criteria that are measured by the scale of power rather than the actual needs of civil society and the Syrian society as a whole. Therefore, one cannot speak of independent political parties with an agenda or programme that is independent of the “security apparatus.”

⁸ Association of Syrian Economists, represented by its president who previously held the positions of Minister of Planning and Minister of Higher Education in previous Baath Party governments.

⁹ Unpublished meeting between the author of this paper and some of the members of the 2012 Constitution Drafting Committee.

¹⁰ The formation of the Constitution Drafting Committee was preceded by the adoption of a new law for political parties in 2011, shortly after the beginning of the protests in Syria. However, the opposition considered that “the new parties that were subsequently licensed are mere façades and affiliated with the authorities, despite claiming to be independent”.

As for the participation of lawyers, judges, and media professionals, the opposition holds that, while the Constitutional Drafting Committee included individuals exercising those professions, these were selected by the Executive rather than by the legal, judicial, or academic institutions. There was no “conviction, desire, or capability” on the part of these individuals to construct a truly participatory and democratic constitution. It should be noted that during the process of drafting the constitution, there was no communication with any opposition figures or independent individuals “operating outside the official governmental or security frameworks.”

It should further be noted that various Syrian opposition factions had previously refused to participate in the Constitutional Drafting Committee upon its formation. From their perspective, the committee was carrying out its mission under extremely unfavourable and unhealthy conditions, amidst the remnants of thousands of victims, tens of thousands of detainees and displaced persons, and the presence of the army, armed forces, and security forces in the streets of Syrian villages, towns, and cities. They anticipated that the regime would insist on shaping the constitution according to its own interests.¹¹

An objective evaluation of that period requires asking whether the **opposition could have possibly accepted, at that time, participation in the Constitutional Drafting Committee had it been invited to. It also requires assessing whether the opposition was right in boycotting the process and whether, had it participated in it, it would have been capable of bringing about real change in the constitution and the subsequent course of events.**

There is no definitive answer to these questions, given that during that period, in the fall of 2011, there was a significant division and hardening of positions on both sides. The authorities did not want to involve anyone in a meaningful and influential way, avoiding any real change, even at the level of the procedural mechanisms of the constitutional process. Some who claimed to represent the political opposition were unwilling to negotiate or engage in dialogue at that stage unless they were handed power outright. There was a conviction that the opposition would have rejected participation in the constitutional process if invited, due to the manner in which the Constitutional Committee was formed and the procedures followed in drafting and approving the constitution, as well as the violent response of the government to the popular protests. This leads us to emphasize that the matter would have required an environment and preparations that were not in place, alongside a trust-building climate that was absent then and continues to be absent in Syria today.

B. ASSESSMENT OF THE EXTENT OF SOCIAL AND PUBLIC PARTICIPATION IN THE DRAFTING OF THE 2012 CONSTITUTION

As previously mentioned, even if governments resort to the option of “appointing” legal experts to draft the initial draft constitution before submitting it to a general referendum instead of “electing” a constituent assembly, this

¹¹ Oueidat, “On the Syrian Constitutional Draft.”

requires, in addition to selecting, drafting committee members who are renowned for their objectivity, independence, and legal expertise, a public discussion of the constitutional provisions before they are put to a referendum.¹² This embodies the concept of “public participation” and transparency considerations in constitution-making. Unfortunately, these aspects were not taken into account in the drafting of the current Syrian Constitution.

Indeed, criticism of the 2012 Syrian constitution-making process has focused on the absolute absence of public participation and transparency. The process itself was conducted in secret and strict confidentiality, “despite the appointment of an official spokesperson for the committee.” Additionally, there was no publication of the minutes of the meetings and discussions that were held by the drafting committee, either during the drafting phase or following the adoption of the constitution. Despite nearly a decade having passed since its adoption, “there has been no public debate on the constitution in the media, cultural institutions, universities, or other public forums to assess its merits and drawbacks before the public.”¹³ Contrary to the internationally adopted practices in constitution-making, which require subjecting the draft and its projects to discussions and dialogues conducted by media outlets, journalists, cultural forums, professional and labour unions, civil society organizations, and various relevant entities, the Syrian process did not follow these steps. There was no thorough study, dialogue, or public discussion that involved feedback from these various sectors. As a result, a clear understanding of the constitution and its content was not achieved among the electorate. This prevented the people from expressing their genuine opinions during the referendum, whether in favour or against, based on informed and objective assessments. Most, if not all, countries have adopted these contemporary phases and practices. However, in Syria, “according to its critics, the government limited itself to publishing the text of the constitution and promoting praise and accolades in favour of it, without providing an opportunity for comprehensive public engagement and scrutiny.”¹⁴

In contrast, some parties involved in the constitution-making process believe that the standards of transparency and public participation were indeed met during that stage. They argue that:

The referendum was accompanied by an extensive awareness-raising campaign and the active dissemination of information. However, it is acknowledged that not all Syrians had access to the information due to security and logistical reasons. Furthermore, there were individuals who were not directly involved or interested in the constitutional process. This observation aligns with a pre-existing phenomenon in Syria, characterized by a decline in public engagement and interest in public affairs and elections. In fact, voter turnout in some regions before the war did not exceed 5%.¹⁵

¹² Mitri, “Legal Remarks on the Draft Constitution.”

¹³ Statement issued by the National Coordination Body on the “referendum on the alleged new constitution.”

¹⁴ Oueidat, “On the Syrian Constitutional Draft.”

¹⁵ Unpublished meeting between the author of this paper and some of the members of the 2012 Constitution Drafting Committee.

At any rate, during that period, “general public sentiment” considered talk of “public participation” in 2012 “unrealistic,” as no one was concerned with such participation. Rather, for the people, violence had already begun, and their focus was on how to stop or mitigate its risks.

C. THE ADOPTION OF THE CONSTITUTION AND PUBLIC PARTICIPATION THEREIN

The criticism directed at the 2012 Constitution was not only limited to how the drafting committee was established but also extended to the circumstances and timing of the “referendum” itself. After the committee completed the drafting of the new constitution and handed it over to the President, Presidential Decree No. 85 of 2012 was issued, setting Sunday, 26 February 2012 as the date for the referendum on the draft constitution of the Syrian Arab Republic.¹⁶

The opposition forces at that time rejected the official call for the constitution referendum, and similar calls were made by opposition forces and some civil society organizations, both inside and outside Syria, to boycott the referendum process. For example, the statement issued by the General Authority of the Syrian Revolution – Revolutionary Council on 25 February 2012, stressed that “the General Authority of the Syrian Revolution calls on the Syrian people to boycott the farce of the constitution referendum out of respect for their intelligence,” and it urged citizens to “completely boycott and not go to the polling centres.” Similarly, the Executive Office of the Syrian National Coordination Body for Democratic Change in Damascus issued a statement on 26 February 2012, regarding the referendum on the “alleged” new constitution, stating that “... the draft constitution is being put to a referendum while the country is boiling politically, explosions are occurring in many areas, tanks, armoured vehicles, and soldiers are deployed everywhere, and the sounds of bombs, shells, and machine guns overshadow any other sound in numerous cities, towns, and villages from Horan in the far south to Aleppo in the far north.” The statement concluded that “the Syrian people ... are not concerned with the farce of the referendum on a supposed new constitution that will be nothing more than words that are not worth the ink they were written with.”¹⁷

The opposing opinions concluded that “setting a date for the referendum while killings, arrests, and sieges of cities continue is a clear message that opinion will be under the dominance of cannons, bullets, the torture of detention, and the need to address basic human needs.”¹⁸

¹⁶ The Ministry of the Interior indicated that the number of citizens eligible to vote, born on or before 1 January 1994, amounts to 14,589,945 citizens of both genders across various governorates. The ministry announced the allocation of 14,185 polling centers to conduct the voting process, urging citizens to exercise their right to vote at these centers.

