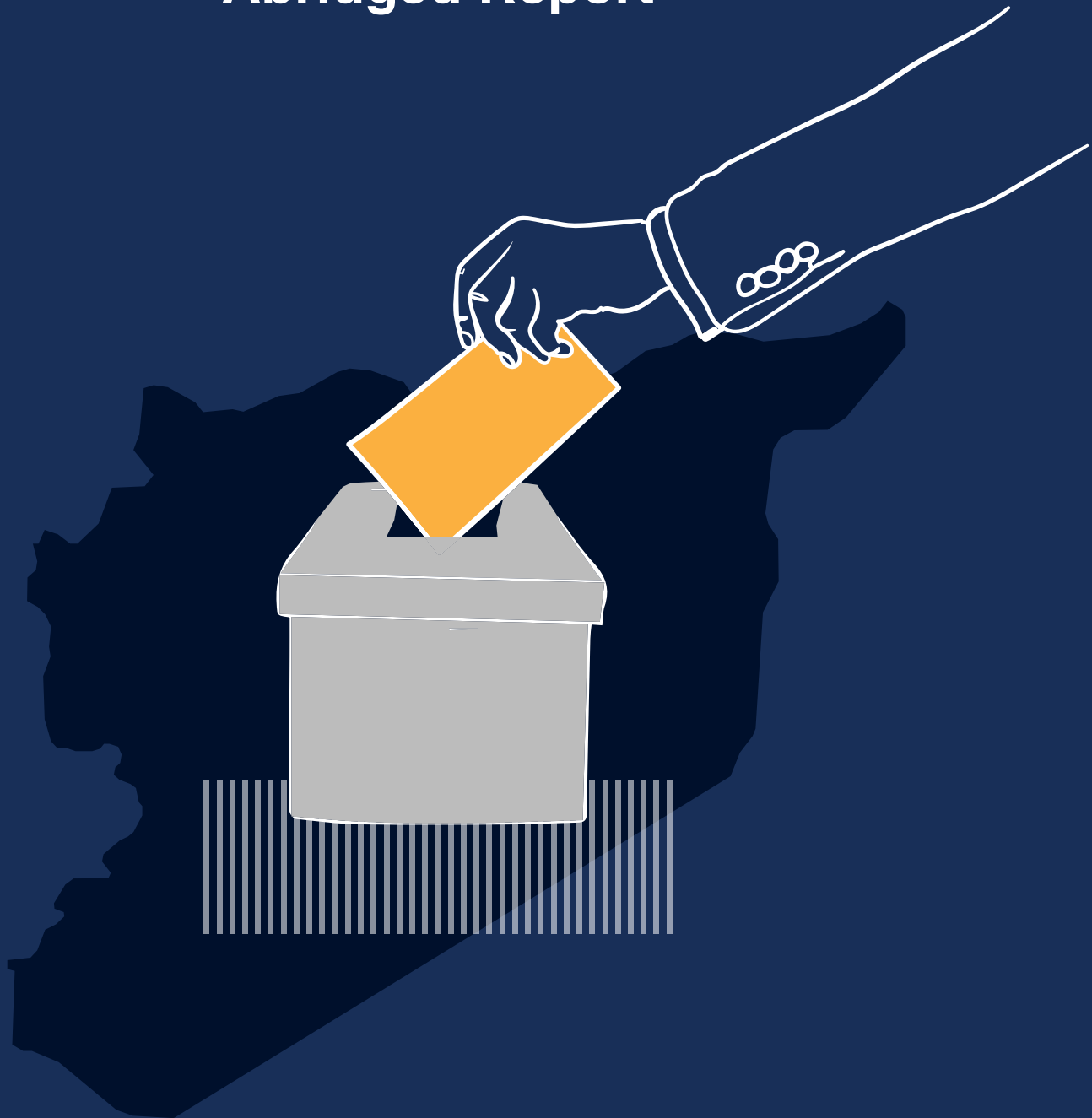




# Electoral Reform and Democratic Transition in Syria – Abridged Report –



اليوم التالي  
لدعم الانتقال الديمقراطي في سوريا



THE DAY AFTER  
Supporting Democratic Transition In Syria

# Electoral Reform and Democratic Transition in Syria -Abridged Report-



2022

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The Day After Association (TDA) is a Syrian organization that works to support democratic transition in Syria, and its scope of work is focused on the following areas: Rule of law, transitional justice, security sector reform, electoral system design and Constituent Assembly election, constitutional design, economic reform and social policies.

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Implemented by:



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## Notice

**It is important for The Day After to note that, due to the necessities of drafting and writing this text, in addition to the inflexibility of the Arabic language between masculine and feminine in texts of a technical nature, and because some people have difficulty reading when using gender-sensitive language, the association was forced not to use the feminine in this study. However, The Day After affirms its absolute support and belief in gender equality in its internal policies, reports, and studies, and in the content of the issues it defends.**

## Foreword by The Day After

The process of democratic transition, or the implementation of a peace agreement in any country, is not complete without ensuring free and fair elections, through which male and female voters can choose their representatives to run the affairs of the state.

This was stipulated in Resolution 2254 of 2015, which introduced a road map for democratic transition in Syria by stating: “The Council expressed support for free and fair elections, pursuant to the new constitution, to be held within 18 months and administered under United Nations supervision, “to the highest international standards” of transparency and accountability, with all Syrians — including members of the diaspora — eligible to participate.”

If elections are the means to assign power in democratic systems, it does not seem the same in countries with a totalitarian regime, as in Syria, as the formal elections turn into a tool of power in perpetuating authoritarianism. The matter becomes complicated the longer the rule of the totalitarian regime continues, due to the distortion of state institutions and laws that are difficult to adhere to, and the matter becomes more complicated when the totalitarian regime drags the country into a conflict that leads to the displacement of half the Syrian population from their areas of residence.

The Day After believes that democratic transition in Syria can only be achieved through the ability of Syrian men and women to choose their representatives freely, in a safe and neutral environment, in which all legal, institutional, security, technical, cognitive and other conditions are met. This report was issued to shed light on the challenges in any upcoming elections in Syria. Elections are not a transparent box in which male and female voters cast their votes, but rather a complex process that starts from the constitutional and legal framework, ensuring the correctness of representation through the selection of the electoral system and the division of districts, how to manage elections and the role of the international community in facilitating them, and ensuring the integrity of elections through impartiality and the integrity of the judiciary and security forces and the media. Strengthening the political participation of parties, enhancing the participation of women, ensuring the participation of displaced people and refugees, and the role of CSOs in the elections is also extremely crucial. The report concluded with a set of recommendations in each part related to the elections, similar to policy papers, which contribute as a knowledge and negotiating tool to achieving a better future for Syria.

The Day After hopes that this report will help reach a political solution that achieves a just and sustainable peace, based on achieving freedom and dignity for Syrians, through the exercise of all rights, including political rights, in a fair electoral system and a safe and neutral environment that guarantees the ability of Syrians to choose their representatives freely and safely.

The Day After thanks all researchers, the steering committee, and everyone who contributed to the production of this report, hoping that it will be a contribution to our path towards democratic transformation.

**Executive Director: Mutasem Syoufi**

## Preface

In the early part of the last decade, Syria witnessed unprecedented mobilization of demands for a democratic transition, initiated by a peaceful popular movement during 2011. The movement was met with repression and violence by the Syrian regime, through the security services and the intervention of the army. Soon, officers began to defect from the army, and the Free Army was formed. Not long after, the protest movement was accompanied by the broad presence of armed groups and military formations whose demands branched out, ranging from the overthrow of the Syrian authoritarian regime to the establishment of mini-states on a religious or ethnic basis. This coincided with a breakdown of security conditions, and the gradual expansion of jihadist organizations and foreign military and political interventions in Syria which continue to this day. Consequently, the Syrian people suffered horrific, and mass-scale human rights violations documented by many local and international organizations, which resulted in waves of displacement, internal and external, that have affected millions of Syrians. Furthermore, the conflict resulted in the mass destruction of a large part of Syria's infrastructure and a continuous surge in poverty which has today reached unprecedented rates. In the face of this tragic reality, attempts persist to reach a resolution to the Syrian crisis, paving the way for achieving fundamental political change that eliminates the authoritarian structure in Syria, builds a state of citizenship that respects the rights and freedoms of its citizens, and establishes sustainable peace, especially through the implementation of transitional justice measures.

Within The Day After's efforts to contribute to the launch and success of the transitional period and the establishment of a democratic state in Syria, the Association took the initiative to work on the Electoral Reform and the Democratic Transition in Syria project in cooperation with a group of researchers with different specializations and, with the support of the German Corporation for International Cooperation (GIZ). In this context, the following report includes an analytical and critical review of the legal and institutional frameworks pertaining to elections in Syria and provides a vision and recommendations for future electoral processes in the country. This report, addressed primarily to the actors involved in the Syrian issue, contains the most important elements required to be included in a future Syrian electoral system to ensure a political transition compatible with the demands of the Syrian people in building a state of law and citizenship based on equality for all. Therefore, the authors of this report stress the illegality of holding any elections, regardless of their type, without a comprehensive political solution that guarantees dismantling the structure of the Syrian regime which used to organize formalistic elections in an atmosphere of intimidation, lack of competition, and lack of credibility.

The report's authors were keen to present a comprehensive study on the conditions for holding fair and impartial elections in a safe and neutral political, legal and secure environment in which the United Nations plays a leading role in line with Security Council Resolution 2254 in order to achieve fair representation for all categories of the Syrian people, including internally displaced persons and refugees, and the equal treatment of all Syrian women in rights and duties.

This report derives its importance from the fact that electoral reform is one of the most important pillars of the democratic transition, and it is even more necessary in countries that suffer from political crises, civil war, and/or external intervention, as is the case in Syria. Therefore, the electoral process in Syria can contribute to strengthening democracy and sustainable peace and translate the will of the people through the vote, which can produce a political regime with seats distributed across Parliament, the government, and even at the level of locality. Especially in countries that have never undergone elections or a culture of popular democracy, those without political stability and legislation and institutions formed under the rule of law, electoral processes can be arduous and thorny.

Therefore, this report argues that the success of future elections in Syria is dependent on a comprehensive process of legislative reform. Such a process must not only cover laws related to elections and that regulate the electoral process, but also to all legislation that indirectly related to elections such as the rules governing the formation of political parties, the work of civil society organizations, the establishment of associations, freedom of expression, and media neutrality. This also includes other rights necessary for the conduct of democracy and the formation of a state of citizenship, especially curtailing executive overreach, particularly represented in Syria by the Presidency of the Republic and the security services. Proper planning and organization of the electoral process is not sufficient, unless there are credible, independent governmental institutions capable of ensuring free and fair elections under the rule of law, taking into account the separation of powers and the freedoms and rights of citizens. The authors of this report emphasized on the need for the electoral system to contribute to building democratic institutions of governance capable of implementing transitional justice measures and national reconciliation programs in the short term.

