

CHAPTER 4

Drafting a Modern Constitution for Syria



THE CONSTITUTIONAL CULTURE IN SYRIA

Fifteen different constitutions have been issued in Syria since the foundation of the modern Syrian state in 1920.¹ These include permanent, temporary, and amended constitutions as well as reversions back to previous constitutions. The volatility of the constitution for the Syrian state stems from the country's frequent military coups and political transformations, each of which instituted radical changes in an attempt to give the appearance of political legitimacy. The first constitution, the Constitution of the Arab Kingdom of Syria, which was drafted in 1920, proclaimed Syria to be a civil representative monarchy. It specified the powers of the king and the prime minister, who was subject to the confidence of the General Conference, which was made up of two chambers: the popularly elected People's Assembly; and the Council of Sheikhs, half of whose members were appointed by the king and the other half of whom were elected by members of the People's Assembly. The constitution also approved the existence of the Supreme Constitutional Court.

In 1928, the popularly elected Constitutional Assembly selected a committee to draft a new constitution for Syria. This constitution proclaimed Syria to

be a representative republic whose capital was Damascus and whose religion was Islam. This constitution gave significant powers to the president, but it also limited his term to five years and prohibited his reelection until five years had passed after the end of his first term. In 1930, the constitution was amended at the order of the French high commissioner of the Levant.

After the Syrian people obtained independence in 1946 and the final French soldier withdrew from Syrian soil in 1947, the first head of the independent Syrian state, President Shukri al-Kuwatli, amended the constitution and changed the electoral system from two rounds to one round. Al-Kuwatli then amended the constitution again in 1949 to allow the president to be reelected directly after the completion of his first term. However, Husni al-Zaim deposed him in a coup d'état on March 30, 1949, and suspended the constitution.

In August 1949, Sami al-Hinnawi led another military coup and then called for the election of a constitutional assembly to draft a new constitution. A new law was issued for the election of this assembly, and Syrian women participated in the voting for the first time. The Constitution of 1950, also known as the Constitution of Independence, is a significant democratic development in Syria. It proclaimed Syria

to be a representative state, granted broad powers to the prime minister, and at the same time limited the powers of the president. The constitution also strengthened judicial authority, as well as the state's democracy and institutions, by modernizing the Supreme Constitutional Court. The Constitution of 1950 was advanced with respect to rights and public freedoms based upon the Universal Declaration of Human Rights issued in 1948.

In 1952, Adib al-Shishakli led his second coup d'état and suspended the constitution until a new constitution was issued in 1953. This constitution has been characterized as the first presidential constitution. It removed the position of prime minister from the government and gave wide executive powers to the president in a system that resembled that of the United States of America. This government was removed in 1954 in a countercoup against al-Shishakli, after which the constitution of 1950 was reinstated.

In 1958, the constitution was suspended when Syria was unified with the Republic of Egypt to form the United Arab Republic; the 1950 constitution was replaced with a temporary constitution drafted by Gamel Abdul Nasser, but this constitution was canceled after the two countries were separated in 1962. In 1963, the Ba'ath Party staged a coup, which effectively suspended the constitution, and imposed a state of emergency (that was not lifted until after the outbreak of the Syrian revolution in March 2011). The National Council for Revolutionary Command issued a temporary constitution for the country in 1964, another constitution in 1969, and a yet another constitution after Hafez al-Assad assumed power in 1971.

In 1973, Hafez al-Assad formed a committee to draft a permanent constitution for the country. This constitution, which was adopted via popular referendum, imposed the Ba'ath Party's ideas and principles upon Syrian society, proclaimed that the Ba'ath Party was the leading party of the state and society, and declared that the Ba'ath Party's National Council for Revolutionary Command was the sole party authorized to nominate the republic's president, whose confirmation was subject to a popular referendum. This constitution also gave the president of the republic

broad powers, whereby he is not only the head of state but also the general secretary of the Ba'ath Party, the supreme commander of the army and the armed forces (Article 103), and the head of the Central Command of the National Developmental Front. Moreover, the president's powers are both executive and legislative, because he has the right to dissolve the People's Assembly (Article 107), assume legislative authority when the council is not in session (Article 111), and create laws (Article 108). He also has the right to appoint and dismiss vice presidents and delegates and to specify their duties; to appoint and dismiss the prime minister, his deputies, and ministers (Article 95); to declare war (Article 100); and to declare and cancel a state of emergency (Article 101).²

In 2013, this constitution was amended under the pressure of the spreading peaceful demonstrations that emerged out of the beginning of the Syrian Revolution in March 2011. Although the new constitution (the Constitution of 2012) nullified Article 8, which stated that the Ba'ath Party was the leading party of the state and society, the powers of the president remained unchanged. Moreover, the constitution was written in a Ba'athist manner. Bashar al-Assad formed a committee to rewrite the constitution within part of a package of "reforms" for the political and administrative regime. Then, the interior minister in Bashar al-Assad's government announced that 89.4 percent of voters in the referendum had approved the new draft of the country's constitution, and thus the constitution took effect. The interior minister added that 9 percent of voters in the referendum voted against the new constitution and that the number of nullified votes was 1.8 percent.