¹⁷ Statement issued by the National Coordination Body on the “referendum on the alleged new constitution.”

¹⁸ Anwar Al-Buni, “[A Critical Reading of the New Syrian Draft Constitution](#),” 9 September 2011.

However, the referendum on the new constitution took place on 26 February 2012, as scheduled, and at the end of that day, the Minister of the Interior announced that the percentage of those who approved the new constitution reached 89.4% of the total number of voters.¹⁹ It is worth noting that the opposition, naturally, cast doubt on this percentage and pointed out that “all these numbers are certainly questionable as the opposition, in all its factions, boycotted the constitutional project, and various media outlets reported significant low turnout and participation in the vote on the constitution.”²⁰

Following the referendum, the President issued Decree No. 94 of 2012 to make the new constitution enter into force on 27 February 2012. The procedural path that was followed to draft and adopt the Syrian Constitution in 2012, along with pre-existing political positions and the general climate during that period, led to the opposition’s refusal to engage in the process, depriving the constitutional process of the element of “participation.” Additionally, citizens’ disinterest in the process further diminished “public participation,” ultimately resulting in the formulation of a constitutional text based on reactionary logic. Consequently, the constitutional text did not meet popular aspirations, demands, or rights.

Indeed, the trajectory of the process revealed that disregarding inclusiveness and downplaying the significance of public participation could only lead to further chaos and undermine the legitimacy of the constitution.

II. THE EXTENT TO WHICH THE 2012 SYRIAN CONSTITUTION ADDRESSED POPULAR ASPIRATIONS AND DEMANDS

It becomes evident from reviewing the course of events experienced by the country beginning in March 2011 that the constitution was one of the key drivers of the popular demands that sparked those events. Therefore, it was hoped that the 2012 Constitution, which came as a response to those popular demands, would fulfil them and reflect them through clear constitutional provisions reassuring the protesters that their voices had been heard and that their demands were on the path to being realized.

Did the 2012 Constitution fulfil this task? Was it successful in achieving it? Did it include provisions that differed from those of preceding constitutions? These questions will be addressed in the subsections below.

¹⁹ Daraji, *Constitutional Options for Syria*, 59.

²⁰ See: *A Democratic Transition Plan for Syria* (Washington: Syrian Expert House and the Syrian Center for Strategic and Political Studies, 2013), 46.

A. POPULAR DEMANDS AND THE CONSTITUTION

The constitution is closely linked to the popular protest movement that began in 2011, as many of its demands were due to clear “constitutional deficiencies and flaws.” These reveal:

- **Either a glaring deficiency in the constitution in place**, such as the demands for political pluralism, as expressed by the wide-ranging popular calls to repeal Article 8 of the constitution,²¹ which entrenched the Arab Socialist Baath Party as the “leader of the state and society”.
- **Or the lack of implementation of numerous constitutional texts and principles**, such as the “demands for freedom, accountability, and justice.” Such demands revealed that many of the rights and guarantees enshrined in the constitution were effectively frozen or legally trumped, making it easier to violate and infringe upon them.

It should be noted that all these demands echoed rights that were contained in the constitution. If the constitution had been effective and its provisions and guarantees had been respected, there would have been no need for popular protests to demand the practical implementation of constitutional rights that remained theoretical.

The National Coordination Body for Democratic Change inside Syria held its first founding conference in Damascus at the beginning of the events on 30 June 2011. It considered that one of the main requirements for ending the crisis was the recognition of the need to repeal Article 8 of the constitution – identified with despotism – and a public call, within a short period of time, to convene a general national conference with the objective of laying the foundations for drafting a constitution establishing a parliamentary system and submitting it to a general referendum for approval.²²

The relationship between the constitution and the crisis is also evident in the final statement of the Consultative Meeting of the National Dialogue, sponsored by the Syrian Government, which took place in Damascus from 10 to 12 July 2011. The majority of the official opposition forces, both inside and outside the country, boycotted the meeting, which was limited to a group of politicians, intellectuals, members of society, and young activists. Regarding the constitution, the statement mentioned that “the consultative meeting discussed the constitution and the discussion reflected different healthy and national perspectives, including with respect to Article 8 of the constitution. It found that amending it necessitates the amendment of several constitutional articles, as well as the preamble. Therefore, it

²¹ The article states: “The Arab Socialist Baath Party is the leading party in society and the state, leading a progressive national front that works to unify the energies of the masses of the people and place them in the service of the goals of the Arab nation.” Opposition groups have considered, for decades, that this provision had negative consequences on Syrian society, as it led to the abolition of political pluralism, enshrined the principle of revolutionary legitimacy, established legal discrimination between citizens based on their political affiliation, led to the monopolization of power, and contributed to corruption. Furthermore, it completely reversed the relationship between the party, the state, and society. Instead of the party serving the state and society, the state and society became hostages to the party that leads them in accordance with the constitution. See: Razan Zaitouneh, “The Democratic Constitution and the Syrian Constitution,” *Al-Adab*, 10 November 2008.

²² National Coordination Body for Democratic Change, *Political Statement*, 25 June 2011.

recommended the establishment of a legal-political committee to review the entire constitution and provide proposals allowing for the drafting of a modern and new constitution for the Syrian Arab Republic, which guarantees political pluralism, social justice, the rule of law, and fundamental human rights, empowers women and preserves their role, protects the rights of children, and defines the rights and duties of citizens on an equal basis for all.”

This clearly reveals that the deficiencies and impediments that were present in the constitution in place were one of the reasons that led the country to its current state.²³ It was also hoped that the constitution could serve as a tool for resolving and overcoming the crisis.

B. ANALYSIS OF THE NEW CONSTITUTIONAL TEXTS

The Syrian constitutional experience in drafting the 2012 Constitution reveals that there was no genuine and rights-based discussion regarding the dialectics and philosophy of its formulation, given that the government undertook the process in isolation after the opposition boycotted both the drafting and the referendum stages. As a result, the new constitution largely maintained the provisions of its predecessor, with some amendments aimed at appeasing the protesting public, such as the introduction of political pluralism, or the modification of the mechanism for electing the President, and the specification of the presidential term. However, apart from these changes, many of the texts from the previous constitution were repeated verbatim.

It becomes evident, when comparing the texts of the 2012 and 1973 Constitutions, that the similarities between the two primarily concern the following fundamental issues:²⁴

- The mechanism by which the constitution was adopted: Both the 2012 and the 1973 Constitutions were adopted via a constitutional referendum.
- The nature of the system of government: Both constitutions establish a republican democratic system of government, emphasizing the national character of the state.
- The form of the system of government: Both constitutions establish a system based on a dual executive power (President of the Republic and Council of Ministers), while granting the President the upper hand. The President is granted extensive powers that extend beyond the conventional boundaries of executive authority in Western countries and surpass the powers of a President in a presidential system. Additionally, parliamentary membership and ministerial positions can be combined.

²³ One cannot ignore the fact that the causes and factors that contributed to the country’s current state cannot be attributed solely to internal reasons and the accumulated practices of the ruling authority over decades. There are also external causes and factors that are no longer hidden, especially after a number of statements that were made by several politicians who held official positions in countries of relevance to the Syrian crisis. Those statements revealed the extent of foreign intervention and its role in pushing the country towards its current unfortunate fate.

²⁴ Hassan Al-Bahri, “[The Constitution of the Syrian Arab Republic: A Comparative Study of the 1973 and 2012 Constitutions](#),” *Damascus University Journal of Economic and Legal Sciences* 34, no. 2 (2018): 14-27.