This report addresses the legal aspect of the electoral reform process in Syria, and is outside its scope to discuss scenarios for a political solution and other indirect related matters, such as the impact of the economic situation and the absence of the necessary infrastructure to hold elections. This report aims to be part of an ongoing process to identify the legal obstacles and challenges that hinder the holding of free, fair and inclusive elections for all Syrians in the future, and to develop strategies and solutions to confront them, as well as anticipate the best electoral standards favorable to the Syrian context.

## Research Objectives

Considering the foregoing, this report seeks to achieve the following objectives:

1. Provide a roadmap for the electoral reforms required to ensure free and fair elections that adhere to internationally approved election standards in terms of ensuring the participation of all groups of Syrians, both those inside and outside Syria, while preventing discrimination on the basis of religion, race, political affiliation, opinion, ideology, ethnic and social background, wealth, lineage, or any other basis.
2. Providing accurate technical recommendations to the actors involved in the Syrian issue, especially focusing on the rights of historically marginalized groups in Syria and taking into account gender sensitivity, women's rights, and the rights of IDPs and refugees, the involvement of Syrian civil society, and impartial international monitoring of the electoral process.
3. Provide a negotiation tool that can be used by the major actors involved in the Syria crisis, including the Office of The United Nations Special Envoy for Syria and representatives of Syrian civil society within the Constitutional Committee.
4. Provide a precedent that can be used as a reference point for any future effort aimed at raising public awareness among Syrians about electoral rights and the conduct of electoral processes, as well as building the capacities of Syrian civil society and political groups on matters related to elections.



## Research Methodology

This report tackles the legal aspects of electoral reform in Syria, and therefore it is outside the scope of this report to discuss scenarios for a political solution or other matters with a tangential relation to elections such as economic impact and the absence of proper infrastructure required for elections. Therefore, the report aims to be part of a continuous process of identifying legal obstacles and challenges to holding future elections that are free, fair, and inclusive of all Syrians, and to develop strategies and solutions to address these challenges, while also examining the best electoral standards congruent with the Syrian context. As such, the report adopts a descriptive analytical approach through the use of a set of qualitative research methods and tools, and conducts an analytical-critical survey of legal and institutional frameworks relevant for elections, as follows:

Conducting a broad review of the current legal and institutional framework that governs and regulates elections in Syria, in light of international standards adopted for elections and stipulated in international human rights conventions ratified by the Syrian state. This includes a review of Syrian constitutional provisions, laws, and decrees related to elections, as well as other legislation relevant to the work of institutions with a fundamental role in ensuring the integrity of the electoral process and promoting participation, such as the judiciary, security services, media, political parties, unions, and associations. The report will not neglect to address the historical, political, and social contexts that influence the current legal and institutional framework and contribute to undermining the rule of law and perpetuate discrimination against women and some groups of Syrian society, leading to the absence of a state of citizenship and equality that embraces religious, ethnic, and political diversity.

Addressing the experiences of electoral reform in a number of countries that witnessed armed conflicts similar to Syria. An examination of other countries' experiences and the challenges they face in this context can contribute to developing perceptions and solutions, to address the challenges that may arise in the Syrian context and benefit from those experiences and overcome their errors in the case of Syria. This also provides a deeper understanding of the magnitude of challenges that will face elections in Syria and contributes to defining the role of civil society and the international community in these processes.

Conducting interviews and consultations with international elections experts in order to enrich the research outcomes, discuss various possible solutions and strategies, and formulate suitable recommendations.

Holding a number of focus group sessions (4 sessions) with groups of Kurds, women, and members of internally displaced communities and refugees, to listen to the perspectives and suggestions of stakeholders and take them into consideration while writing the report and formulating its recommendations.

Finally, it should be noted that there is some repetition across the sections of this report, some of which had to address similar issues that exist in other sections, as these sections were prepared by researchers each of whom was tasked with drafting a specific section. Therefore, the authors of this report decided to overlook these instances of repetition, which are necessary to read and understand each section separately.

## Report Structure

The report adopts a descriptive analytical approach through the use of a set of research tools and qualitative methods, and an analytical and critical review of the legal and institutional frameworks related to elections, in order to serve the purposes of the topics discussed. It aims to conduct a broad review of the current legal and institutional framework that governs and regulates elections in Syria, and addresses reform experiences of electoral processes in a number of countries that witnessed conflicts similar to Syria, and how to benefit from them in the Syrian context, in a way that provides a deeper understanding of the magnitude of the challenges of the electoral process in Syria, and contributes to defining the role of civil society and the international community in this process.

The report also relied on conducting interviews and consultations with international experts in elections, to enrich the results of the research, discuss various solutions and strategies, and formulate recommendations. Four focus-group sessions were held with various Syrian groups. A number of sessions were devoted to discussing ways to ensure the effective and equal participation of women, and others for refugees and internally displaced persons, in order to listen to the views and suggestions of stakeholders, which contributes to taking them into account while writing the report and formulating its recommendations.

Finally, it is important to note that the non-gendering of the language used in the report was based on the need to simplify it as much as possible and make it easier for the reader to understand. Therefore, this does not detract from any derogation from women's rights, as the authors and supporters of this report seek to achieve full equality between women and men, and to eradicate discrimination and violence against them at the legal and social levels

## Part I

# The Legal and Political Framework Governing Elections in Syria



# Part I: The Legal and Political Framework Governing Elections in Syria

In its first part, this section discusses the absence of a legal and political environment conducive to free and fair elections in Syria. It conducts a review of Syrian legislation in effect since the 1963 coup, which perpetuates autocracy, the absence of a state of citizenship, and human rights violations, including laws reformulated or amended in the aftermath of the 2011 uprising. The second part of this section examines the international standards and stipulated in human rights instruments and treaties to which Syria is party, while the third and final part highlights the incompatibility of Syrian legislation with these international instruments.

## Chapter 1: A Legal Environment Unconducive to Elections

This chapter provides insight on the roots of the absence of the rule of law and citizenship under the rule of the Syrian regime, and the absence of democracy, and the lack of the elections under its iron-fist rule with the minimum elements of justice, integrity and competitiveness, The arsenal of legislation and laws and procedures that controlled the electoral process, served the permanence of the regime and the dominance of its ruling party in power. This prevented citizens from expressing their free will, and the authority's use of presidential, parliamentary and local electoral benefits, to recycle its false legitimacy by all means of fraud and illegitimacy.

### 1. Fraudulent elections and illegitimate political rule

In Syria, elections over the past decades have failed to express the will of the Syrian people, as they were a mere façade for democracy on the basis of which the Syrian regime claims to rule. Presidential elections in Syria were an opportunity for exuberant propaganda for Assad and his regime, squandering state funds as well as the private funds of those seeking personal gain by catering to the security services. Moreover, these elections enabled the security apparatuses to terrorize citizens and coerce them into voting, arranging security dossiers on those who abstain from voting or vote for anyone other than the ruling regime –and making matters worse for those with existing security files. The case was not different for parliamentary elections, or those held at the local level, as through them the ruling regime aimed to consolidate its control over the legislative, and regional and local governments, by securing seats for its most loyal benefactors. Through these elections, the regime also sought to establish a legitimacy which it lacks, and to present an image of “democratic reform” in order to evade international pressures.

The most prominent manifestations of undermining the state of citizenship and the rule of law emerge from the lack of legitimacy of the laws in force. Syrian laws were illegitimate, either due to executive assault on the independence of the legislature, or due

to the latter's lack of legitimacy as it emerged from undemocratic elections. Legitimate laws are issued only by democratically elected parliaments, and thus legislate laws that serve the interests of citizens. Furthermore, legitimate laws stem from the conscience of legislators, and must be consistent with public interest and essentially restrict any transgressions by the executive authority. This legitimacy was absent even from the 1973 constitution which was adopted in an undemocratic manner, unlike the 1950 constitution which was drafted by an elected and democratic Constituent Assembly formed of different parties on November 26, 1949.

## **2. An arsenal of legislation consolidating authoritarianism**

The post-March 8 era built the foundations of a state of tyranny and dictatorship in Syria. An arsenal of legislation was enacted that restricted liberties both public and private, which is absolutely inconsistent with democracy and provides an environment un conducive to elections. The most prominent of these legislative acts was the imposition of a state of emergency via Military Order No. 2 issued by the National Council for the Revolutionary Command (NCRC) on March 8, 1963, which also coincided with the issuance of Military Order No. 1 mandating the NCRC to exercise both legislative and executive powers. Later, the Law for the Protection of the Revolution would also be adopted, promulgated via Decree No. 6 of 1964. This law stipulated life sentences for anyone who opposes the goals of the revolution and resists the socialist Baath regime by word, writing, or deed, with penalties amounting to the death penalty in some cases.

The Law on the Security of Arab Socialist Baath Party, No. 52 of 1979, stipulated in its Article 9 imprisonment for a period of no less than five years for any act intended to prevent the Baath Party from exercising its functions as stipulated in the constitution and legislation, and the death penalty if the act in question is accompanied by violence. Not even the Syrian economy was spared the hegemony of the ruling authority and its ideology, as the Economic Criminal Code was issued via Decree No. 37 on May 6, 1966, whose purpose was to control and direct the economy in a manner consistent with the interest of the regime and its benefactors and loyalists, as Article 13 of the decree stipulated imprisonment for 15 years for those who resist the socialist system that the Syrian regime claims to embody.

The violations of the right to freedom of expression and assembly go beyond these exceptional legislation acts, permeating into articles of the Syrian Penal Code.<sup>[1]</sup> This especially includes broad and vague articles which have long been used as grounds to arrest and prosecute human rights activists and dissidents, and which contravene the principle of rotation of power. For example, Article 287 of the Penal Code provides for the imprisonment of anyone who broadcasts "false or exaggerated news that harms the prestige of the state or its financial standing." thus disrupting any civil society activity unless it serves the interests of the ruling regime.<sup>[2]</sup>

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[1] Syrian Arab Republic, Syrian Penal Code, Contained in Legislative Decree No. 148 on June 22, 1949.

[2] The Law on Associations and Private Societies no. 93 of 1958 failed to provide for the licensing of civil society organizations or the regulation of their activity.