All these numbers are certainly questionable. All aspects of the country's opposition boycotted the drafting of the constitution, and media outlets issued a number of reports about the weak turnout and low voter participation rate.

In any case, although the new constitution nullified Article 8, which stated that the Ba'ath Party was the leader of the state and society, it still preserved most articles and clauses from the previous constitution. It also increased the powers of the president of the republic and centralized his powers to an even greater

extent. Article 113 gave the president of the republic broader legislative powers than those afforded to the People's Assembly—powers that are rare in most of the world's constitutions except in exceptional emergency situations, when it is impossible to seat parliament. The People's Assembly in Syria only meets for a limited amount of time each year. (According to Article 64, the People's Assembly is called for three sessions a year, whose total must exceed six months). This gives the president of the republic legislative powers when the People's Assembly is not in session, which is what continuously happens. Many of the laws are issued by decree during People's Assembly recesses and on a nonemergency basis. As a result, the task of the legislative authority becomes one of approving the decrees of the president of the republic after they have been issued and come into effect.

Article 114 gives the president of the republic the power to prevent state institutions from carrying out their functions in case of grave danger or threat to national unity or the integrity and independence of national territory, allowing him to take rapid measures necessary to address the danger. The elastic language contained in this article gives the president of the republic significant capabilities to misuse his powers—which is largely what has happened in the past—without setting legislative controls and specific procedures for returning to the normal state of affairs.

Article 97 states that the president of the republic appoints the prime minister, his deputies, and the ministers and their deputies. The president also accepts their resignations, and dismisses them from their posts. This means that the president of the republic has actually become directly responsible for the work of each ministry, and his powers make him directly responsible for the work of the government. Though the president is theoretically subject to the accountability of the People's Assembly, in actuality the actions of the president are beyond question except in the case of high treason.³

CONSTITUTIONAL LEGITIMACY IN THE TRANSITIONAL PERIOD

With the outbreak of the Syrian revolution in March 2011 and the rising opposition to the Ba'ath regime (and the president specifically), the severity and scope of popular demands increased in an unprecedented manner. This presented the Syrian opposition and people with the challenge of reformulating the national contract embodied in the constitution and rebuilding the country's administrative, legal, and political system. The Syrian revolution is truly a historic opportunity to build a democratic state that exists in harmony with both the popular will that refuses the legal, political, and social reality imposed by the regime and the requirements of the age that reject authoritarianism, monopolization of power, suppression of liberties, and closed political and economic conditions.

On this basis, the Syrian Expert House's Working Group for Constitutional and Legal Reform studied the most important ideas of those that have been proposed for realizing constitutional legitimacy after the fall of the Syrian regime. The Syrian revolution at its core rejects the current regime, because it is authoritarian and an impediment to realizing the ambitions of the Syrian people, and it also rejects the constitutional legitimacy grounded in the Constitution of 1973, because it reduced the state and society to a tool in the hands of a group, party, or person. As such, any researcher or politician must account for the fact that the Constitution of 1973 and the Constitution of 2012 cannot in any case reflect the temperament of the Syrian people, especially after the revolution of March 2011.

The Constitution of 1973 is one of the instruments that laid the foundation for and imposed the legitimacy of the Ba'ath regime embodied by presidents Hafez al-Assad and Bashar al-Assad for nearly four decades. As noted above, the constitution stated that the Ba'ath Party was the leading party of the state and

society and that the National Council of the Ba'ath Party was the sole party authorized to nominate a presidential candidate. This constitution, which proclaimed Syria to be a socialist Arab-national state, is also considered a model for limiting public freedoms.