- The establishment and powers of the Council of Ministers: There are no differences between the two constitutions regarding its establishment. Likewise, its powers remained unchanged in the 2022 Constitution.
- Rights and public freedoms: The content of both constitutions does not differ regarding the rights and freedoms enjoyed by Syrian citizens or the obligations they have towards the state.
- The powers of the People’s Assembly: These remained unchanged in the 2012 Constitution, except with regard to the mechanism for the election of the President of the Republic. The People’s Assembly no longer elects the President as it did under the 1973 Constitution, a shift having been effected from a referendum, as per the 1973 Constitution, to a general election by the people under the 2012 Constitution.
- The Presidency of the Supreme Judicial Council: In both the 1973 and 2012 Constitutions, the President of the Republic heads the Supreme Judicial Council.

Both constitutions also adopted the idea of prohibiting constitutional amendments regarding term limits. They also recognized the legal value of the preamble of the constitution, while adopting unified amendment procedures. Furthermore, they are both written or codified constitutions that are rigid rather than flexible.

As for the extent to which the 2012 Constitution met the demands and aspirations of the people, we will refer to the perspectives of both the government and its opponents on this matter as follows.

1. The Perspective of Government Supporters

Legal experts who participated in the process of drafting the constitution consider the 2012 Constitution a “natural and logical response to popular demands.” They argue that the majority of the popular delegations that the President met with personally after the protests began called for political and economic reforms. Their main demands focused on political reforms such as the recognition of political pluralism, the end of one-party monopoly on power, and the amendment of the mechanism for electing the President to provide for a direct election by the people. As such, the crucial text back then was Article 8 of the constitution. Consequently, the opinion of numerous human rights and political figures was sought to assess whether it was possible to annul Article 8 alone. The consensus was that a significant number of other articles in the constitution were interconnected with Article 8, which required a complete constitutional amendment. Additionally, there was a conviction that the chapter on rights and freedoms had to be modified and expanded as it was no longer appropriate decades after its adoption in the 1973 Constitution. As a result, the leadership in Syria, represented by the President, the leadership of the ruling Arab Socialist Baath Party, and the leadership of the Progressive National Front, agreed that there was a need for a comprehensive amendment of the Syrian constitution. This has already been accomplished.²⁵

²⁵ Unpublished meeting between the author of this paper and some of the members of the 2012 Constitution Drafting Committee.

Here, reference is made to several principles and provisions included in the new constitution, as opposed to what was stated in the 1973 Constitution, with the primary aim of responding to and meeting popular demands. Examples include:²⁶

- **The form of the political system of the state:** The 2012 Constitution established a political system based on political and party pluralism, as stipulated in Article 8 thereof. In doing so, it differed from the previous Constitution of 1973, which was based on the principle of the Baath Arab Socialist Party as the leading party of the state and society, in accordance with Article 8 of that constitution.
- **The method of electing the President of the Republic:** According to Article 85 of the 2012 Constitution, the President of the Republic is elected by the people through direct general suffrage in a single round. This is different from the method followed in the 1973 Constitution, which was based on a popular referendum on the sole candidate proposed by the People's Assembly upon the recommendation of the leadership of the Baath Arab Socialist Party. The 2012 Constitution, which introduced a new provision regarding the election of the President, explicitly stipulated for the first time in modern Syrian history following independence the need for the President to be directly elected by the people, in accordance with the principles of competitive pluralistic elections.
- **The term of the President of the Republic:** Although both constitutions granted the President of the Republic a term of seven years, the 2012 Constitution explicitly limited the number of terms. It stated that the President of the Republic cannot be re-elected except for one consecutive term, meaning that a maximum of two terms is allowed. This stands in contrast with the 1973 Constitution, which placed no limit on the number of terms, thus making it possible for the President to be re-elected for an unlimited number of terms.
- **Electoral disputes:** The 1973 Constitution distinguished between the examination of the validity of the election of members of the People's Assembly and the final decision on the validity of their membership. It granted the investigative power to the Supreme Constitutional Court, while exclusively assigning the People's Assembly the power to make the final decision on the validity of membership. This provision attracted numerous criticisms for contradicting the principles of independence and impartiality that should be upheld. It was thus rectified in the 2012 Constitution, which entrusted the Supreme Constitutional Court with the task of considering and making the final decision on the election of members of the People's Assembly.
- **The Supreme Constitutional Court:** The 2012 Constitution expanded the jurisdiction of this court beyond what was provided for in the 1973 Constitution. It granted it the authority to oversee the constitutionality of circulars and regulations, in addition to laws, and legislative decrees, as well as the supervision of the presidential election, the interpretation of constitutional texts, and the consideration of the loss of eligibility conditions by the President or a member of the People's Assembly. Additionally, the 2012 Constitution reduced the percentage of members of the People's Assembly who have the right to

²⁶ Al-Bahri, "The Constitution of the Syrian Arab Republic," 27-38.

challenge the constitutionality of laws before their enactment, from one-fourth as stipulated in the 1973 Constitution to one-fifth. Finally, the 2012 Constitution authorized individuals, under strict procedural conditions, to indirectly challenge the unconstitutionality of laws and legislative decrees, which was not possible under the 1973 Constitution.²⁷

Hence, supporters of the 2012 Constitution conclude that it represents “the beginning of a new phase, a pivotal turning point in Syria’s political life and contemporary history, a significant step towards democracy, and the establishment of a pluralistic representative democratic foundation for the Syrian political system, as well as a serious starting point for achieving political, economic, and social reforms in various aspects of Syrian life.”²⁸

2. The Perspective of Government Opponents

In contrast, the 2012 Constitution has faced significant criticism and accusations from opposition forces. The majority of the criticisms levelled against the new constitution can be summarized as follows:

- **The extensive powers of the President:** Most of the criticism directed at the constitution focused on the very broad powers of the President. The constitution, in essence, was a reflection of the position of the regime and the President, incorporating their desires and safeguarding their interests. Consequently, it gave the President as many powers as those included in the previous constitution. In fact, it conferred upon them absolute powers that the president of no other state enjoys. These powers utterly contradict the principle of separation of powers, effectively neutralizing the provisions of the constitution concerning democracy, pluralism, and other such principles.²⁹

According to these views, the new constitution upheld the full powers of the President, who remained in control of every executive prerogative (appointing the government and shaping its policies, serving as the Commander-in-Chief of the army and armed forces, appointing officials, concluding agreements and treaties, declaring a state of war or peace, and possessing absolute powers during crises). Additionally, the President retains control over the legislative authority (issuing laws and legislation) and the judicial authority (as the head of the Supreme Judicial Council). In doing so, the constitution concentrated powers that are meant to be distributed according to its own provisions.³⁰

Furthermore, despite the theoretical independence that the judiciary is supposed to enjoy, the President of the Republic chairs the Supreme Judicial Council (Article 133/1), and it is the President who “ensures” the independence of the judicial authority “with the assistance of” the Supreme Judicial Council (Article 132). Even if the vague meaning of “ensures” and “with the assistance of” is accepted,

²⁷ On the changes that were introduced to the Constitutional Court, see: Ibrahim Daraji, *The Constitutional Court in Syrian Constitutions: A Comparative Historical Legal Reading* (London: Legitimacy and Citizenship in the Arab World Programme, Conflict and Civil Society Research Unit, LSE, 2020), 63 and ff.

²⁸ This opinion is referred to in: Oueidat, “On the Syrian Constitutional Draft.”

²⁹ Oueidat, “On the Syrian Constitutional Draft.”