The regime established exceptional courts in order to enforce its legislative arsenal that constrains liberties and seeks to ensure the continuation of its rule, and over decades these courts issued draconian and unfair rulings especially against opponents of the regime. These courts encroached upon the jurisdiction of the ordinary judiciary, and were characterized by their military and ideological nature and the expediency of their proceedings which do not meet the minimum conditions of a fair trial.<sup>[3]</sup> The most prominent of these bodies was the Supreme State Security Court (SSSC), responsible for trying thousands of political activists and human rights defenders in Syria.<sup>[4]</sup> The law establishing economic security courts was also promulgated by Legislative Decree No. 46 of August 8, 1977, according to which an exceptional court was formed to apply the loose articles contained in the aforementioned economic penal code. As for the Military Field Court, it was established by Decree No. 109 of 1968, and in turn failed to observe the most basic fair trial standards.<sup>[5]</sup>

Furthermore, the predominance of the security apparatuses upended any possibility of access to political activity or competitive elections, and thus a democratic transition in Syria. Consistently, these agencies have eradicated any manifestation of political pluralism, free media, or civil society activism, while restricting freedom of expression and the right to form associations. Syrian security agencies have also practiced, and continue to practice, widespread and systematic violations of the rights and freedoms of Syrian citizens under the decades-long state of emergency. This led to strict security control over various aspects of political, economic, social, and cultural life in the country, beyond the fundamental role of these agencies in perpetuating the rule of the authoritarian Assad regime, and have played a key role in organizing and monitoring the nominal elections that Syria has undergone over past decades.<sup>[6]</sup> These agencies are entrenched through a body of legislative decrees that enables them to eschew legal procedures recognized in the state of law.

Even further, many decrees guarantee security personnel immunity from prosecution for crimes committed while performing their duties such as Legislative Decree

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[3] The International Covenant on Civil and Political Rights, adopted and presented for signing and ratification as per United Nations General Assembly Resolution 2200A (XXI), dated 16 December 1966 and in force from 23 March 1976, articles 49, 9, and 14. The judiciary in Syria became subjugated to the executive, as the Law on the Judiciary was amended via Legislative Decree No. 24 issued by the Presidential Council on February 14, 1966, which indicates that the president of the republic chairs the High Judicial Council, with the minister of justice as vice-chairman.

[4] Established via Legislative Decree No. 47 of 1968 and dissolved in 2012 as discussed below.

[5] For more, see: Riad Ali, "Military Field Courts: Courts of Crimes?" (Arabic), Syrian Legal Forum and Arab Reform Initiative, 12 February 2018, available here: <http://www.syrianlegalforum.net/publications/view/32>.

[6] Interview with a security expert.

No. 14 of January 15, 1969.<sup>[7]</sup> Therefore, it seems that restructuring and organizing the security services is an inescapable condition necessary for initiating a process of democratic reform in Syria, thus providing a safe environment for elections. Over past decades, there was no possibility for citizens to exercise their rights to political participation in decision-making in light of nominal pro forma elections that do not, in any case, impact the ruling regime or lead to a peaceful transfer of power. This is mainly attested by Bashar al-Assad's assumption of the Presidency of the Republic in 2000 following the death of his father, Hafez al-Assad, who had held this position since 1971. This was done via an amendment to the previous Syrian constitution to reduce the legal age of eligibility to the presidency from 40 to 34, thus rendering Bashar al-Assad eligible at the time.<sup>[8]</sup>

### **3. A policy of promoting disunity among Syrian communities**

The Syrian regime was not satisfied with merely extending its security grip over the government, but also relied on division and discrimination between citizens. The regime doesn't hide its systematic policy of tampering with the Syrian national fabric and the diversity of Syrian communities and its sectarian practices in order to remain in power. The Syrian regime has issued many decrees targeting non-Arabs, especially Kurds who were deprived of the right to learn their language or even speak it, in addition to discrimination against Kurds in public office, work, education, and the inability to publish in languages other than Arabic. In al-Hasakah Governorate, the census of October 5, 1962, deprived thousands of Kurds of Syrian citizenship,<sup>[9]</sup> which was also later revoked from many Kurds for political reasons, while some did not acquire it at all on the pretext of having entered Syria from neighboring countries.

The laws and policies mentioned above were a mere reflection and reinforcement of the previous Syrian constitution of 1973 which abolished any semblance of the rule of law or a state of citizenship, and thus political pluralism and the prospect of free and fair elections.<sup>[10]</sup> The ruling regime relied heavily on this constitution which included in its first article that the Syrian Arab Republic is a democratic, popular, socialist state, the

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[7] This decree, which included the formation of the General Intelligence Directorate, stipulates the following in Article 16: "A council shall be formed in the General Intelligence Directorate to discipline its employees, delegates, and those seconded to it. No employee of the Directorate may be prosecuted for crimes committed while carrying out the specific tasks assigned to them, or in the course of their execution, except by virtue of a prosecution order issued by the director of the Directorate." Furthermore, Article 4 of Decree No. 5409 of 1969, which appears to regulate the work of the Intelligence Directorate, states, "It is not permissible to prosecute any of the employees of the General Intelligence Directorate, those delegated or seconded to it, or those who contract with it directly, before the judiciary in crimes arising from the job or in the course of carrying it out before their referral to the disciplinary board in the Directorate and the issuance of a prosecution order by the director. The issuance of a prosecution order remains obligatory even after the end of their service in the Directorate." Moreover, in 2008, Decree no. 64 was issued which further strengthened the immunity of the security services but prohibiting the legal prosecution of security personnel who commit crimes and subjected such prosecution to the approval of their superiors.

[8] "Election Provisions in the Constitutions of Syria" (Arabic), research paper, Free Syrian Lawyers Association - Legal Expert Team, 10 April 2020, link: <https://bit.ly/3oIl9D5>, accessed on 21 April 2021.

[9] Syrian Arab Republic, Presidential Decree No. 93 of August 23, 1962. For more, see: Syrians for Truth and Justice, "Syrian Citizenship Disappeared: How the 1962 Census Destroyed Stateless Kurds' Lives and Identities", 2018, p. 16 et seq., link: "[Syrian Citizenship Disappeared](https://stj-sy.org/)" - [Syrians for Truth and Justice \(stj-sy.org\)](https://stj-sy.org/) accessed on 15 May 2021.

[10] Syrian Arab Republic, (Syrian) Constitution of 1973, issued via Decree no. 208 on 13 March 1973.

same article which then adds that Syria is a member of the Union of Arab Republics and is part of the Arab world and the Arab nation. Similarly, it is clear from many texts of this constitution that it is based on the ideology of the ruling party, as Article 8 explicitly states that the Arab Socialist Baath Party is “the leading party in the society and the state.” Thus, during the past decades, the Baath Party has consistently secured the majority of parliamentary seats and consolidated control over the Council of Ministers, in addition to its penetration into all sectors of the state, especially education, the military, and the security services. As for Article 49, it compels popular organizations to participate actively in realizing the goals of the Baath Party by “building the socialist Arab society and defending the system.”

It is also evident from the provisions of this constitution that it does not adhere to the principle of separation of powers, thus undermining any foundations for democracy and the rule of law.<sup>[11]</sup> The 1973 Constitution grants the President of the Republic broad powers not only at the level of executive authority, but both the legislative and judicial as well. Article 111 authorizes the president to legislate during or outside People’s Assembly sessions, or even during the period between the terms of two Assemblies.<sup>[12]</sup> Moreover, Article 98 grants the president the right to veto laws approved by the People’s Assembly, while Article 107 enables him to dissolve the Assembly. In terms of judicial authority, the President of the Republic presides over the High Judicial Council, pursuant to Article 132, consequently violating the principle of judicial independence and the immunity of judges, as this Article allows the President of the Republic to intervene in the appointment and dismissal of judges. As for Article 139, it grants the President of the Republic the right to appoint all members of the Supreme Constitutional Court which would be responsible for his trial –only in cases of high treason.<sup>[13]</sup> Furthermore, the rights stipulated in the Constitution were not translated on the ground as, for example, Article 39 stipulates the right to assemble and demonstrate peacefully, and that such activity should be regulated by law, but no such law was issued.<sup>[14]</sup> Meanwhile, the Constitution failed to address in any way other basic rights such as the freedom to establish civil society organizations and to form or join political parties.

[11] French philosopher Montesquieu, in his book *The Spirit of Laws* published in 1748, stresses the essentiality of the separation of powers in different systems of government, and that only power can stop the abuse of power. Thus, this principle ensures that power is not concentrated in the hands of one person or body, which is essential for the independence of the judiciary and its impartiality.

[12] Moreover, according to Article 110, the President of the Republic may prepare draft laws and refer them to the People’s Assembly. He also has the power to veto any amendment to the constitution even if it receives the support of “two-thirds majority of the People’s Assembly members,” according to Article 149 of the constitution.

[13] Article 91 of the 1973 Constitution states that, “The President cannot be held responsible for actions pertaining directly to his duties, except in the case of high treason. A request for his indictment requires a proposal of at least one-third of the members of the People’s Assembly and an Assembly decision adopted by a two-thirds majority in an open vote at a special secret session. His trial takes place only before the Supreme Constitutional Court.”

[14] The Peaceful Protest Law was issued in 2012 and came as a disappointment. For more, see Nael Georges, “Legal Notes on the Legislative Decree Regulating Peaceful Demonstration in Syria” (Arabic), Syrian Human Rights Committee, 22 April 2011, link: <https://www.shrc.org/?p=9823>, accessed on 23 April 2021.



#### 4. The Illusion of legal reform

As for the legal reforms that the Syrian regime claimed to have undertaken following the popular uprising of 2011, they merely reproduced a legislative system that is oppressive to Syrian citizens and dedicated to maintaining the regime's hold over power. The regime issued a set of laws in an attempt to contain popular anger and circumvent the political transition demanded by Syrians in opposition to the regime. In 2011, particular demands were voiced: ending the state of emergency devoted to privileging the security services and abolishing the exceptional courts. Additionally, there were demands for the abolition of Article 8 of the Constitution which consolidates the Arab Socialist Baath Party's control over the reins of power.

The Syrian regime used repressive force to confront peaceful demonstrations and dissent to its rule, but nonetheless responded promptly to the demands mentioned above. The regime abolished Article 8 of the previous constitution and issued Decree No. 161 to end the state of emergency, which coincided with Legislative Decree No. 53 relating to the abolition of the Supreme State Security Court (SSSC).<sup>[15]</sup> However, this legislative gap limiting the power of the security services was quickly compensated for through a new legislative framework under the banner of 'counter-terrorism.' Law No. 19 of 2012, the Counter-terrorism Law, was adopted which paved the way for the issuance of Decree No. 22 of 2012 establishing the Counter-terrorism Court (CTC) to hear cases with terrorism charges. The CTC soon became a new arm of the security services, and inherited the duties previously entrusted to the defunct SSSC.<sup>[16]</sup> In its Article 8, Decree No. 22 explicitly states that "the court shall not be bound by the rules stipulated in the legislation in force, in any of the roles or procedures of prosecution or trial."

The new Counter-terrorism Law imposed severe restrictions on the right to freedom of expression and contains in its 15 articles political terminologies and broad concepts that criminalize even those who exercise their legitimate rights, such as the term 'the conspiracy.' It also states in Article 8 that, "Whoever distributes printed materials or stored information regardless of its form, with the intention of promoting terrorist means or terrorist acts, shall be punished with temporary hard labor, and the same penalty shall be imposed on whoever manages or uses an internet site for this purpose." In this context, the Syrian regime even criminalized forms of peaceful dissent by considering them "means of promoting terrorism" as evidenced by the trial of many activists and peaceful dissidents before the Counter-terrorism Court since its inception.