Even though the Constitution of 2012 is the most important reform that Bashar al-Assad has undertaken since becoming president, it is in reality still a tool in the hands of the president to monopolize power and infringe upon the judicial and legislative authorities. The recent constitution, an advanced version of the Constitution of 1973, grants the president the power to infringe upon the state's judicial and legislative institutions by reducing the legislative term of the People's Assembly as well as the opportunity to issue legislation without parliamentary review, as indicated in Articles 114 and 116. Moreover, the president also appoints the prime minister and is the chairman of the High Judicial Council—the highest judicial authority in Syria. Additionally, the Judicial Council is composed of seven persons, four of whom serve at the behest of the executive authority.

In this respect, it is necessary to search for an alternative for these two constitutions—even if it is temporary. Several proposals were studied for solving the problem related to the legitimacy whereby the country will be governed after the fall of the existing regime. The following three scenarios and choices were proposed.

The First Scenario

The first scenario entails suspending the Constitution of 2012 and reinstating the Constitution of 1950 without any amendments. This constitution is an important reference point in Syrian legislation, a historical event in of itself as the Constitution of Independence (the first constitution issued after Syria gained its independence from France), and the most recent reliable constitution because the Constitutional Assembly was popularly elected and thus enjoys genuine popular legitimacy. Moreover, given the time of its issuance, this constitution is more developed than the other constitutions regarding rights and public liberties. Most members of the Syrian Expert

House support this option. In fact, it has become a point of near consensus among the Syrian opposition (especially in light of the nostalgia for the time of independence, the most notable example of which has been the adoption of the independence flag as the flag of the current revolution).

This proposal, however, is not without shortcomings. The Constitution of 1950 does not contain any formula for a transitional government or transitional executive body, for the scope of the transitional government's executive and legislative powers, or for the timelines for constitutional deadlines in the event of a constitutional or governmental vacuum, as is anticipated with the fall of the regime. Moreover, reinstating the Constitution of 1950 after suspending the Constitution of 2012 will not have significant value or a positive practical effect upon governance during

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the transitional period. Instead, it will merely be a cosmetic step that does not address the dilemma of actual constitutional legitimacy.

The Constitution of 1950 was also drafted sixty-three years ago amid a sociopolitical situation that was extremely different from that of today. Today, people demand genuine change that affects their economic, political, and social life and that satisfies their aspirations for more of the rights and liberties that have been guaranteed by the international conventions and treaties signed by Syria since the Constitution of 1950 was issued—especially the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights that Syria ratified in 1968.

The Second Scenario

The second scenario entails suspending the Constitution of 2012 and reinstating the Constitution of 1950 with the necessary amendments. This idea offers a solution to the problem raised by the first scenario and choice by creating a constitutional formula that organizes the management of the transitional period. The articles of the Constitution of 1950 that cause controversy between groups of the Syrian people will be amended or nullified temporarily until a new permanent constitution can be drafted.

The shortcoming of this idea is the lack of a constitutional or legitimate mechanisms for instituting these amendments. The drafters of the Constitution of 1950 were elected; it will be nearly impossible to create an elected committee to amend this constitution directly after the fall of the regime. Moreover, no Syrian political party has the power to choose a certain committee to amend this constitution during the transitional period. It will not be possible to amend the Constitution of 1950 at the beginning of the transitional period in a manner that satisfies Syrians' ambitions for a state that respects constitutional and legal legitimacy. This situation illustrates the importance of expediting the process of drafting a new and permanent constitution for Syria by agreeing upon a mechanism to draft this constitution—as proposed in the following paragraph.

The Third Scenario

Under the third scenario, which is the recommendation of the Syrian Expert House, following the fall of the Assad regime, the transitional government will issue a constitutional declaration of limited power and duration. The declaration will clarify the government's powers, tasks, administrative nature, time frame, and mechanisms and method for organizing the election of the constitutional assembly charged with drafting a permanent constitution that will be later put to a referendum.

MECHANISMS FOR DRAFTING THE CONSTITUTION OF THE NEW SYRIA

The Syrian people as a whole must ratify the constitution, and it must express their true and legitimate aspirations and ambitions. The constitution is the overarching framework for the relationship between the citizen and the three branches of the government, the guarantor of rights and individual liberties to all ethnic and religious factions of the people, and the regulator of the government and its apparatuses. The constitution must defend the independence and integrity of the judiciary, ensure the effectiveness and vitality of Parliament, and be the ultimate expression of the people's and state's identity.

Therefore, the constitution must be completed through a modern and clear process that builds confidence between the citizen and the state, giving Syrians a sense of pride in this contract. The major problem in any democratic transition in this era—especially when transitioning from an authoritarian, dictatorial state to a modern, democratic state resembling the rest of the world's democracies—is first the transition to the modern conception of a state whose legal basis is the constitution. Herein lies the problem: How can states suffering from a tremendous amount of political and legal chaos adopt a new constitution that represents a clear break from the previous extended period?