³⁰ Al-Buni, “Critical Reading of the new Syrian Draft Constitution.”

the fact remains that the President heads the Supreme Judicial Council, and the constitution does not specify the composition or mode of appointment of the council, which are left for the law to determine (Article 133). Similarly, the appointment, discipline, and removal of judges are left to the law rather than being determined by the constitution (Article 136). Given the powers of the President regarding judicial matters, these provisions are not sufficient to guarantee the independence of the judiciary.³¹

The President also has the authority to issue decrees when the People's Assembly is in session, and even when it is not in session, in cases of "absolute necessity" (an undefined term) (Article 113). While the People's Assembly has the right to repeal any law enacted by the President, it can only do so by an absolute majority vote of its members – a requirement that does not apply to the enactment of ordinary legislation by the People's Assembly. Furthermore, even if the assembly manages to repeal the decree, such a repeal does not have a retroactive effect, meaning that the President is granted unrestricted authority to issue temporary legislation.³² Furthermore, Article 113 grants the President of the Republic broader legislative powers compared to those granted to the People's Assembly, which is uncommon in most constitutions around the world, except in exceptional and emergency situations where it is not possible for parliament to meet. The People's Assembly only convenes for a limited period during the year; as stated in Article 64, it is called upon to convene for three regular sessions per year, totalling no less than six months. This grants the President of the Republic legislative powers during the period where parliament is not in session, resulting in a sustained practice whereby many laws are issued through decrees during the recess periods, in the absence of any urgent need. As such, the legislative authority's task is reduced to approving the President's decisions after they have been issued and have come into effect.³³

- **The limited powers of the People's Assembly:** Criticism has also been directed at the "limited powers" granted to the People's Assembly. For example, Article 75 states that the assembly has the right to discuss the ministerial statement, but it does not give it the authority to approve or consent to it. This means that the People's Assembly lacks the power to choose the Prime Minister and ministers. Consequently, it merely approves bills prepared by the government, which gives rise to the possibility of it rejecting bills on the basis of a majority that is not represented by the government, leading to a genuine political crisis. It should be noted that in democratic countries, the government obtains the confidence of parliament by having its statement approved by it, thereby reflecting the will of the majority elected by the people. Therefore, it was necessary to amend this article to grant the People's Assembly the right to approve or reject the ministerial statement, thereby rejecting the government appointed by the President, who should be required to pick the Prime Minister and ministers from the elected majority.³⁴

³¹ *Syria: Options for a Political Transition* (unpublished study by the Carter Center, August 2014 draft), 12.

³² *The New Syrian Constitution: An Assessment* (Constitution Net, 2012).

³³ *A Democratic Transition Plan for Syria*, 46.

³⁴ Mitri, "Legal Remarks on the Draft Constitution."

At the same time, in those instances where the constitution granted the People's Assembly additional powers, this sparked controversy and criticism, for "despite the fact that the constitution recognizes popular referendums, it has given the People's Assembly the power to amend their results in clear disregard for popular will."³⁵

- **Limited human rights:** The current constitution lacks a clear affirmation, typically found in the preamble, of the status and role of human rights and public freedoms in shaping the political, economic, and social framework for the Syrian society it addresses. Such omission deprives the text of one of the fundamental requirements placed on constitutions, which is the protection of an issue deemed necessary for their existence. Moreover, the regulation of these freedoms is left outside the framework of the international standards subscribed to by the state through its accession to relevant international treaties, or by virtue of international customary law and binding rules in this field. This deficiency runs contrary to what many constitutions around the world have embraced.

The new constitution failed to mention numerous rights, and no reference was made to fourth generation rights. The current text was unable to draw clear boundaries between direct political action (parties and political associations) and civil society, which seeks, through pressure groups, to collaborate with the ruling authority to advance individual rights. In this respect, Article 10 did not deviate from what was previously in effect, stating that "popular organizations, professional unions, and associations are bodies that bring together citizens to develop society and achieve the interests of their members. The state guarantees their independence, their exercise of popular oversight, and their participation in the various sectors and councils established by law, in those areas that achieve their objectives, and in accordance with the terms and conditions stipulated by the law."

In addition to the above, the right to form associations and unions is restricted by the requirement that they be based on "national foundations," which leaves the definition of what is to be considered national open to interpretation. Furthermore, while freedom of belief is enshrined, the freedom to practice one's beliefs is not (Article 42).

- **Religion and the civil nature of the state:** Article 3 of the constitution, which deals with "the religion of the President of the Republic" in its first paragraph and "the personal status of sects" in its fourth paragraph, has sparked a lot of controversy and debate. The main criticism directed at this article is that it discriminates among citizens based on identity (and not religion), because it suffices for the civil registry to indicate that a person's religion is Islam for them to be eligible to become President, whereas individuals whose religion is not Islam are excluded. The question is not a question of faith; what matters is the religion stated in the civil registry, regardless of whether the President is a believer or practices religious rituals. As for the fourth paragraph of the same article, it refers to the protection of the personal status of sects. However, it is high time to eliminate any reference to laws and ideologies based on sects and religions, especially considering the current events

³⁵ Al-Buni, "Critical Reading of the new Syrian Draft Constitution".

taking place in Syria and the Arab world, driven by religious and sectarian ideologies. The time has come for a civil state to be established, but this was ignored by the new constitution.³⁶

- **The neglect of women's rights:** An objective comparison of the majority of the provisions related to women's rights in the current 2012 Constitution and the previous 1973 Constitution reveals that the two are "almost identical." They share the same gender-related deficiencies and shortcomings, both in form and substance. Indeed, they subject women to multiple religious systems and generalize conservative constitutional values, they empty women's rights of their content through referral to legislation that contradicts them, and they disregard the inclusion of necessary provisions to safeguard women's rights. Furthermore, both constitutions resort to general phrases that are not accompanied by specific implementation mechanisms, creating "ambiguity" regarding women's enjoyment of specific rights. Despite some differences in the numbering of the articles and their linguistic formulation, the content is the same.

This led the "Coalition of Syrian Women for Syrian Democracy" to affirm in its evaluation of the 2012 Constitution that, despite addressing civil, political, social, economic, and cultural rights, as well as the right to live a life free from violence, the protection of motherhood, adequate housing, and state assistance in caring for minors, the elderly, and persons with disabilities, the constitution lacks specific provisions to address the significant gender gap in enabling women to exercise and enjoy these rights. This absence perpetuates unequal relationships within the structure of the family as a major factor in depriving women of their theoretical "rights."³⁷

- **The lack of implementing mechanisms in the constitution:** The new constitution superficially emphasizes a number of important principles but fails to provide any specific mechanisms to ensure the respect of these principles in actual practice. For instance, the judicial system is declared to be independent in name (Article 132), yet it is the President of the Republic who presides over the Supreme Judicial Council (Article 133/1). As a result, the judiciary is effectively under the control of the executive authority represented by the President. Similarly, the constitutional provisions relating to the rights and freedoms that are outlined in the second chapter of the new constitution are formulated as ambiguously as in the previous constitution, under which numerous infringements occurred. Article 43 of the new constitution (which is nearly identical to Article 38 of the 1973 Constitution) illustrates this point by stating that the state "shall guarantee the freedom and independence of the press, printing, publishing, and media within the limits of the law." The problem with this formulation is that it does not provide any indication of the types of restrictions that the law may impose, thereby leaving the mentioned freedoms susceptible to any form of constraints desired by both the executive and legislative authorities.³⁸

³⁶ Mitri, "Legal Remarks on the Draft Constitution". On religion and the constitution, see also: *Constitutional Revival: Tunisia and Egypt Rebuild Themselves*, (United Nations Development Programme Publications, 2011), 27 and ff.