As a continuation of what the Syrian regime called "reform," Legislative Decree No. 100 of 2011 on political parties was issued, and similarly failed to meet the most basic international standards.<sup>[17]</sup> In Article 35, the decree states that, "National Progressive Front

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[15] This was on April 21, 2011.

[16] See: Human Rights Watch, Syria: Counterterrorism Court Used to Stifle Dissent, June 2013, link: <https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>

[17] Vide infra, in Section Five, Chapter Three of this report.

[NPF] parties are legally licensed ipso facto,” these parties being those supportive of the ruling regime. Furthermore, a Law on Media was issued pursuant to Legislative Decree No. 108 of 2011 which, in turn, remained inconsistent with the principles of democracy and the rule of law, and even strengthened the ruling regime's control over official and unofficial media.<sup>[18]</sup> On April 7 of the same year, Bashar al-Assad issued Decree No. 49 according to which citizenship was granted to some Kurds formerly deprived of it.<sup>[19]</sup> However, this decree only partially addressed the issue of stateless persons in Syria which requires a comprehensive review of all Laws related to citizenship and naturalization, including the provisions of Legislative Decree Law No. 276 of 1969 related to the Syrian Arab nationality. This decree is also discriminatory against women, especially in Article 3 which considers a Syrian Arab to be “whoever was born in or outside the country to a Syrian Arab father,” while paragraph B of this decree does not allow a mother to grant citizenship to her children born in or outside the country except when there is no proof of the newborn's legal relation to his father, such as cases in which the father is unknown.

## **5. The 2012 constitution: the lack of legitimacy and falling short in substance**

On October 15, 2011, Bashar al-Assad issued Decree No. 33 to form a national committee to draft a new constitution. This process lacked any democratic mechanism or dialogue with the Syrian opposition and was even conducted under continued systematic violations against dissidents to Assad's rule. As with all elections under the rule of the Assad regime, both the Hafez and Bashar, the referendum on the 2012 draft constitution was held in an atmosphere lacking any semblance of democracy. During this referendum, the Syrian regime exerted pressure on Syrians, even those residing in neighboring countries such as Lebanon, and coerced them to vote. As for the result of the referendum, according to the Syrian government, 89.4% of referendum participants approved the new constitution that was promulgated in February of 2012.<sup>[20]</sup> The referendum was described by some opposition figures and officials from other countries as “farical.”<sup>[21]</sup> The contents of this new constitution are an extension of the regime's security and ideological domination over the state and government. This is despite the abolition of Article 8 on the role of the Arab Socialist Baath Party and its replacement with an article bearing the same number which, in its first paragraph, states that, “The political system of the state shall be based on the principle of political pluralism and exercising power democratically through the ballot box.”

As is the case with previous constitution, the 2012 Constitution grants the President of the Republic extremely broad legislative, executive, and judicial powers including the

[18] Vide infra, in Section Four, Chapter Three of this report.

[19] For more, see: Syrians for Truth and Justice, “Lost Syrian Citizenship,” *ibid.*, p. 21.

[20] BBC News Arabic, “Syria: 89.4% of Referendum Participants Approved the Constitution” (Arabic), 27 February 2012, link: [https://www.bbc.com/arabic/middleeast/2012/02/120227\\_syria\\_const\\_voting\\_results](https://www.bbc.com/arabic/middleeast/2012/02/120227_syria_const_voting_results), accessed on 15 May 2021.

[21] See: Monte Carlo International, “Highlights of the Current Syrian Constitution and Proposed Amendments” (Arabic), 1 November 2019, link: <https://bit.ly/3EQQHUu>, accessed on 15 May 2021.

ability to dissolve the People's Assembly (Article 111), prepare draft laws and assume the authority to legislate (Articles 112-113), chair the High Judicial Council (Article 133), and name all judges of the Supreme Constitutional Court (Article 141).<sup>[22]</sup> The new constitution does not detail the conditions for implementing the state of emergency that persisted for 48 years under the Assad regime,<sup>[23]</sup> and it also omits many basic citizens' rights such as the inadmissibility of trying civilians before military courts which would limit the powers of the security services and exceptional courts. This constitution also failed to subject the armed forces to civilian oversight,<sup>[24]</sup> something that is becoming increasingly important in the Syrian case considering the military's ideology and doctrine, and its systematic violations against Syrians especially over the past decade which have included mass killing, torture, mass displacement, and the arbitrary arrest of hundreds of thousands of Syrians opposing the current regime.

Thus, there were no signs of achieving a structural change in the political and legislative structure of the regime that could lead to a break with the previous era. Instead, the sectarian tendencies of the Syrian regime were evident as it continued to employ religion to serve its interests especially through ensuring the loyalty and support of official religious institutions, Islamic and other, and its recruitment of foreign Shia militias such as Lebanese Hezbollah to fight among its ranks. The religious, sectarian, and ethnic incitement that took place in Syria, combined with accelerating foreign interventions, led to an increase in the intensity of armed violence which took many forms including conflict between supporters and opponents of the regime, Sunnis and Shias, and Arabs and Kurds. Years of conflict have resulted in the destruction of a large proportion of Syria's already fragile infrastructure, and hundreds of thousands have been detained over the course of the conflict, among whom are tens of thousands of cases of enforced disappearance,<sup>[25]</sup> while poverty rates in Syria reached unprecedented levels.<sup>[26]</sup>

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[22] See also articles 105, 106, 107, 108 and 109.

[23] Article 114 also allowed the President of the Republic to take swift measures, as necessitated by circumstance, to confront a grave danger, without clarifying what is meant by such danger or specifying the restriction of freedoms of citizens that may result from the application of such measures.

[24] See Article 11 of this constitution.

[25] Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, *ibid.*, p. 39.

[26] For more, see: World by Map, link: <https://www.citypopulation.de/en/world/bymap/poverty>, accessed 20 April 2021.

## Chapter 2: International Law and Elections in Syria

While electoral systems, and the way elections are managed, vary from one state to another, all states are required to adhere to international standards for free and fair elections. This commitment stems primarily from the international instruments adopted within the UN framework that these states have ratified, or will ratify, as part of their processes of legal reform and political change. Many international and regional bodies have developed best practices and standards to fulfill these commitments.

### First: International covenants and elections

Many international covenants provide guarantees for holding free and fair elections and other rights related to elections such as the prohibition of discrimination and freedom of opinion, expression, assembly, movement, and the media. These covenants and agreements also provide for the implementation of the rule of law principle, which involves the prohibition of arbitrary arrest and practices such as torture and inhuman treatment; the independence of the judiciary; and the rotation and transfer of power. All of these rights are contained within the Universal Declaration of Human Rights of 1948,<sup>[27]</sup> which states in Article 21, with regard to electoral rights, that, “1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

In turn, the International Covenant on Civil and Political Rights (ICCPR) refers to the Universal Declaration and to those electoral and election-related rights.<sup>[28]</sup> Article 1 of the Covenant recognizes the right of all peoples to self-determination, and the third paragraph of the same article requires states parties to “promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”<sup>[29]</sup> Article 25 of this Covenant contains some of the most important legal obligations related to elections imposed on states that have ratified the Covenant, and stipulates in its first paragraph that every citizen, without any of the discrimination specified in this Covenant, has the right to “take part in the conduct of public affairs, directly or through freely chosen representatives.” The second and third paragraphs of the same article add that every citizen “o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors,” and that they shall “have access, on general terms of equality, to public service in his country.”

[27] It was adopted by the United Nations General Assembly on December 10, 1948, during its 183rd meeting.

[28] Adopted by the United Nations General Assembly by Resolution No. 2200 (A-D-21) on December 16, 1966, and entered into force in 1976 after 35 countries ratified it.

[29] Such text is contained in Article 1 of the International Covenant on Economic, Social and Cultural Rights.

Other such international agreements included electoral rights, such as the International Convention on the Elimination of All Forms of Racial Discrimination<sup>[30]</sup> which in Article 5, paragraph c, indicates “political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.” The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also contains 30 articles many of which call for the enactment of national legislation to eradicate and combat discrimination on the basis of sex, and to enhance the legal status of women, particularly in Article 3 which requires states parties to “take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”<sup>[31]</sup> Article 7 of the CEDAW is concerned with ensuring for women, on an equal basis with men, the right to “vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.” Similarly to the instruments cited above, in 2006, the Convention on the Rights of Persons with Disabilities (CRPD), affirm, as the above-mentioned covenants, the equal right to vote and to be elected.

There are also many regional charters that address issues of political participation, elections, and other rights that enhance them. The European Convention on Human Rights,<sup>[32]</sup> adopted by the Council of Europe,<sup>[33]</sup> is one of the most prominent instruments at the European level. In the African sphere, the African Charter on Human and Peoples’ Rights was adopted to which many Arab countries in the African continent joined. With regard to the subject of this report, being Syria, special attention must be paid to the Arab Charter on Human Rights, first adopted by the League of Arab States<sup>[34]</sup> on September 15, 1997 before being reviewed and a new version adopted on May 23, 2004.<sup>[35]</sup> In many of its articles, this charter states the rejection of all forms of discrimination including that based on gender, language, and religious belief.<sup>[36]</sup> Article 24 of the charter affirms the principle of equality between citizens and the right of every citizen to “the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.” Many other paragraphs of this charter provide for rights related to elections such as freedom of political practice, taking part in the conduct of public affairs; standing for election; choosing representatives in a free and credible manner; freely forming and joining as-

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[30] Adopted by United Nations General Assembly Resolution 2106 A (D-20), on December 21, 1965.

[31] See the full text of the Convention at the following link: <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, accessed on 4 August 2021.

[32] It entered into force on September 3, 1953. For the full text of the Covenant: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

[33] A human rights organization founded in 1949 and today comprising 47 member states. The Council of Europe works to support democracy and the rule of law and promote respect for human rights.

[34] As per Arab League Resolution No. 5437, dated 15 September 1997.

[35] This was through the Sixteenth Arab Summit, hosted by Tunisia.

[36] See Articles 3, 11, 34, 39 and 41.

sociations; and the right to peaceful assembly.

From international human rights instruments, a set of standards for democratic elections can be derived. The extent of adherence to these standards is a criterion for conducting free, fair, and credible elections. In addition to the rights closely related to elections, being implemented in accordance with the rule of law and providing a democratic atmosphere free from intimidation of citizens, and guaranteeing trust in the electoral process, voting must also be confidential and within direct, periodic, competitive elections that guarantee equality and universality. Competitive elections are defined as those that take place within democratic systems and, “in which the voter has actual choices, is free to choose among them, with all of this guaranteed based on applicable legal rules.<sup>[37]</sup>” As such, the electoral process is voided of its substance if elections are not pluralistic or competitive, such as when parties or people are excluded from candidacy without reasonable grounds. This is what happens under authoritarian regimes that monopolize the electoral process and exclude their opponents, whether by preventing them from forming parties or the right of assembly, expression, and movement, or otherwise by preventing them running for office. This can be achieved by limiting candidacy to one person, as was the case in the Syrian presidential elections before 2014 which were held via referendum, or after 2014 such as in the People’s Assembly and the Supreme Constitutional Court, in which the regime was decidedly involved in the support and approval of nominations.