One of the established constitutional concepts in the modern era is that people are sovereign in any state. Sovereignty passed from the ruler to the nation—the people—once the people had been transformed from a group of subjects into citizens living according to a clearly defined social contract. As part of the process of exercising their sovereignty, the people must enjoy a monopoly on the exercise of their inherent constituent authority, whereby they alone have the authority to draft a constitution that they deem appropriate without intervention from rulers—and in return the people and rulers both agree to abide by its rules.

There is no doubt that devising a mechanism for drafting the new constitution for the country as soon as possible is one of the most pressing priorities

incumbent on the party authorized to govern Syria during the transition period. The mechanism must be clear, it must be organized, and it must express the Syrian people's aspirations and ambitions for building a great and democratic state.

There are two mechanisms for drafting a constitution. The constitution can either be drafted by a popularly elected body, called the constitutional assembly (or the constituent assembly); or a draft of the constitution can be offered up to a public referendum in a process called the constituent referendum (or the popular constituent referendum).

We first briefly outline these methods, and then we consider which one is best for the Syrian situation. We acknowledge that the mechanisms for drafting a constitution from first draft to adoption are of no less critical importance than the text of the constitution itself.

The Constituent Assembly

The constituent assembly is one of the democratic methods followed to draft and establish constitutions. In this section, we review the content and scope of this method, the ideological bases upon which it depends, and the types of constituent assemblies—and we also evaluate this method as a whole.

The origins of the constituent assembly stem from the principle of national sovereignty, whereby the nation, or the people, is the sole sovereign entity in the state. In its essence, this idea is a genuine application of the system of representative democracy after direct democracy has become an impossibility.

In this method for drafting constitutions, the nation—the sovereign source of all authority—authorizes its representatives to exercise sovereignty on a one-time basis to draft the constitution. The nation's representatives form a body—called the constituent council, the constituent assembly, or the constitutional conference—that drafts the regulations for ruling the country in the name and on the behalf of the nation. The constitution this body issues can be considered as if it were issued from all members of the nation. In this situation, it is not necessary to submit the new constitution to the people once again. Instead, this document comes into effect as soon as the

authorized body adopts it, without being subject to a second approval by any other party. The constituent assembly is a direct application of the social contract that establishes the political community and makes the rules for its public authority. Hence, the constitution must be drafted by the community's members, or the people as a whole, and not by a certain faction.

The constituent assembly method spread to a number of the world's states at various historical stages. The American colonies revolting against British imperialism used this method to draft their constitutions after gaining their independence from the British Crown in 1776. From the United States of America, the method moved to France after the French Revolution in 1789 upon the drafting of the first of the revolution's constitutions in 1791. France used this method to draft the constitutions of 1848 and 1875 as well.

The constituent assembly method was also used in other states during the last century, especially during the interwar period and after World War II, when many countries declared their independence or entered into new stages of their history. For example, this method was followed in writing the German Constitution of 1919, the Austrian Constitution of 1920, the Spanish Constitution of 1931, the Italian Constitution of 1947, the Indian Constitution of 1949, and the Syrian Republic Constitution of 1950.

There are several types of constituent assemblies. There are limited objective constituent assemblies, like the American constituent assemblies, whose purpose does not extend beyond drafting the country's constitution. There are also constituent assemblies with a legislative role, whose purview extends to contain functions like legislative authority in addition to drafting the constitution.

We might find this type of assembly primarily in the wake of revolutionary movements. In these cases, the constituent assembly is not only entrusted with drafting the constitution but also exercising the jurisdictions of the legislative and executive authorities. The constituent assembly plays this role until the state's various institutions are formed after the drafting and passing of a new constitution. As such, assemblies like these, whose ranks include the French

constituent assemblies, are described as “general constituent assemblies.” There is no doubt that the limited objective constituent assembly is the preferred method for preventing authorities from overlapping and confining them to specific responsibilities.

The election of the constituent assembly, however, does not lack flaws and shortcomings regardless of the widespread popularity that it may enjoy. The transitional government needs a long time to be able to carry out a fair electoral process, given complicated social and security conditions. Instability will become a serious problem after the fall of the regime due to the spread of armed groups and the large number of refugees. Internally displaced persons will complicate any electoral process and will need to be returned to their cities and villages, before they can exercise their electoral right.