³⁷ Sawsan Zakzak, Faek Hwajeh, and Maya Al-Rahbi, *Toward a Gender-sensitive Constitution and Lessons Learned from Constitution-building Processes in the Middle East and North Africa Region* (Coalition of Syrian Women for Syrian Democracy, 2014), 21.

³⁸ *The New Syrian Constitution: An Assessment*.

The principles of accountability and transparency are also among the standards by which one can measure the degree of democracy in a constitution. These principles are neither mentioned nor adopted as fundamental principles in the Syrian Constitution.

There are additional criticisms that have been directed at the constitution that cannot be ignored, such as the issue of Arabism in the constitution, which stems from the ideology of the ruling party, and has an impact on the principle of state neutrality towards nationalities. Consequently, it fails to build a state that respects all its ethnic and minority components and does not overlook the rights of non-Arab populations, as was also the case under previous constitutions. Furthermore, the constitution should have addressed the role of security agencies and their obligation to abide by the provisions of the law and respect human rights. The same applies to the army, which should explicitly be subjected to civilian oversight in any democratic constitution.

There is also the issue of the absence of several fundamental constitutional provisions, such as the principle of the supremacy of international human rights agreements over domestic legislation, the criminalization of discrimination between citizens, detailed guidelines with respect to how rights and freedoms can be restricted, and the conditions for implementing a state of emergency, particularly bearing in mind that the misuse of emergency powers in Syria over the past decades effectively suspended the constitution.

Based on all of the above, the opponents of the 2012 Constitution conclude that it “did not bring anything new except for the attempt to replace expressions of monopolization, control, and autocracy with ambiguous terminology,”³⁹ making it an undemocratic constitution that does not comply with any internationally recognized standards. They further assert that it failed to meet the popular demands raised by the mass protest movement during that period, occasionally attempting to circumvent them by merely symbolically referring to them without ensuring their effective implementation.

III. THE DEGREE OF SUCCESS AND EFFICIENCY OF THE 2012 CONSTITUTION AT THE IMPLEMENTATION LEVEL

As discussed in the sections above, the 2012 Constitution did not bring about revolutionary provisions from a constitutional standpoint. Instead, it limited itself to reproducing the majority of the previous constitutional provisions, while introducing amendments with respect to limited issues, the most important of which were the following: the change in the mechanism for the election of the President of the Republic, the recognition of political pluralism, and the broadening of the powers of the Supreme Constitutional Court. In this section, we will assess the degree to which these new provisions have been effectively implemented, while trying to determine the reasons behind their success or failure.

³⁹ Al-Buni, “Critical Reading of the new Syrian Draft Constitution.”

A. THE DEGREE OF COMPLIANCE WITH THE NEW CONSTITUTIONAL PROVISIONS

Based on the new provisions of the constitution, a new electoral law was enacted, under which several presidential, parliamentary, and local elections were held. Individuals also resorted to the Constitutional Court to challenge the constitutionality of some laws that were issued in accordance with the new provisions of the constitution.

1. Conducting Pluralistic Presidential Elections Based on the Provisions of the New Constitution

As previously mentioned, the most significant development in the 2012 Constitution was the amendment of the mechanism for electing the President of the Republic, who is now directly elected by the people in a single round. Under the 1973 Constitution, the sole candidate proposed by the leadership of the Arab Socialist Baath Party was subjected to a popular referendum. It is worth noting that, for the first time in contemporary Syrian history since independence, the 2012 Constitution stipulated the necessity of directly electing the President by the people, in accordance with the principle of competitive pluralistic elections.

Based on the new provisions, the President was directly elected for the first time in the presidential election of 2014 and again in the presidential election of 2021.

- Presidential Election – 2014:** The presidential election, which took place on 3 June 2014, was the first multi-candidate election in decades. Based on the provisions of the new constitution and the current electoral law, a total of 24 candidates, including two women and a Christian, submitted their applications to the Supreme Constitutional Court for the presidency. Out of these candidates, only three fulfilled all the necessary conditions for candidacy, as stipulated in the constitution and the general electoral law, including obtaining support from 35 members of parliament. The candidates who met these requirements were President Bashar Al-Assad, Hassan Abdullah Al-Nouri from the National Initiative for Administration and Change in Syria, a member of parliament from Damascus, and Maher Abdulhafiz Hajjar, a former leader in the People's Will Party and a member of parliament from Aleppo. On Wednesday, 4 June, the Supreme Constitutional Court announced that the voter turnout in the elections reached 73.42%. The number of voters was reported as 11,634,412 out of a total of 15,845,575 eligible Syrian citizens. On the same day, the Speaker of the People's Assembly announced the preliminary results, indicating that the candidate from the Baath Party, President Bashar Al-Assad, received 92.20% of the votes, while his competitor Hassan Al-Nouri received 4.47%, and the other competitor Maher Hajjar received 3.33%. On 16 July 2014, President Bashar Al-Assad took the constitutional oath for a seven-year term.
- Presidential Election – 2021:** The presidential election, which took place in May 2021, was the second election following the adoption of the 2012 Constitution. On 18 April 2021, the Speaker of the People's Assembly announced the opening of the candidacy process for the presidential election in accordance with the provisions of the constitution. Subsequently, it was announced that the Supreme Constitutional Court had received 51 presidential candidacy applications from the People's Assembly.

On 29 April 2021, the Supreme Constitutional Court received a box from the People's Assembly containing the written endorsements of assembly members for their respective candidates to the presidential election. The court was tasked with sorting and deciding on the candidacy requests within five days. On 3 May 2021, the President of the Supreme Constitutional Court announced in its initial statement that the court had decided to accept the nominations of Abdullah Saloum Abdullah, Bashar Hafez Al-Assad, and Mahmoud Ahmed Marai. The remaining candidacy applications were rejected due to their failure to meet the constitutional and legal requirements.

The results of the presidential election were announced in a press conference by the Speaker of the People's Assembly. They revealed that the candidate from the Baath Party, President Bashar Al-Assad, obtained 95.19% of the votes, while his competitor Mahmoud Merhi received 3.31% and the other competitor Abdullah Saloum Abdullah received 1.50% of the votes.

Those elections, in both their 2014 and 2021 editions, faced numerous criticisms, whether regarding the conditions set forth by the electoral law and the provisions of the new constitution, or due to the timing of the elections and the circumstances under which they took place.

Regarding the eligibility criteria for the position of the presidency of the Syrian Arab Republic, those conditions stipulate that the candidate must be a "resident of the Syrian Arab Republic for a period of not less than ten years of continuous permanent residency at the time of submitting the candidacy application." This provision has led to the exclusion of opposition members from participating in the electoral process, as the majority of them live outside the country, depriving many Syrians of the opportunity to run for the presidency, and contradicting the constitution, which states that citizenship is a fundamental principle encompassing rights and duties enjoyed and exercised by every citizen in accordance with the law. Moreover, citizens are declared equal in rights and duties, and discrimination based on gender, origin, language, religion, or creed is forbidden.⁴⁰ As discussed above, the discrimination among citizens in running for this position is also observed in the requirement that the presidential candidate must be a "Muslim," thereby depriving non-Muslim Syrians of the right to run for the presidency.