## **Second: Syria's Position on International and Regional Conventions and Standards**

Syria's participation in drafting international human rights instruments is an essential step towards the possibility of implementing these rights at the domestic level. However, this participation has seen clear impact from political, ideological, and religious considerations and many attempts to evade the implementation of these instruments, especially by not ratifying them, issuing reservations to some of their contents, and enacting laws in contravention to them, as well as engaging in a system of regional, Arab, and Islamic conventions and treaties in order to limit the impact of international ones.

### **1. Participation and reservations to international instruments**

Syria acceded to most international human rights instruments, and even actively participated in drafting some such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights of which it voted in favor and ratified. However, from Syria's participation in drafting some international instruments and its reservations about some of their provisions, it became evident that Syria does not accept the notion of equality between citizens, especially between Muslims and others, or between men and women. For example, Syria joined the position of the delegate of the Republic of Iraq (Mr. al-Qaisi), who spoke on behalf of the Organization of Islamic Cooperation (then known as the Organization of the Islamic Conference) while drafting

[37] See: Arab Electoral Dictionary, United Nations Development Program, first edition, 2020, p. 46.

the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. al-Qaisi indicated at the time that OIC countries “are convinced of the importance of this declaration, so they accept its adoption without a vote. These countries express reservations to any text or expression in this declaration that contradicts Islamic Sharia or any legislation or law based on the Sharia.”<sup>[38]</sup> This was supported by the Syrian delegate, Ms. Al-Ali, who expressed her delegation's reservations about “several paragraphs in the draft declaration that contradict the spirit of the Syrian constitution or national, religious and cultural traditions, reservations which relate to paragraph (f) of Article 6 and to Article 7.”<sup>[39]</sup> Paragraph (f) of Article 6 pertains to the freedom to solicit and receive voluntary contributions, both financial and other, from individuals and institutions, while Article 7 relates to ensuring, in the legislation of each country, the rights and freedoms stipulated in the Declaration.

Some provisions of the CEDAW have also prompted reservations from Syria whose UN representative supported the position of many Arab and Islamic countries in proposing the rescinding of Paragraph 2 of Article 9 concerning equality between women and men with respect to the nationality of their children. The Syrian representative indicated that, according to the legislation of his country, the nationality of the child is automatically that of the father.<sup>[40]</sup> However, this proposal was not adopted. As such, Syria officially expressed reservations to Article 9 related to the acquisition of nationality, especially its second paragraph which grants women equal rights with men with regard to granting nationality to their children.

Like many other Arab countries, Syria has expressed reservations to other provisions of this Covenant such as Article 15 which states in its first paragraph that “States Parties shall accord to women equality with men before the law.” The remaining paragraphs of this article relate to equality in legal capacity and all stages of juridical procedures, granting equal rights through legislation related to the movement of persons and the freedom to choose the place of residence and domicile.

Syria has also invoked the principle of sovereignty to reject many United Nations mechanisms to monitor respect for the provisions of ratified international agreements, which hinders the implementation of those provisions. Syria has voiced reservation against the contents of Article 41 of the International Covenant on Civil and Political Rights (ICCPR) which authorizes the Human Rights Committee, responsible for implementing the provisions of the Covenant, to receive complaints from state parties related to human rights violations. In the same context, Syria has rejected the competence of this committee, under the First Optional Protocol to the ICCPR, to receive individual complaints from persons claiming that some of the provisions of the Covenant have been violated.

Syria has also reserved to the jurisdiction of other international judicial bodies, notably Article 22 of the International Convention on the Elimination of All Forms of Racial

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[38] See General Assembly, Third Committee, 36th Session, 43rd Meeting, 9/11/1981.

[39] Ibid.

[40] Compte rendu, point 75 du l'ordre du jour: projet de Convention sur l'élimination de la discrimination à l'égard des femmes, A/C.3/34/SR.70, 10 December 1979, p.7-8.

Discrimination, and Article 29 Paragraph 1 of the CEDAW which provide for referring some forms of disputes arising from the application or interpretation of the Convention to the International Court of Justice for arbitration/adjudication. Syria also rejected the competence of the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1997.<sup>[41]</sup>

In addition to the above reservations, Syria has not acceded to some basic international agreements to build the rule of law and guarantee other rights related to elections, including the United Nations Convention Relating to the Status of Stateless Persons of 1954 and the United Nations Convention on the Reduction of Statelessness of 1961. These conventions are especially important in the Syrian case, due to the presence of many stateless persons who were born and reside in Syria. Syria has not yet joined the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) which will also be essential to achieving a political settlement and addressing the issue of enforced disappearance and avoiding its resurgence in the future.

## 2. The ambiguity of the principle of international instruments' precedence over domestic legislation

Syria's lack of openness towards international human rights instruments is further demonstrated by its abstention from explicitly recognizing the supremacy of these instruments over domestic legislation in the event of conflict between the two. This principle is essential to ensuring the material implementation of international covenants, treaties, and agreements. In this regard, Article 27 of the Vienna Convention on the Law of Treaties<sup>[42]</sup> states that, "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."<sup>[43]</sup> The Permanent Court of International Justice, in a number of advisory opinions, went to mention this principle and stated that a state could not invoke the provisions of its constitution to avoid the application of the obligations imposed on it under the rules of international law or existing treaties.<sup>[44]</sup>

Some international agreements explicitly require state parties to amend their legislation or repeal provisions that are inconsistent with their contents. This is the case with the International Convention on the Elimination of All Forms of Racial Discrimination which states that, "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."<sup>[45]</sup>

[41] See Articles 20 and 30 of the Convention.

[42] It entered into force January 27, 1980.

[43] The first paragraph of Article 46 of this Convention, relating to the invalidity of treaties, states the following: "A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance."

[44] See the advisory opinion dating February 1932: CPJI, affaire Traitement des nationaux polonais à Dantzig, avis consultatif, Série A/B, no 44, p. 24.

[45] Article two, Paragraph 1, c.



Despite these provisions, ambiguity still shrouds the issue of the supremacy of ratified international covenants over domestic law, especially considering the fact that it has not been recognized by any Syrian constitution, past or present.<sup>[46]</sup> It should also be noted that Legislative Decree No. 3, by which Syria acceded to the International Covenant on Civil and Political Rights on April 21, 1969, gave this Covenant the status of domestic legislation. However, it should be noted that the Civil Chamber of the Court of Cassation indicated in one of its rulings that, “National courts do not apply treaties based on the state’s international commitment to their application, but rather as it has become part of the domestic laws of the state. If there is conflict between the provisions of the treaty and the provisions of a domestic law, the national court must apply the provisions of the international treaty, giving it precedence over domestic law.”<sup>[47]</sup>

### 3. At the regional level:

Syria was committed to the Arab Charter on Human Rights following its accession to it on February 6, 2007. It is worth noting, however, that the absence of effective monitoring mechanisms for the implementation of the provisions of the Charter, as well as the Charter’s silence on some basic rights or their restriction stipulated in the domestic laws of States Parties,<sup>[48]</sup> rendered its provisions mere ink on paper. This is confirmed by the absence of free and fair elections for the vast majority of Arab League states that drafted and signed the Charter, and thus this instrument has lost its credibility and effectiveness. The same applies to the above-mentioned declarations adopted within the framework of the Organization of Islamic Cooperation which, in addition to their weak content compared to international covenants, lack oversight mechanisms for the application and implementation of their provisions. This is also compounded by the absence of a real political will on the part of member states, most of which are ruled by authoritarian regimes whose existence is undermined by holding free and fair elections.

Therefore, influenced by states' religious and ideological considerations, these regional instruments remain primarily of political or moral value, and do not in all cases have binding legal force. In the absence of implementation mechanisms, and the fragility of these regional instruments, we believe that it is in the interest of Syrians to rely on the contents of international human rights covenants that do not have such defects. Respecting the provisions of international instruments and standards, and the compatibility of Syrian legislation with them, are some of the priorities of the transitional phase in Syria, and even as a fundamental legal basis for a process of comprehensive legal reform.

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[46] This is in contrast to some constitutions of Arab states such as Morocco. As stated in the preamble to the Lebanese Constitution that Lebanon is a “founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.”

[47] Decision No. 366/1905 dated December 21, 1980, published in “The Attorneys Magazine”, 1981, p. 305. Also see: Human Rights Committee’s third periodic report on the Syrian Arab Republic, CCPR/C/SYR/ 2004/3, 5 July 2004, para. 39.

[48] Violations by Syrian laws limit citizens’ enjoyment of the rights stipulated in the Charter, especially in the presence of an arsenal of Syrian legislation that restricts and violates freedoms and rights.

## Chapter 3: Syrian Legislation and Electoral Rights

As relates to elections, the current Syrian legal framework does not comply with international standards and cannot guarantee the holding of democratic elections. This is demonstrated here by citing excerpts from constitutions and electoral laws, particularly the current Syrian constitution of 2012 and the Law of General Elections of 2014.<sup>[49]</sup> The section also addresses how such legislations contravene international standards and argues for the need to draft a new constitution and issue new electoral laws to form the legal basis for holding free and fair elections.

### First: Syrian Constitutions and Electoral Rights

There is no international standard for state constitutions that explicitly requires detail with regard to elections, and many of the constitutions of democratic nations have not delved deeply into the subject of electoral processes. However, we believe that a future Syrian constitution must include electoral rights more broadly, and also particularly restrict any abuses on part of the executive. This includes, for instance, determining the conditions for the nomination of a sitting president to a new term, and the methods of electing them. Such detailed provisions are crucial if we consider the Syrian experience in which restriction of rights and liberties is stipulated in the constitution,<sup>[50]</sup> and are of even greater importance in a context such as Syria, where it may be very difficult to establish strong democratic institutions in the foreseeable future. Consequently, the provisions of a future Syrian constitution will form the most vital entry point towards a process of political transition. A new constitution in Syria will also contribute to achieving the greater goals of election, i.e., prohibiting abuse of power by the winners of elections and preventing the enactment of laws that are inconsistent with democracy and human rights.<sup>[51]</sup>

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[49] Law no. 5 issued on March 17, 2014.

[50] Article 2 of the 2012 Constitution stipulates that, “The system of governance in the state shall be a republican system; Sovereignty is an attribute of the people; and no individual or group may claim sovereignty. Sovereignty shall be based on the principle of the rule of the people by the people and for the people.” However, this same article stipulates that, “The People shall exercise their sovereignty within the aspects and limits prescribed in the Constitution.” In such a case, we find that the restriction came not only from the laws, but from the constitution itself which contains provisions that contravene human rights, as this report shows in more than one site. As an example of a legal restriction of a fundamental constitutional right, we cite Article 10 of this Constitution, which requires public organizations, professional unions, and associations to work “in accordance with the terms and conditions prescribed by law.” Thus, many laws were issued to which the constitution is compliant, instead of constitutionality governing the formulation and contents of laws. This is exacerbated by the absence of any effective role by the constitutional court, which ought to abolish laws and proposals that are unconstitutional, as well as the absence of any other constitutional committees that are devoted to the respect and adherence to constitutional provisions and guarantees.