The Syrian voter may not cast his or her vote based upon competency and constitutional or legal experience, or his or her conviction of a candidate’s plan and vision. Doctrinal, political, and sectarian conflicts may affect the process of electing the constituent committee and may produce a constituent assembly that is not sufficient for the ambitions of the Syrian people and the principles of their historic revolution. It will be difficult to convince all the Syrian voters that they are selecting a constituent assembly whose highly complicated technical task requires persons possessing experience and vision at a time when many of them are going to the ballot box to select those who will represent their political beliefs, sect, ethnicity, or clan. The role of the people in drafting a constitution will be limited to electing the members of the constituent assembly. From there, they will retire and become passive rather than active actors, because their destiny will lie in the hands of the members of the elected representative assembly in a kind of absolute mandate.

Given these realities, is this method sufficient to translate popular momentum into a popular desire for a new, modern constitution based upon the people’s needs? It might not be adequate, especially because this event will take place after a period of long popular resistance during which the people sacrificed greatly and after which each person will feel a sense

of desire and entitlement to be part of the new constitutional process. Therefore, this method needs to be linked with a popular referendum once society has been given sufficient time to circulate and debate the constitution on all platforms.

The Constitutional Referendum

In general, the popular referendum method is not only associated with drafting constitutions but also with representative democracy, through which democratic regimes request the people’s opinions and make them active participants in the exercise of authority. Originally, these regimes were built upon the system of representative democracy or rule by an elected Parliament. However, for some important issues they return authority to the people to have them exercise it themselves via a popular referendum. Thus, on one hand, the elected representative bodies rule in the name of the people; but on the other hand, they leave room for some of the styles of direct democracy that were once prevalent in ancient Athens whereby the people ruled themselves by themselves. This system is a compromise between representative democracy and direct democracy, and as such it is called semidirect democracy.

In the context of drafting constitutions, the constituent constitutional referendum aims to draft a new constitution for the country and may also take the form of a corrective referendum that causes some changes in the existing constitution. When drafting the constitution according to this method, a certain specialized committee drafts the constitution and a general referendum surveys the people’s opinion from there. However, even though this method is widespread in today’s world, it is still one of the most contentious methods for drafting a constitution. This method may be effective in times of civil peace and stability, especially when amending an existing constitution. But during times of revolution, disorder, and a dearth of public confidence, the mere drafting of a constitution by a committee—even a specialized committee—becomes a cause for doubt.

The absence of popular participation in the selection and drafting of the constitution taints this mechanism—especially because Syria is currently leaving

a popular revolution whose basic demand was for democracy. The government charged with managing the transition period will be chosen consensually and have limited powers. Subsequently, giving it the right to appoint the members of the constitutional committee exceeds many of the powers of an unelected temporary caretaker government. Appointing the members of the constitutional committee is also an issue that may sooner or later spark conflict or political disagreement between the factions of the Syrian people, because the appointment mechanism itself is a matter of long-term, continuous contention regardless of the type of people appointed or the motives of the transitional government in selecting them.

The situation in Syria is one in which the Syrian people lack almost all confidence in any committee appointed to draft the country's constitution. Practically and theoretically speaking, coming up with criteria for recruiting committee members is no easy task. We have already seen that the people rejected the mere thought of Bashar al-Assad charging a committee to draft the constitution in 2011, which only led to increased popular rejection of the regime and its ruling style. Conversely, carrying out a constitutional referendum in a situation of unstable security would be exceedingly difficult.

Given the flaws of each method, there is another choice: a mixed method that combines the general constituent assembly and the constitutional referendum. This is the method that the Syrian Expert House recommends. In this situation, the process of preparing the constitution passes through two stages. The first stage is that of drafting the constitution, in which a popularly elected constituent assembly takes up the task of drafting the constitution and presents the resulting constitution to the people via a general referendum. This constitution is not legitimate and does not come into effect unless it is presented to a referendum and receives the majority of votes. The second stage, transforming the constitution into an object of popular consent, begins with coupling the constitution to popular approval after it has been subject to a general referendum. In all cases, the constitutional referendum is the most democratic means of drafting a constitution because it is the most sincere

method for expressing the people's actual opinion. It is preferred to the constituent assembly method because of the chance that the assembly's members could substitute their desire for that of the people.

Regarding the constitutional legal framework in Syria, the mixed method needs to be followed after the end of the conflict. With this method, an elected constituent assembly produces a constitutional draft that is submitted to general referendum. A number of hurdles emerge in this framework:

- ▶ Guarantees for the constitution drafting process
- ▶ The temporary constitution under whose purview the state will continue to exist until a new constitution is drafted.
- ▶ The law according to which the constituent assembly will be carried out.