Additionally, according to the provisions of the constitution, a candidacy application for the position of the presidency of the Syrian Arab Republic is only accepted if the applicant obtains written endorsement of their candidacy from at least 35 members of the People's Assembly. Members of the People's Assembly are not allowed to endorse more than one candidate. This procedural mechanism has faced criticism due to the fact that the ruling Arab Socialist Baath Party holds a wide and comfortable majority within the People's Assembly. This means that candidates for the presidency will inevitably be from the leadership of the ruling Baath Party, or the parties allied with it, as it is easier for them to obtain the required written endorsements from assembly members. Moreover, this requirement has the effect of excluding opposition figures and political leaders, whether inside or outside the country.⁴¹

⁴⁰ For more details, see: Nael Gerges, "[Observations on the General Elections Law in Syria: Elections under Unfair Standards](#)," *The Legal Agenda*, 22 April 2014.

⁴¹ Hassan Al-Bahri, *Elections as a Means of Assigning Power in Democratic Regimes: A Comparative Analytical Study* (publisher, date, and place of publication not provided), 131-132.

These elections have also faced criticism from the countries supporting the Syrian opposition, who announced their boycott of these elections. Criticism has focused on the conditions and timing of the elections amidst the ongoing war in the country, the opposition's boycott of the elections, and the millions of Syrians taking refuge outside the country. They have also warned against the elections conflicting with the political process led by the United Nations to resolve the Syrian crisis. For this reason, several countries have prohibited the organization of these presidential elections within their territories.

2. The Adoption of the Electoral Law on the Basis of the Provisions of the New Constitution

In accordance with the provisions of the 2021 Constitution, a new electoral law was adopted – the General Elections Law No. 5 of 2014 – to regulate the election of the President of the Republic, the members of the People's Assembly, and the members of the local administration councils, as well as the organization of popular referendums.

In order to ensure the integrity and independence of the elections, the law stipulates the establishment of a judicial committee called the “Supreme Judicial Committee for Elections,” headquartered in Damascus. This committee is responsible for the administration of elections and referendums, as well as full supervision over the election of the members of the People's Assembly and the local administration councils. It is tasked with taking all necessary measures to guarantee the freedom, integrity, and safety of the electoral process.⁴²

In addition to establishing the Supreme Judicial Committee for Elections to replace the Ministry of the Interior in supervising the electoral process since 2011, several amendments were also made to the electoral law. As a result, members of the police and military were granted, for the first time, the right to vote (wherever they are in the country) in legislative elections, after it had been prohibited for a long time with the purpose of preventing military officers from interfering in these elections. Voters were allowed to use their personal or military identification cards instead of the electoral cards that were introduced in 1998, which had become the only accepted official document for voting since 2003.⁴³

The law faced numerous criticisms.⁴⁴ In addition to the criticism of the above-mentioned requirements placed on presidential candidates, there have also been concerns regarding the handling of presidential elections. The law grants the Supreme Constitutional Court the authority to oversee presidential elections, handle appeals related to them, and declare their results. However, the members of this court are appointed by the President of the Republic before they take their oath of office, which undermines their independence and neutrality as they are beholden to them.

⁴² Fourth Regular Report submitted by the Syrian Arab Republic, International Charter of Political and Civil Rights, Paragraph 103 and ff. See: UN Document CCPR/C/SYR/4 (27 May 2022).

⁴³ Ziad Awad and Agnès Favier, *Elections in Wartime: The Syrian People's Council (2016-2020)*, translated by Maya Sowan (Fiesole: Middle East Directions, Robert Schuman Institute for Advances Studies at the European University Institute, 2020), 7.

⁴⁴ For more details, see: Gerges, “Observations on the General Elections Law in Syria.”

The criticisms also extended to the manner in which the “Supreme Judicial Committee for Elections” is formed, as it has been pointed out that the provision proclaiming its independence does not make it effectively independent. This is due to the fact that the judiciary is headed by the President, who guarantees its independence, while the majority of judges belong to the Baath Party, which renders the mentioned committee non-neutral.

Criticism was further levelled at the fact that governors appointed by the government were granted the authority to “form election committees in each electoral centre from among the civil servants in the state” to manage the electoral centre. This grants the government control over the electoral process and its outcomes, in the absence of an impartial entity overseeing this process.

Likewise, critics targeted the division of electoral districts into two sectors, with 50% allocated to workers and farmers, and the remaining 50% to other segments of the population. This division is slippery and blurs the distinction between the two groups, making it easy to manipulate. Moreover, the provision stating that a referendum is considered successful if it receives an absolute majority of votes cast means that the referendum can be deemed successful even if fewer than 5% of eligible voters participate. Additionally, the law allowed the Ministries of Local Administration and Interior to appoint a number of employees to work under the supervision of the election committees throughout the electoral process. This may lead these employees to interfere in the electoral process in favour of the government’s interests.

After the adoption of the 2012 Constitution, legislative elections were held in 2012, 2016, and 2020. Additionally, elections for local administration councils took place in 2018 and 2022.

These elections reveal that the new constitution, enacted in February 2022, and the new laws concerning political parties (2011) and general elections (2011 and 2014) had no tangible impact whatsoever. Indeed, the division of electoral districts, the number of seats in each district, and the 50% quota for “workers and farmers” remained unchanged. Furthermore, the Baath Party leadership continued to play a significant role in shaping the electoral lists, despite losing its status as the ruling party of society and the state in the new constitution.⁴⁵

Despite the adoption by the electoral law of the principles of individual voting, individual candidacy, and individual vote counting, followed by the announcement of results for each candidate separately, the Baath Party, as it had done before, issued lists of candidates under the Progressive National Front. Starting from the 2012 elections, the Baath Party leadership changed the name of its candidate lists from “Progressive National Front lists” to “National Unity lists,” implicitly suggesting that “the nation is going through a crisis that requires national unity.” The “National Unity” lists included affiliated candidates from the front as well as independent candidates in most provinces, in numbers equal to the remaining seats. Conversely, the Baath Party left some open independent seats in other districts, without pre-determination, theoretically allowing room for competition. As a result, all candidates from the “National Unity” lists won, indicating that they underwent a merely formal vote on election day after being selected by the Baath Party leadership.

⁴⁵ Awad and Favier, *Elections in Wartime*.

As a result of the elections, the number of members of the Baath Party in the People's Assembly actually increased from 136 in the 2007 general elections to 168 out of 250 seats in 2016. The party thus maintained its dominance (over 67% of the seats) in the assembly. It is worth noting that among the ten new political parties,⁴⁶ two candidates affiliated with the recently established People's Party won after running as independents. At the same time, some of those parties boycotted the elections. In the legislative elections of 2020, the list of successful candidates included 166 members from the ruling Baath Party, representing 66.4%, and 17 members representing the Progressive National Front parties (excluding the Baath Party), representing 6.8% of the assembly. Independents accounted for 67 members, representing 26.8% of seats.

This also applies to the local administrative elections, where the elections resulted in the victory of "National Unity" lists, the majority of which were Baathist. The Baath Party continues to maintain its dominance over the administrative units' councils; it controls their executive offices, and all the governors belong to the party.⁴⁷

3. Enabling Individuals to Challenge the Constitutionality of Laws before the Supreme Constitutional Court on the basis of the Provisions of the New Constitution

As previously mentioned, the 2012 Constitution provided for indirect individual access to the Constitutional Court, granting the court jurisdiction to pronounce itself on the claim of the unconstitutionality of a law. It stipulated that the court's jurisdiction in this respect is exercised when, in the course of appealing a court ruling, one of the parties to the case submits a challenge against the constitutionality of a legal provision that was applied by the court who issued the ruling. If the court of appeal deems the challenge to be serious and necessary for the resolution of the case, it shall suspend proceedings and refer the challenge to the Supreme Constitutional Court. The Supreme Constitutional Court is then required to decide on the challenge within a period of thirty days from the date of its submission.⁴⁸

Following the adoption of the 2012 Constitution, a new law regulating the Supreme Constitutional Court was enacted in 2014, including detailed mechanisms regarding how individuals can exercise indirect access. These mechanisms were effectively implemented, allowing the Constitutional Court to exercise its jurisdiction in several cases. In most of these cases, the court rejected the challenge on procedural grounds. However, there was one case where the court initially accepted the challenge on procedural grounds but later rejected it on substantive grounds.⁴⁹

⁴⁶ The ten parties that competed in the 2016 general elections outside the Progressive National Front are: Al-Tadamun (Solidarity), Syria Al-Watan (Syria the Nation), Al-Tali'a Al-Dimuqratiya (Democratic Vanguard), Al-Dimuqrati Al-Souri (Syrian Democratic), Al-Tadamun Al-Arabi Al-Dimuqrati (Arab Democratic Solidarity), Al-Tanmiyah Al-Wataniyah (National Development), Al-Shabab Al-Watani Al-Souri (Syrian National Youth), Al-Shabab Al-Watani Lil Adalah wa Al-Tanmiyah (National Youth for Justice and Development), Al-Irada Al-Shaabiya (People's Will), and Al-Sha'b (The People).