[51] A briefing paper issued by Democracy Reporting International stresses the need to include electoral rights and guarantees in the constitutions of countries that have experienced “controversial” elections. This is useful for several reasons: “First, constitutions guide lawmakers and election administrators in the process of drafting electoral laws and regulations. By requiring compliance, constitutions ensure that the legal framework for elections adheres to a comprehensive set of electoral rights. Second, constitutions can support a rights-based interpretation of electoral laws. Where various interpretations of a norm may be possible, constitutional guarantees will suggest that the most rights-friendly interpretation should be used. Third, constitutions can fill the gap when electoral legislation leaves out important rights protections. Fourth, constitutions make clear to citizens what rights they should expect in an election and provide a constitutional basis for an appeal to courts should those rights be violated.” Democracy Reporting International, *Election Provisions in Constitutions*, Briefing Paper, April 2014, p. 3.

## 1. The Presidency of the Republic in Syria's Constitutions

Beyond failing to provide basic rights pertaining to elections, Syria's last two constitutions have played a key role in perpetuating control by the executive, represented especially by the Presidency of the Republic, over the reigns of power, as well as enshrining discrimination between citizens in regards to candidacy for this position. This led to the promotion of authoritarianism and autocracy, eliminated political pluralism, and free and fair elections. As such, it also undermined the state of citizenship which must be based on equality between citizens. Among the essential issues that must be addressed in a future Syrian constitution is the abolition of Article 3 which prohibits non-Muslims from running for the presidency, because it violates the principle of non-discrimination,<sup>[52]</sup> reinforces sectarianism, and undermines the citizenship of non-Muslims and impacts their integration. Compared to the 1973 Constitution, the 2012 Syrian Constitution made some progress in regard to the method of electing the president, as it became possible to have multiple candidates after the previous constitution had limited candidacy to one.<sup>[53]</sup> However, the new constitution contains many articles that violate international election standards. In addition to the abovementioned discrimination on the basis of religion, Article 84 prohibits candidacy by those married to non-Syrians,<sup>[54]</sup> and those who had not resided in Syria for at least ten continuous years by the date of submitting the candidacy application. This excludes a substantial group of Syrians, especially those displaced during the past decade, from running for future elections. As stated in the Paragraph 3 of Article 85, "The candidacy application shall not be accepted unless the applicant has acquired the support of at least 35 members of the People's Assembly." This calls for contemplation of other constitutional texts that grant the president broad powers over parliament, especially the power to dissolve the Assembly according to Article 111, thus enabling the president to influence Assembly members regarding his re-nomination for the presidency, and even the selection of his electoral competition.

Article 84 also imposes restrictions on candidates for the position of President of the Republic, ones that may be unreasonable and unacceptable under international standards. Setting the age of eligibility at 40 years<sup>[55]</sup> is excessive compared to many democratic countries.<sup>[56]</sup> According to the second and third paragraphs of this article, it is stipulated that the candidate should "be of Syrian nationality by birth, of parents who

[52] This is stipulated by the international standards referred to above, and in several articles of the Syrian Constitution of 2012 such as Articles 19 and 33.

[53] This was done through a farcical popular referendum every seven years, in an atmosphere of political repression and intimidation, and with direct intervention from the Baath Party's Regional Command through its National Progressive Front in appointing candidates. See Articles 10, 71, and 84 of the 1973 Constitution. For more on the issue of elections in the 1973 constitution, see: Hadia al-Omari, "Elections in Syria. Between a Right and Largesse - Part 1" (Arabic), Opinion Piece, Omran Center for Strategic Studies, January 28, 2020, <https://bit.ly/3mJIHz>.

[54] It follows from this text that legislation excludes Syrian women from running for the presidency. However, the matter may be up to the Constitutional Court's interpretation which itself may not exclude women. In all cases, any constitutional text in the future must be gender-sensitive in order to achieve full equality among citizens in all rights, including provisions on electoral rights.

[55] This is according to Article 84, Paragraph 1.

[56] In Denmark, any citizen who has reached the age of 18 can run for any general elections, and the same is the case in France, while Germany has set the minimum age at 40.

are of Syrian nationality by birth,” and that they should “enjoy civil and political rights and not convicted of a dishonorable felony, even if he was reinstated.” Article 152 of the constitution prohibits anyone carrying another nationality, in addition to their Syrian nationality, from holding several key positions including the presidency and membership to the People's Assembly. While drafting such articles for a future Syrian constitution, the injustice related to granting and depriving Syrians of their citizenship must be taken into consideration. This includes what is already contained in the Syrian Nationality Law,<sup>[57]</sup> the displacement of large numbers of Syrians, as well as the politicized court rulings by the Syrian regime against its dissidents which will prevent some of them from running in future elections if such paragraphs remain part of a future constitution of Syria.

## 2. The legislative authority and the constitution

With regard to legislative elections, the new constitution of 2012 enshrined some guarantees related to electoral rights, such as the contents of Article 57 which states that, “Members of the People’s Assembly shall be elected by the public, secret, direct and equal vote in accordance with the provisions of the Election Law.” Article 61 stipulates that the electoral law includes “1. The freedom of voters to choose their representatives and the safety and integrity of the electoral procedures; 2. The right of candidates to supervise the electoral process; 3. Punishing those who abuse the will of the voters; 4. Identifying the regulations of financing election campaigns; 5. Organizing the election campaign and the use of media outlets.”<sup>[58]</sup> However, during electoral campaigns, including presidential elections, these campaigns are unregulated as a large number of candidate posters and other media are displayed.

Article 56 of the current constitution sets the term of the People’s Assembly at four years subject to legal extension in case of war. This exception needs to be clarified, especially in light of the Syrian context which has seen armed conflict for more than ten years, on the one hand, and the fact that, for decades, the Syrian regime has considered itself to be in a state of war with Israel, which enabled it to impose a prolonged state of emergency. Moreover, the Supreme Constitutional Court has recently ruled that, “the President of the Republic has the right to issue a decree to postpone the elections of members of the People’s Assembly for the third legislative term until the end of the exceptional circumstance represented by the Coronavirus pandemic.”<sup>[59]</sup> By doing so, the Court has enabled the president to extend the mandate of members of the People's Assembly in a state of war, in what appears to be a constitutional violation. In its ruling, the court relied on Article 114 which allows the President of the Republic to take the prompt measures required to confront “a grave danger and a situation threatening national unity, the safety and integrity of the territories of the homeland occurs or prevents state institutions from shouldering their constitutional responsibilities.”

[57] Issued pursuant to Legislative Decree No. 276 of November 24, 1969.

[58] In turn, the Syrian Constitution of 1950, in Article 40, included some texts similar to what is contained here.

[59] Issued on April 5, 2020, Principle No. 4, Decision No. 4 was published in the file “Syrian Elections: Organizational and Legal Framework,” United Nations Economic and Social Commission for Western Asia (ESCWA), 2020, p. 172 et seq.

These broad and ambiguous articles of the constitution confirm, once again, that the president's powers are absolute, and he is granted hegemony over the legislative and judicial. Here, it bears mention again that elected members of the People's Assembly are only then appointed via decree from the President of the Republic.<sup>[60]</sup>

### 3. Constitutional quotas and the political participation of Syrian communities

Similarly, to the previous constitution, the 2012 Syrian constitution only stipulates one quota which is allotted to workers and farmers, such that at least half of the members of the People's Assembly must be from these categories according to Article 60. On the other hand, the Syrian constitution neglects to include certain guarantees or quotas that favor promoting the participation of marginalized groups and, unlike many constitutions that take into account the contexts and demographic compositions of their countries. The new Egyptian constitution, for example, referred in more than one instance to the necessity of representing women, the youth, people with disabilities, Christians, and those residing abroad.<sup>[61]</sup> Although the Syrian Constitution stipulated in Article 23 guarantees to provide opportunities for the effective participation of women in political life, it does not specify a women's quota,<sup>[62]</sup> and neglected to make such guarantees for the youth, people with disabilities, and Syrians displaced outside the country.

Furthermore, the Syrian constitution does not provide for the establishment of an independent elections authority, or adequate guarantees for its independence or proper administration, which will be outlined in the relevant section.<sup>[63]</sup> It may also be important to include, in a future constitution, mechanisms for adjudicating electoral disputes,

the electoral system to be followed,<sup>[64]</sup> and the demarcation of electoral districts and their seats in order to avoid manipulation by the ruling regime or its inclusion of conflicting/contravening provisions in electoral laws.<sup>[65]</sup> Furthermore, it is necessary for the constitution to elaborate on transparency and election monitoring, and the secrecy of vote which the Syrian people have not known under the rule of the Assad regime. The current Syrian constitution also fails to include conditions for eligibility to run for

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[60] See, for example, the text of Decree No. 127 issued on May 2, 2016, which contains naming the winners of seats in the People's Assembly for the second legislative term.

[61] Article 244 of this constitution was amended to stipulate that, "The state grants youth, Christians, persons with disability and expatriate Egyptians appropriate representation in the first House of Representatives to be elected after this Constitution is adopted, in the manner specified by law." See also Article 180 of this constitution. It is worthy of note that most of Egypt's previous constitutions also included a quota for workers and farmers.

[62] Article 46 of the Tunisian constitution of 2014 requires the state to work "to attain parity between women and men in elected Assemblies."

[63] For example, Article 126 of the Tunisian Constitution of 2014 stipulates the following: "The elections commission, named the Supreme Independent Elections Commission, is responsible for the management and organization of elections and referenda, supervising them in all their stages, ensuring the regularity, integrity, and transparency of the election process, and announcing election results. The Commission has regulatory powers in its areas of responsibility. The Commission shall be composed of nine independent, impartial, and competent members, with integrity, who undertake their work for a single six-year term. One third of its members are replaced every two years."

[64] For more on electoral systems and constitutions, see: DRI, *Election Provisions in Constitutions*, *ibid.*, p. 7 et seq.

[65] For relevant provisions from the constitutions of other countries, *ibid.*, p. 4.

parliamentary elections, leaving this to the general Election Law which contravenes international standards, as will be shown in the next section.