GUARANTEES IN THE ELECTION OF CONSTITUTIONAL ASSEMBLY MEMBERS AND REFERENDUM STAGES

The basis for differentiating between a constitution based upon the will of the people and one drafted in an undemocratic manner lies in the general conditions that surround the referendum. Sectarian, confessional, or regional mobilization will certainly limit the people's freedom to choose suitable ruling principles. Likewise, the existence of armed groups, on one hand, and the remains of the repressive security apparatus, on the other hand, will have an extremely detrimental effect on reaching the desired goal of a constitution that truly expresses the will of the people.

As a result, during the election of the members of the constituent assembly, the following guarantees and parameters need to be present in order to guarantee that the mechanism for creating a constitution expresses the will of the people:

- ▶ Selecting the members of the constituent assembly electorally and refraining from appointing them through the transitional government or any other military, political, or revolutionary party;

- ▶ Carrying out democratic elections according to a direct secret ballot under local and international judicial supervision;
- ▶ Giving all parties and currents in the Syrian political arena the opportunity to participate in the election of the constituent assembly;
- ▶ Carrying out the elections in a free and tolerant atmosphere, because elections carried out in a repressive political environment will certainly not express the will of the people;
- ▶ Leaving space for the elected assembly to work in total freedom without political and nonpolitical pressure so that it produces the text that best reflects the people's desire.

During the process, efforts will need to be made to seek to provide the basic guarantees to ensure democracy and the production of an appropriate constitutional text. The most important of these guarantees are the following:

1. Seeking to raise the level of political consciousness and political participation.
2. Guaranteeing the appropriate distance from sectarian and regional incitement in Syria.
3. Ensuring that sufficient time exists for public discussion in order to give all groups of the people the opportunity to express their points of view that may be simultaneously different and useful.
4. Leaving sufficient time between submitting the constitution to a referendum and the referendum process itself.
5. Ensuring that an actual atmosphere of democracy and freedom exists before and during the referendum.
6. Ensuring that free and independent media outlets covering the discussion exist before the referendum and cover it in a transparent manner.
7. Taking all the necessary logistical, judicial, and legal measures to guarantee the integrity of the referendum.

CONCLUSIONS REGARDING THE SEQUENCE OF CONSTITUTIONAL STEPS

As mentioned in chapter 3, which explored the structure of the future political system in Syria, the transitional government that will be charged with organizing constituent assembly elections for the writing of the constitution must issue a constitutional declaration that specifies its tasks, its powers, and its method for organizing the elections. It has been indicated that it is possible to revert back to the Constitution of 1950 as a starting point for the discussion. However, even though the Constitution of 1950 is more advanced than the constitutional window dressings that have covered the Syrian state since its foundation, and though it may play a temporary role in organizing the transition period in Syria, this constitution does contain many points of contention among the various constituencies in Syrian society. Additionally, the 1950 constitution needs to be modernized in order to keep pace with the international conventions that uphold public liberties and human rights. The system of the Syrian state proclaimed by the Constitution of 1950 is a representative democratic system. This system will be need to be thoroughly reviewed by the constituent assembly in order to meet the need for a national consensus.

The Constitutional Reform Working Group of the Syrian Expert House studied a number of the articles in the Constitution of 1950. These articles pertain to the identity of the Syrian state, rights, and public freedoms, as well as the structure of the future political system in Syria. The working group hopes to spark a debate of these articles. The following conclusions are the results of discussions within the Syrian Expert House's working group on the articles of the Constitution of 1950.

The Identity of the Syrian State

The Syrian Expert House's Constitutional Reform Working Group expects that the 1950 constitution's Article 1, on the identity of the state, will spark a sharp sociopolitical debate—specifically the first and third clauses, which state that Syria is a representative

democratic Arab republic with full sovereignty and that the Syrian people are part of the Arab nation.

The national identity mentioned in Article 1 of the constitution is a sensitive subject for Syria's ethnic minorities—especially the Kurds. This may raise questions about the possibility of mentioning all of Syria's ethnic groups in this article or refraining from mentioning any one of them, based upon the idea that mentioning ethnic groups is not an essential task in the national social contract that is a Syrian constitution. A large segment of the Syrian people, however, believe that it is necessary to mention the Arab ethnic group in the constitution because Pan-Arabism is a fundamental component of the Syrian culture and conscience. Mentioning this ethnic group also demonstrates the extent of the connection that exists between the Syrian state and people and the Arab nation extending into the Arabian Peninsula and North Africa.