⁴⁷ *The Regime's Management of Local Elections: What Do the Results of the Local Administration Elections Tell Us?* (Omran Center for Strategic Studies, 2018), 9.

⁴⁸ Constitution of the Syrian Arab Republic (2012), Article 147(2)(a) and (b).

⁴⁹ Daraji, *The Constitutional Court in Syrian Constitutions*, 69.

While this mechanism was effectively implemented in conformity with the new constitution, it is worth recalling that it was deemed flawed from the outset and was subject to criticism. Although the possibility of challenging the constitutionality of laws was granted to individuals, it was only granted at the appeal level, not during the original lawsuit. This limits individuals' access to the Constitutional Court, which also lacks the ability to initiate constitutional review on its own initiative. Instead, it is necessary for one of the parties to raise the matter before the court considering the case, be it a civil, criminal, or administrative court. It is a prerequisite for this court to be a second instance court, meaning that the referral must be submitted in the course of an appeal, which renders any referral invalid if it is submitted before a court of first instance.⁵⁰

The Syrian Constitution further imposes a number of conditions on the possibility of exercising the right to referral, including that the challenger must be a party to the case, meaning that they must have a personal interest and direct stake in the lawsuit, and the provision being challenged as unconstitutional must directly affect them. This prevents ordinary citizens or legal entities such as associations, unions, or civil society organizations from pre-emptively challenging a legal provision they believe to be in violation of the constitution. Additionally, the second instance court that considers the case is granted discretionary authority to determine whether the referral is serious and necessary for resolution. This means that the second instance court can decide to dismiss the challenge to the constitutionality of the legal provision, thereby blocking its referral to the Supreme Constitutional Court. This closes the only indirect gateway for individuals to access the Constitutional Court. As a result, the challenge to the constitutionality of laws is not dealt with as a matter of public order. If one of the parties raises it, the assessment of its seriousness is left to the absolute discretion of the court of appeal, leading to divergent judicial interpretations. What one court considers a serious challenge, another court may not, even if it concerns the same legal provision.⁵¹

B. THE DEGREE TO WHICH THE GAINS AND THE NEW CONSTITUTIONAL PROVISIONS WERE REVERSED

Based on the above, it cannot be claimed that there were genuine, significant, and impactful political or constitutional gains achieved by the 2012 Constitution that were later reversed. It is worth noting that the only observable change was the recognition of political pluralism and the abolition of Article 8, which was the most prominent article in the previous constitution, referring to the Baath Arab Socialist Party as the leader of the state and society. However, this constitutional change did not have a major impact in reality. Apart from the change in the names of party and front lists in the elections (from Progressive National Front lists to National Unity lists) and the granting licenses to some new parties that did not have any tangible impact on the ground, no other significant changes can be identified.

⁵⁰ Jamila Al-Charbaji, "[The Role of the Supreme Constitutional Court Role in Supervising the Constitutionality of Laws in the Syrian Arab Republic in the 1973 and 2012 Constitutions](#)," *Damascus University Journal for Economic and Legal Sciences* 29, no. 3 (2013): 132.

⁵¹ Hassan Al-Bahri, *Constitutional Courts: A Comparative Study*, 1st ed. (2017), 169.

There has not been a genuine implementation of the provisions related to political pluralism, which should have expanded the base of political participation for licensed parties. For example, the internal regulations of the People's Assembly should have been amended to enable these parties to establish parliamentary blocs within the People's Assembly, enhancing the assembly's performance and encouraging initiatives from all represented parties, rather than restricting them mostly to the party with the parliamentary majority. Additionally, it is important to include opposition parties within the democratic process, thereby organizing political and social activism among various political and social currents in the country.⁵² Furthermore, there is a need to reconsider the mechanism for party licensing and the decisions regarding their dissolution, as stipulated in the current Parties Law issued in 2011, which places the Ministry of the Interior as the guardian overseeing all stages and processes of that procedure.

Similarly, the dominance of the executive authority over the legislative authority persisted, despite the constitutional priority given to the latter in the Syrian Constitution. In fact, the constitution did not explicitly adopt the principle of separation between the executive and legislative authorities in the traditional sense of the word. Upon closer examination of the relationship between the People's Assembly and the executive branch, it becomes evident that the balance clearly tilts in favour of the latter.⁵³ Despite the constitution's emphasis on diversifying the sources of legislative drafts and achieving harmony between the executive and legislative authorities, constitutional studies that have analysed the performance of the People's Assembly in its legislative function confirm that the executive authority dominated, and continues to dominate the legislative process through the bills it prepares and submits to the People's Assembly, as well as through legislative decrees issued by the President of the Republic in accordance with their constitutional powers as specified in Article 113 of the constitution. The legislative performance of the People's Assembly is thus characterized by the fact that its outcomes are predetermined in favour of passing policies desired by the government, despite the formal legislative process through which bills or legislative decrees are submitted to the assembly.⁵⁴ As for parliament's oversight role, the current status quo confirms beyond any doubt that the assembly does not fulfil this role except under very limited constraints. It is more akin to protocolary procedure or parliamentary tradition than to effective parliamentary oversight.⁵⁵

The failure to implement constitutional provisions can be attributed to various reasons, the most important of which is the nature of the constitutional provisions themselves. They are not "revolutionary constitutional provisions" in the true sense of the word, as they maintain the structure and content of the previous constitutional text, except for the limited changes mentioned earlier. This has resulted in a lack of substantial change because nothing significant in the constitution was altered. In addition, many constitutional provisions refer to legal texts that render them devoid of substance, especially in the absence of an effective mechanism to ensure the amendment of legal texts

⁵² Ahmad Mohammed Tawzan, *A Post-War Parliament in Syria: A Vision for Assessing and Developing the Legislative and Oversight Performance of the People's Assembly* (Damascus: Damascus Center for Research and Studies, 2018), 14-16.

⁵³ Tawzan, *A Post-War Parliament in Syria*, 8.

⁵⁴ Tawzan, 7.

⁵⁵ Tawzan, 23.

that violate constitutional provisions. Indeed, the constitutional provision requiring the nullification of all legal texts that contradict its provisions within a maximum period of three years has never effectively implemented.

It is also important to acknowledge that the Syrian situation, with all its complexities and challenges over the past decade, does not allow for an objective assessment of the actual implementation of those constitutional provisions. The ongoing war and its enduring political, human rights, economic, and social repercussions have hindered the ability to effectively implement both constitutional and legal provisions. Consequently, they impede any objective evaluation of their implementation.