## **Second: Election Laws**

The Syrian Constitution itself contains provisions that violate electoral rights, including discrimination between citizens as explained above. These constitutional provisions influenced election laws that reproduced, or even exacerbated, the violations contained in these constitutions.<sup>[66]</sup>

### **1. The failings of the Law on General Elections of 2014**

The current Law on General Elections of 2014<sup>[67]</sup> includes legal provisions related to presidential, legislative, and local elections. Article 15 of the Law grants the governor the power to issue a decision to form an election committee, composed of civil servants, in each polling center.<sup>[68]</sup> Article 123 also authorizes the Ministry of the Interior to provide the requirements for presidential elections, referenda, and People's Assembly elections, while the Ministry of Local Administration has the mandate to secure the requirements of local administrative council elections. The same article adds that these two ministries shall assign a staff to work under the supervision of electoral management bodies throughout the duration of the electoral process. Members of this staff can therefore interfere in the electoral process for the benefit of those in power and those directly involved in the elections.<sup>[69]</sup> Moreover, the governor, who appoints the electoral management bodies, has direct authority over election workers, instead of leaving the matter of their appointment to an electoral authority and placing them under its supervision.<sup>[70]</sup>

The Law on General Elections also gives to the Ministry of Interior the task of preparing the general electoral register, in coordination with the Ministries of Justice and Local Administration and the Central Bureau of Statistics.<sup>[71]</sup> However, the Ministry of the Interior, to which many of the Syrian security services are affiliated, is not an impartial party unless it is restructured and democratized.

[66] For example, Article 30 of Law No. 5 reinstates discriminatory conditions for candidacy for the position of President of the Republic. Article 23 of the implementing regulations of Law No. 5 re-introduces these constitutional conditions for running for the presidency, and Article 22 of the same law stipulates a quota for workers and farmers. It is noteworthy that Article 23 of these implementing regulations stipulates that the application for candidacy for the People's Assembly or local administration councils must be attached to a civil record that includes information such as the applicant's being "a Syrian Arab for at least ten years from the date of submitting the candidacy application." This clause is not intended to exclude non-Arabs from running for office, as the Syrian People's Assembly includes many Kurds, but this indicates the penetration of the regime's pan-Arabist ideology into the legislative structure, especially its consideration of all Syrians to be Arabs.

[67] It replaced Legislative Decree No. 101 of 2011 referred to as the Law on General Elections.

[68] It is the committee that manages elections in polling stations, according to Article 1 of this law.

[69] It bears mention that the first paragraph of Article 51 of the Law on General Elections requires "any public servant to treat all candidates and political parties equally and with complete impartiality, in order to ensure the achievement of the principle of equal opportunities during the electoral campaign." However, this article is nothing more than ink on paper, especially considering the appointment of Arab Socialist Baath Party members to these electoral commissions.

[70] For more on the independence of EMB workers, see: "Document of the Organization of Arab Electoral Management Bodies (ArabEMBs) on the Independence Criteria of Electoral Management Bodies" (Arabic), ArabEMBs and UNDP, 2020, pp. 14-15.

[71] See Article 28. Also see: Article 27 of this law.

Despite its issuance in 2014, i.e., after the displacement of millions of Syrians, the Law on General Elections does not address the issue of voters residing outside the country in an adequate manner that is commensurate with the scale of the tragedy. According to Article 70 of the implementing regulations of the Law on General Elections, those residing abroad have the right to vote only in the presidential elections, and in the Syrian embassies. This article, along with some that follow it, set in place several conditions for the exercise of the right to vote, including that the voter's name being included in the electoral register; that there is no legal impediment to their exercise of the right to vote; and that their passport is valid and stamped with an exit stamp from any Syrian border crossing.<sup>[72]</sup> It is known that a large number of Syrians who left the country during the last decade do not meet these criteria. In any elections in the transitional period, it is essential to facilitate the process of voting for non-residents of Syria in transparent polling stations and lifting restrictions that prevent them from exercising their electoral rights.<sup>[73]</sup> It is noteworthy that Law No. 8 of 2016 amended the Law on General Elections, transferring the elections of some constituencies, or electoral centers there, from one region to another to allow voting and nomination by internally displaced persons. However, this law in no way addresses the issue of those residing outside Syria.

While Article 51 of the Law on General Elections explicitly guarantees freedom of expression for every candidate or party,<sup>[74]</sup> Article 50 imposes many restrictions including the commitment of candidates to maintain national unity, and prohibiting “anything contrary to public order and decency” from election campaigns.<sup>[75]</sup> These restrictions may be acceptable under the rule of law, but the ruling Syrian regime has always interpreted them as restrictions on the exercise of the right to freedom of expression.<sup>[76]</sup>

With regard to election management, an independent body has not been established in Syria for this purpose. Rather, the Law on General Elections created a Higher Judicial Committee for Elections, tasked with managing the process of electing the President of the Republic under the supervision of the Supreme Constitutional Court. This committee has a full mandate to supervise referenda, People's Assembly elections, and local administrative council elections.<sup>[77]</sup> Composed exclusively of judges, this committee is under the control of the executive authority, as its seven members are appointed by a

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[72] Article 72 of these regulations.

[73] For more, see: Section Three: Promoting Participation in Elections, paragraphs on participation of non-residents.

[74] Paragraph 2.

[75] Moreover, election campaigns were not at all regulated under the rule of the Syrian regime. The Law on General Elections does not include any effective mechanisms for monitoring and financing electoral campaigns, despite the inclusion in Article 108 of a penalty for anyone who posts electoral statements, pictures, and bulletins outside their designated locations. Conversely, in Tunisia, the EMB is entrusted with this task, as Article 71 of the Tunisian Basic Law on Elections and Referendums, issued on May 26, 2014, states that, “The Authority undertakes, voluntarily or at the request of any entity whatsoever, to monitor adherence by a candidate, a candidate list or a party to the principles, rules and procedures of campaigning. The Authority may seek the use of public force, if necessary, to break up meetings, demonstrations, motorcades or gatherings.” In many of its other articles, this law detailed the monitoring of media advertising, electoral campaigns, and the role of the media, as can be seen in Articles 67, 68, 69, 72, 73 and 74. Also, the second part of this law is devoted to campaign financing.

[76] See also Article 44 of the implementing regulations of this law.

[77] See Article 10.

presidential decree after being nominated by the Supreme Judicial Council,<sup>[78]</sup> which itself is headed by the President of the Republic. The Law on General Elections also neglects the issue of division and delimitation of electoral districts in accordance with international standards, or the election of an electoral system that is appropriate to the Syrian case, which will be allocated its own section of the report due to its importance.

Finally, it must be noted that the influence of the Syrian regime, and its governance, extend to all elections including Baath Party elections as well as local elections. For example, the Local Administration Law<sup>[79]</sup> preserves broad powers for governors who are unelected and instead appointed by the President of the Republic and take their oath before him.<sup>[80]</sup> According to Article 122 of this law, the President of the Republic has the right to dissolve local councils at various levels. Since its issuance, the security services have continued to influence the elections and appoint those loyal to them.

## 2. Towards the adoption of a new electoral law in Syria

As we observed, all Syrian laws and decrees regulating elections must be reformulated, and there is special need to develop a new electoral law that overcomes the defects mentioned above in order to restrict executive interference that includes the issuance of implementing regulations,<sup>[81]</sup> which must be replaced with regulations and directives issued by an independent electoral authority which must play a key role in the election process. The Syrian context requires strict adherence by the electoral law to international standards in terms of its formation of an EMB independent of the executive, that is capable of carrying out its tasks with total independence, impartiality, and transparency.<sup>[82]</sup>

The new electoral law must also address the issue of voter registration, which must be done automatically by the competent authorities as is the case in Lebanon today. Otherwise, the law may require citizens to register prior to each election, such as the case in France. However, it may be very difficult to prepare automatic voter rolls in Syria especially for IDPs and refugees. Despite this, the voter registration process must be facilitated as much as possible, such that it does not encumber citizens or force them to bear financial costs such as for transportation, as this could cause a large proportion of eligible voters to abstain from registration and participation.

In all cases, international standards must be taken into account while preparing voter registers, especially transparency and clarity which is mainly achieved by stipulating in the new electoral law the registration procedures in an understandable manner, to inform the public of the final outcome, and to publish voter statistics and data while maintaining the confidentiality of personal data such as residential addresses.<sup>[83]</sup> The

[78] See Article 8.

[79] Issued by Decree No. 107 of October 1, 2011.

[80] See Article 40 of this law.

[81] It is worthy of note that the regulations related to the Law on General Elections were issued by former Prime Minister Wael al-Halqi.

[82] Depending on the outcomes of the Syrian conflict, a new election law may add the right of the electoral authority to request technical assistance and support from international, regional, and national organizations in order to achieve its objectives properly.

[83] For more, see: Arab Electoral Dictionary, *ibid.*, p. 82 et seq.



election management body can be entrusted with such responsibilities, especially if it is constituted and its functions are controlled in accordance with international standards. There may be a need to resort to electronic platforms for voter registration, and this could facilitate the issuance of voter identification cards that may also be electronic, thus helping to eliminate, or limit, election fraud and vote tampering, especially in the absence of electoral lists at polling stations and the ability of the voter to cast votes in more than one center.<sup>[84]</sup>

The new laws governing elections in Syria must also provide guarantees for taking all necessary measures to enable persons with disabilities, linguistic minorities, and illiterate persons to cast votes. It is also imperative that the law provides for the application of international agreements that are binding to Syria, as no such provisions were included in the present law, its interpretation, or its application. It must also enshrine the supremacy of international covenants over any provisions of domestic electoral law in violation or contravention of them.<sup>[85]</sup> Finally, there remains the challenge of selecting which body will issue the rules governing elections during the transitional period, considering the absence of a democratically elected parliament. The new electoral or provisional law may be adopted as part of a prospective political solution in Syria.<sup>[86]</sup>

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[84] The electoral law may stipulate the application of “election ink” to the index fingers of voters to avoid casting more than one vote.

[85] There are many Syrian laws that contain such texts. Article 25 of the Syrian Civil Code No. 84 issued on May 18, 1949, states that the provisions of its previous articles, in violation of an international treaty in force in Syria, do not apply. Article 313 of the Code of Civil Procedure No. 1 of 2016 dated January 3, 2016, stipulates that, “Implementing the foregoing rules shall not violate the provisions of treaties concluded between Syria and other states in this regard.”

[86] Interview with Walid Fakhreddine, Lebanese elections expert, 11 May 2021.

## Part II

# Ensuring Accurate and Fair Representation Through the Electoral System and District Division



## Part II: Ensuring Accurate and Fair Representation Through the Electoral System and District Division

This section will address the means of ensuring the accuracy and fairness of representation, by examining various electoral systems, including their advantages and disadvantages, and shedding light on the issue of electoral districting. The last part will be devoted to recommending electoral systems favorable to the case of Syria, with a set of goals that must be achieved through the adoption of such systems.