This point is one of significant controversy in Syrian society. Even though Syrian society is majority Arab, the rest of the Syrian ethnicities have demonstrated a high degree of patriotism, sacrificed much in combating the injustice of the former regime, and backed the Syrian revolution. As such, Syrian law must act with great wisdom and balance in mediating between the values and culture of the primary component of society, the Arabs, and the rights of the significant minorities of the Syrian people, the Kurds, the Turkmen, the Assyrians, and others. It must do this while also accounting for the country's political reality, given the weakness of the state, and striking a balance among the various components of Syrian society.

Article 3 of the Constitution of 1950 may be subject to a long discussion by the members of the constituent assembly and segments of the Syrian people—especially the first two clauses, which state that “religion of the president of the republic is Islam” and that “Islamic jurisprudence is the primary source of legislation.”

The controversy here, in truth, is between two groups of people. The first believe that this article does not sufficiently express the Islamic identity of the state and so must state more clearly that Islam is the state religion. The second group, however,

believes that it is not necessary to deprive a large group of Syrians from the opportunity to reach the top of the executive hierarchy just because they are not Muslim, which may in fact violate the principles of equal rights and opportunity.

Another debate may be sparked around the second clause regarding whether the phrase “Islamic jurisprudence” is most appropriate or whether it should be replaced with “Islamic law” or “the principles of Islamic law.” This debate will require polling the opinions of the Islamic law scholars and the Islamic jurists. Conversely, a disagreement may also be sparked around the phrase “the primary source” for legislation, because some will demand that it be replaced with the phrase “the only source” or “one of the sources.”

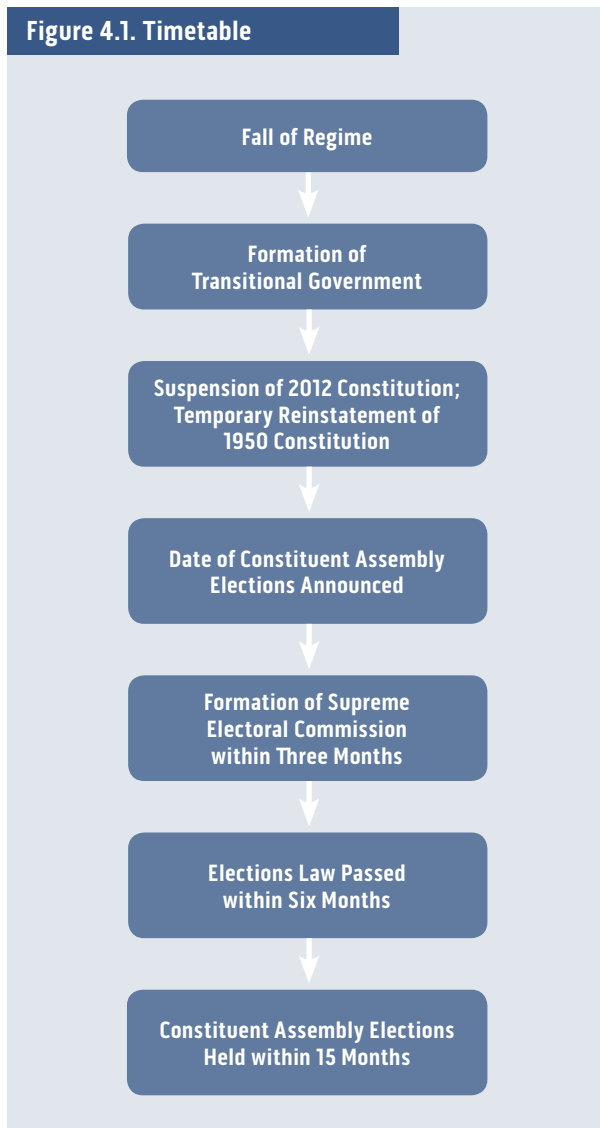
Therefore, the Syrian Expert House's Constitutional Reform Working Group believes that it is important that these disagreements be studied in a practical and inclusive manner. However, the group also believes that the formula mentioned in the Constitution of 1950 is moderate and close to the ideal. As such, the group advises that it and Articles 4, 5, and 6 remain as they are.

Fundamental Freedoms and Public Freedoms

Given the period when it was written, the Constitution of 1950 is very advanced regarding the freedoms and human rights it enshrines. However, even though there is much good material in the constitution, in general it needs to be reformulated. Specifically, Articles 10, 11, 13, 14, and 15 need to be reformulated in order to be compatible with the international conventions that Syria has signed. These include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both of which Syria signed in 1968. Moreover, in general the formulation of the constitution—especially in this section—needs further review and clarification regarding public and private property and the freedoms to own property, work, and invest that are enumerated in Articles 21 through 26.