C. THE RELATION BETWEEN THE FORM OF GOVERNMENT IN SYRIA AND THE CONSTITUTIONAL CHOICE THAT WAS MADE

Finally, regarding the relationship between the form of government in Syria and the constitutional choice that was made, as well as the success or failure in implementing the constitutional amendments, it is worth noting that the constitutional history of modern Syria clearly reveals that there was no genuine opportunity to adopt a constitution that fully respects human rights and democratic principles, whether in terms of the process by means of which it was adopted or in relation to its content. Throughout recent history, the Syrian people have witnessed several and divergent mechanisms for drafting their constitutional documents:

- Appointed or elected constituent assemblies
- Constitutions imposed by an individual leader, a military council or political parties
- Constitutions that came into force via referendum or in the absence thereof

Overall, the Syrian people have not truly been able to engage in a genuine constitutional process that aligns with the required democratic standards, particularly in terms of respecting the principles of inclusivity, transparency, and necessary societal participation. This applies to the process of drafting the constitution, discussing it, and conducting a referendum on it. It should be noted that if only some criteria are met, while the rest are disregarded, the constitution does not come into effect or does not last for long.

The 2012 Constitution did not depart from this context. Instead, it reflected the nature of the political system in terms of monopolization, exclusivity, and lack of pluralism. This was evident at the level of both the process that was followed for its adoption and its content.

Procedurally, the adoption of the 2012 Constitution involved the appointment of a committee with a single political orientation, which operated in a manner that did not uphold the required standards of transparency. There was a lack of genuine public and societal participation, making the process more akin to a formal referendum for the purpose of approval. There were no objective discussions or mechanisms ensuring that feedback from the people reached the committee members responsible for drafting the constitution.

The nature of the political system also exercised its influence on the content of the constitution, specifically in the provisions concerning the President of the Republic and his powers, as mentioned earlier. Furthermore, there was a disregard for the principle of separation of powers, with the executive branch encroaching upon the role and powers of the legislative authority, including its inherent right to legislate. It can be said that this constitution in reality does not constitute or establish a political system that is supposed to be built upon its provisions. Instead, it provides a constitutional framework for an existing political system, enhancing its powers, safeguarding its position, and legitimizing its dominance, thereby perpetuating the characteristics of previous constitutions.

CONCLUSION

It is evident from all of the above that the Syrian Constitution of 2012 was drafted and adopted under extraordinary circumstances witnessed by the Syrian State, which still persist. It was intended to be one of the key steps contributing to the resolution of the Syrian crisis. However, it is abundantly clear that it failed to achieve this goal, turning instead into a new reason for the crisis rather than a tool for its resolution. This is evidenced by the violent course Syria experienced after its adoption, as well as the formation of the current Syrian Constitutional Committee under the auspices of the United Nations, which is currently working on adopting constitutional texts that are different from the provisions of the current 2012 Constitution.

The previous pages revealed numerous flaws that accompanied the drafting of the 2012 Constitution, both in form and content. The procedural democratic standards that must be abided by in constitution-making were not entirely respected, particularly in terms of public and societal participation and transparency during the drafting and adoption phases. Furthermore, substantively, it did not adequately address the popular demands and genuine needs of all segments of the Syrian population, encompassing their various components and political stances.

The lesson learned, in this context, is that for those who aspire to draft a genuine constitution for the country and all its citizens, it is not sufficient to rely on and justify the opposition's preconceived refusal to participate in the process. Instead, genuine efforts must be made to create suitable conditions for the opposition and all representative forces of the people to participate. It is not merely about formally inviting the opposition and waiting for their rejection to proceed independently with the process. What is required is the "creation of a conducive environment" for the opposition to accept to participate in the process, enhancing its legitimacy and inclusiveness. This necessitates practical and legal measures to foster an atmosphere of trust and demonstrate a genuine commitment to embracing participation.

The Syrian constitutional experience clearly reveals that periods of crisis and conflict do not favour constitution-making. Even if the constitution itself is one of the causes of wars and conflicts, it is necessary to explore "temporary" constitutional options until suitable conditions arise for drafting a genuine constitution that enables

inclusivity and meets the requirements for an environment conducive to public participation, which has become a legitimate source for constitutions.

Lessons should be drawn and applied to the process of drafting a future constitution for Syria. Despite the importance of the constitution, rushing through the adoption of a final constitution should be avoided. The constitution should be drafted by an elected body, or a body derived from an elected body. The drafting process should resemble a building process, in the sense of erecting a conceptual and rights-based system, rather than the mere drafting of rigid texts that only allow for narrow interpretations. It should be noted that the purpose of adopting this approach is that inclusivity, public participation, and civil society activities require time and a free and secure environment. They should not be subject to the influence of armed groups or the desire for revenge and exclusion. None of this can be achieved during times of war and conflict.

Syria's current situation also reveals a general attitude of distrust towards any legal or constitutional texts that are formulated. The country has witnessed a history of unreliable processes of drafting and implementing legal and constitutional provisions. This has led the majority of Syrians to lose interest and refrain from participating, driven by the belief that either pre-determined and detailed texts will be formulated to serve specific political agendas, or that "good texts" will be produced but not applied or implemented properly. This has resulted in a state of negativity and indifference that will persist in the future unless serious actions are taken to change this perception through tangible practices on the ground.

One of the lessons learned, from a legal perspective as well, is the continued ability of national laws to undermine the constitutional provisions by rendering them devoid of substance and value. It is expected that the opposite should occur, given that the constitution is the "supreme and highest law of the state" to which all other national legislation should adhere. However, in reality, the Syrian Constitution refers many of the rights it stipulates to national legislation that contradicts its provisions. This should be avoided in any subsequent constitutional formulations.

The Syrian constitutional experience clearly reveals that the most important lesson to be drawn from the 2012 Constitution is that a true constitution, deserving of the Syrian people and in line with international standards and comparative experiences, requires a genuine cultural and constitutional "revolution." It does not appear that "everyone, both supporters and opponents" is currently prepared to accept and participate in such a constitution. It necessitates the resolution of contentious issues that have not yet been settled (such as matters of religion, secularism, legislative sources, the nature of the political system, and the form of the state), as well as the adoption of new principles that have not been addressed previously (such as issues of citizenship and minorities, gender equality, cementing the concept of opposition and its rights, power sharing, and subjecting security forces and the military to constitutional legitimacy). This requires genuine and arduous work involving everyone.

The cultural space did not allow for the discussion of these contentious issues throughout the decades, especially during the years of war in which the 2012 Constitution was drafted. Some of these issues were considered "taboos,"

and submission to the dominance of others became an accepted norm. As a result, the cultural space was absent and neglected for a very long period, and it did not contribute to the formation of a pressure force or momentum to assert specific rights and defend specific interests.

One of the lessons learned from the experience of the 2012 Constitution is that the entire society has borne the cost of the absence of civil society in Syria during the previous decades, which resulted in its ineffectiveness and the paralysis of its ability to change the course of constitutional and field events.

It is necessary here to grant clear rights and sufficient freedoms to civil society organizations by amending all legislation related to their work and abolishing the imposed guardianship authority, in order to enable them to play a genuine enlightening role in raising awareness levels. It should be noted that there are many issues that need to be addressed to restore unity and solidarity in the fragmented society and to restore civil peace. Civil society organizations should fulfil this role, provided that their independence is guaranteed, and they do not have political orientations and objectives that serve one party or another, which would alter their nature as civil society.

For the future, it is hoped that genuine lessons will be learned from past mistakes in order to work towards adopting a new constitutional document and a different constitutional social contract. This should be the result of a true national and popular dialogue, not only between the government and its opponents, but also among all of the Syrian people, without any exceptions, exclusions, or discrimination.

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