In general, the Syrian Expert House's Constitutional Reform Working Group recommends

Figure 4.1. Timetable



enriching the debate on the Constitution of 1950 and radically developing its articles. The group notes that relying upon this constitution provides a semblance of constitutional legitimacy when reference is made to it, as we have mentioned.

TIMETABLE

The transitional period begins at the moment when the existing regime falls, as marked by the head of the regime, Bashar al-Assad, stepping down from power. In this period, it has been agreed that power will be transferred to a transitional government that manages

the country's affairs, according to an agreement made between the opposition and the existing authority or according to an individual decision by the opposition, whose legitimacy stems from its firm grasp of the people's demands for the downfall of the regime once the president has relinquished power.

Immediately following the formation of the transitional government or the transitional executive body (which will be established following a national agreement and authorized to manage the temporary transitional period under the supervision of major world powers and other regional states), this government will issue a decree that suspends the Constitution of 2012 and reinstates the Constitution of 1950. The decree will also specify the form, tasks, working mechanisms, and powers of the executive authority, including the right to issue supplementary constitutional declarations to the Constitution of 1950 specifying the official dates for constituent assembly elections and the life span of the transitional government, in addition to the authority to issue the necessary laws of limited scope to manage the transitional period.

The transitional government shall announce the formation of the Independent Supreme Commission for Elections no more than three months after issuing the above-mentioned decree. This commission will present the detailed election law to the government for approval no more than six months after its establishment. It is assumed that the elections in Syria will take place no more than fifteen months after the decree is issued. Chapter 5 of this report contains the details of the time frames for the election of the constituent assembly (or constituent council), and it is assumed that this assembly will be entrusted with three essential tasks: drafting a permanent constitution for the country, legislation, and granting the government confidence and monitoring its performance.

ENDNOTES

- 1 For more information about Syria's Constitutions review, see *Syrian Constitutional History*, edited by Mazin Yousif Sabbagh (Damascus: Dar Al Sharq, 2010). The book contains the texts all of the Syrian constitutions from 1920 to 1973.
- 2 The Constitution of the Syrian Arab Republic 1973 (Damascus: Al Nouri Foundation, 2002).
- 3 For more information, see "The National Plan for the Future of Syria," December 2012.

Recommendations

Proceeding from the importance of the transitional period and its impact on the future of the modern Syrian state—because the most important of the Syrian revolution’s demands were for a democratic state that spreads freedom and social security and is ruled by fair law under the framework of a constitution that represents all Syrians, because the Syrians who have demanded and called for freedom and transparency will not accept being ruled by the same systems and constitutional frameworks through which the Ba’ath regime managed the state, and because it is not possible for a constitutional vacuum to exist in a great, civilized country that seeks to be a role model—the Constitutional and Legal Reform Working Group within the Syrian Expert House recommends the following:

- 1 The transitional government or administrative body entrusted with managing the transitional period should issue a decree that suspends the Constitution of 2012 and temporarily reinstates the Constitution of 1950 without amendment until the new constitution is issued.
- 2 The government charged with managing the transitional period must issue a supplemental constitutional declaration to this decree that clarifies the powers of this government, especially those regarding decrees and laws, the government’s tasks, working mechanisms, formation criteria, and life span, and the legal time frame for carrying out elections.
- 3 The Syrian Expert House’s Constitutional Reform Working Group believes that electing a constituent assembly is the ideal constitutional-drafting mechanism, despite its drawbacks. The participation by the people in the drafting of their constitution by electing the members of this assembly is an essential step toward adopting the principle of democracy. Therefore, the group believes that the government charged with managing the transitional period must create an atmosphere for transparent and fair elections for selecting the members of the constituent assembly and help as much as possible to educate the voters of the importance of this assembly’s role and function.
- 4 The working group also believes that the national forces—parties, political currents, and civil society organizations—must play their role in educating Syrian citizens about the importance of both these elections and the constituent assembly’s role. The political forces will also express their care for the nation, the Syrian state, its unity, and its long-term and short-term future by selecting candidates who possess the ability and competence to carry the national responsibility that has been placed upon their shoulders.
- 5 The Syrian Expert House also recommends that an appropriate body studies the articles and clauses of the Constitution of 1950, taking into consideration all the different points of view held by national components—especially those relating to the rights and representation of the Kurds, Turkmen, Assyrians, and other minorities—and place these studies before the constituent assembly.