### Chapter 1: Types of Electoral Systems

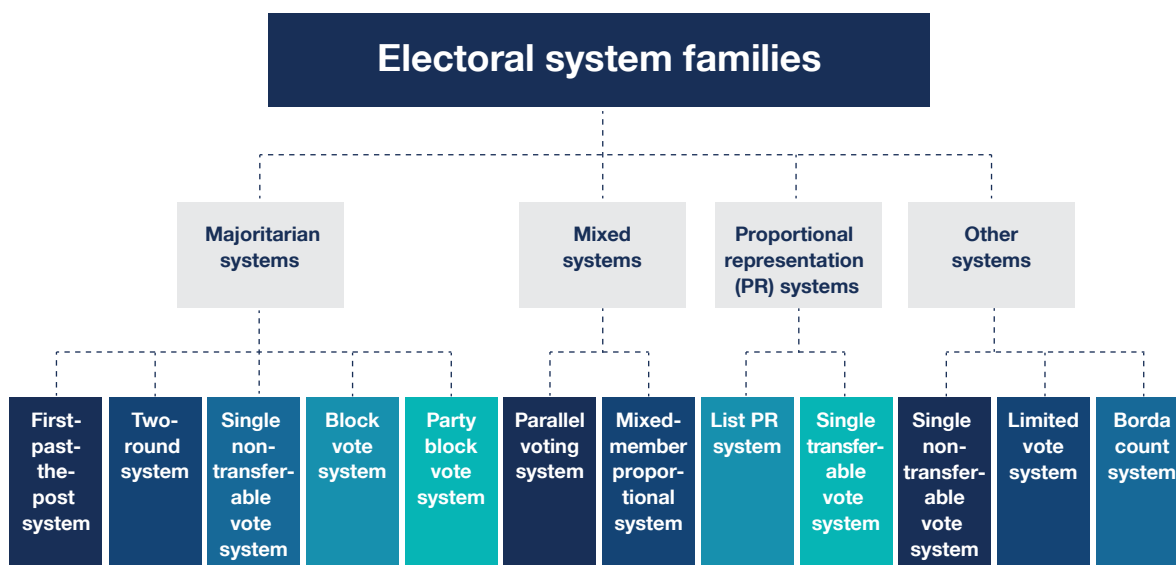
The electoral system and the ballot box are the best mechanisms by which to express the will of the people and to provide a political system based on citizen choice and free will. There is no type of system that automatically guarantees better representation, as the design and choice of each electoral system must be made based on a set of data specific to each country, its society, its cultures, values, and its history of democratic life. However, the main condition for representative democracies is that elections must be characterized by fairness and competition. The responsibility for ensuring this fair competition lies with the electoral framework, which determines how elections are conducted, how the act of voting results in the election of political representatives and determines what type of the political leadership emerges for the foreseeable future.<sup>[87]</sup>

Like the system of government, which can be presidential, parliamentary, or semi-presidential in democratic countries, electoral systems also vary broadly, as there is no international standard that imposes a specific system. Many countries adopt a majoritarian electoral system, while others adopt a system of proportional representation, and we can trace elements of both these systems in countries that implement what is known as the mixed system. This section will explain the most prominent electoral systems and their ramifications, highlighting the advantages and disadvantages of each.

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[87] David Farrell and Elisabeth Carter, *Electoral Systems and Election Management*, 2009.

**Figure 1: Electoral system family**



## First: Majoritarian System

The majoritarian system is one of the oldest electoral systems and is adopted in many countries including Britain and the United States of America. The origins of this system date back to before the emergence of political parties,<sup>[88]</sup> at a time when a vote was for the candidate’s person and not for the party. This system is marked by its simplicity, whereby the candidate or the bloc that receives the most votes win, regardless of their percentage of votes obtained. Typically, a majoritarian system is adopted in presidential elections. Despite its simplicity, the practices of the majoritarian system vary from country to another.

### 1. Types of majoritarian systems

#### 1.1. First-past-the-post system

This is the simplest and most commonly adopted system of elections. According to this system, a voter has only one choice of vote for a person or entity from among a group of candidates listed on the ballot, in single-representative electoral districts. Therefore, whoever receives the highest number of votes wins, regardless of the percentage obtained, and it does not require the winner of elections to obtain an absolute majority.

[88] Talib Awad, “Contemporary Electoral Systems and Election Reform in the Arab World” (Arabic), *ibid.*, p. 111.

**Table 1: Simulation of first-past-the-post (FPTP) electoral process:**<sup>[89]</sup>

Candidate	Votes	Percentage of votes received
Faten	350	35%
Bassam	450	45%
Hussam	250	25%
Wajd	50	5%
Total	1000	100%

**According to this table, the winning candidate in this case would be Bassam.**

Among the advantages of such a system is its simplicity, and often produces bi-partisan politics which can produce a clear and accurate picture of political life divided between a governing majority and a parliamentary minority in opposition to it, and it generally renders political life more stable. This can be found in the United States, the United Kingdom, and many Commonwealth countries. The main disadvantage of this system is the loss or waste of a large proportion of the vote.

### **2.1. Two-round system**

Within this system, voting takes place in two rounds, and it is commonly adopted in presidential elections, based on the principle that a winner must receive an absolute majority of 50% +1, as achieving such a majority negates the need for a second round. If, for instance, there are three candidates in a presidential election, and the first obtains 40% of the total vote, the second 35% percent, and the third 25%, then in a two-round system another round of elections takes place between the candidates that obtained the highest and second-highest percentage of the vote without either of them achieving an absolute majority in the first round. In this case, the second candidate may still be the final winner in the election, even though their share of the vote in the first round was lower than the first candidate. It is clear that a two-round system more accurately reflects the will of the people, as the winner must obtain a percentage of the votes above 50 to ensure their victory.

[89] Numeric examples given will be composed of multiples of 10 for each of calculation, and a total of 1000 will be adopted for the voter block, assuming also that all votes are valid, and that no votes are invalid or nullified in any of the related tables.

It also encourages building alliances between the parties winning the first round, but its main disadvantages are the financial and administrative costs of the second round and the delay in announcement of the results.<sup>[90]</sup>

**Table 2: Simulation of two-round electoral process**

**1/2 First round results**

Candidate	Votes	Percentage of votes received
Faten	350	35%
Bassam	450	45%
Hussam	250	25%
Wajd	50	5%
<b>Total</b>	<b>1000</b>	<b>100%</b>

No candidate received an absolute majority and therefore the election goes to a second round.

**2/2 Second round results**

Name of candidate	Number of votes	Percentage of votes received
Faten	550	55%
Bassam	450	45%

[90] For more details see: Riad Shayya, "Majoritarian and Proportional Election Systems and Small Districts: Advantages and Disadvantages" (Arabic), National Defense Magazine, Issue 84 - April 2013, link: <https://bit.ly/3iY2xL1>, accessed on 19 August 2021.

### 3.1 Block Voting (BV) system

This system operates in the same manner as the first-past-the-post (FPTP) system, with the difference being its use in multi-member electoral districts, such that the voter has a number of votes equal to the number of seats in the electoral district. In this case, the candidates who obtain the highest number of votes win regardless of whether they secure an absolute majority. Block voting often allows voters to elect candidates regardless of their party affiliation, which is contrasted with the party block voting system. However, the adoption of this system may lead to the fragmentation of parties, given the possibility of candidates from the same party to compete for seats in the same district. It is noteworthy that this system is adopted in Syria, although electoral lists are prepared, rendering it closer to a party block system.

**Table 3: Simulation of election using the Block Voting System**

Candidate	List/Bloc				Winners
	White	Black	Blue	Red	
1	450	150	140	260	Candidate (White - 1)
2	200	350	90	150	Candidate (Black - 2)
3	100	200	260	300	Candidate (Red - 3)
4	100	200	280	150	Candidate (Blue - 4)
5	150	100	130	140	Candidate (Red - 1)

### 4.1 Party Block Voting (PBV) System

The same method is adopted as the block vote system to calculating winning candidates. However, the difference is that voting takes place for party lists instead of individual candidates, such that each voter has one vote to cast for a list that includes several candidates. This system facilitates the implementation of a women's quota, as women's representation can be imposed on the candidate lists, which may also include people belonging to various religious and social groups.

**Table 4: Simulation of election using party block voting (PBV)**

List	Votes	Percentage of Vote	First Winner
Unity	350	45%	Unity List
Peace	450	35%	
Liberty	250	25%	
Future	50	5%	
<b>Total</b>	<b>1000</b>	<b>100%</b>	

### 5.1 Alternative Vote (AV) system

Also known as ‘preferential voting,’ within this system the voter has the possibility to rearrange the names of candidates listed on the ballot, according to their preference. The ballots are sorted according to preference, thus excluding those who obtained the smallest preferential votes in the event that they do not obtain an absolute majority. One main disadvantage of this system is that it is complicated, especially in countries that lack an electoral culture<sup>[91]</sup>.

According to this system, the state is divided into single-member districts. However, instead of voting on a single personality, the voter can rearrange candidates according to their personal preference, assigning their favored candidate the number (1) then the number (2) to the candidate after them, and so forth. As such, the alternative voting system enables the electoral to express all their preferences instead of restricting them to the first choice. For this reason, the system is known as ‘preferential voting’ in states where it is adopted.<sup>[92]</sup> Therefore, the victory of a candidate is associated with their ability to secure an absolute majority of the vote, similarly to the FPTP and the two-round system, as the first candidate (winner) and the last (loser) are excluded, and the election process is repeated until all seats are filled.

[91] [Electoral Knowledge Network](#)

[92] Andrew Reynolds et al, *Electoral System Design*, *ibid.*, p. 69-70.



**Table 5: Simulation of election process using the alternative vote (AV) system**

Number the boxes from 1 to 4 according to your preference	Candidate
3	Faten
2	Bassam
4	Hussam
1	Wajd

## 2. Advantages and disadvantages of the majoritarian system

Proponents of the majoritarian electoral system argue that it is a simple system that grants voters clear options and renders easier holding elected officials to account. It is also conducive to the formation of strong governments with a pronounced political character, as the winner secures all seats, thus excluding other parties from representation and preventing them from obstructing the government's programs and legislative reform policies that are increasingly needed in the transitional stages. At the same time, this system provides for the presence of active opposition, contributes to the exclusion and isolation of extremist parties, and often introduces a stable political life revolving around two or three strong political parties such as the case in the United Kingdom and the United States.

However, the majoritarian system does not offer true representation of popular will, as many votes go to waste without being translated into seats. Another shortcoming of this system is its exclusion of minorities,<sup>[93]</sup> as well as the fact that it poses hindrances to the representation of women, youth, and other marginalized groups in need of special consideration, as it often elects older men who already enjoy power and influence within society. Consequently, the majoritarian system appears to be incompatible with the Syrian context as, in addition to the aforementioned disadvantages, it leads to the promotion of sub-national affiliations and undermining partisan life by not motivating parties to form alliances and coalitions to secure a parliamentary majority.

[93] It may be a political minority, or one belonging to a particular religion, sect, or ethnicity.

## Second: Proportional Representation (PR) System

The adoption of proportional representation systems coincided with the spread of liberal thought in Europe, in the early 19<sup>th</sup> century, at a time that required the innovation of an electoral system compatible with public freedoms and with the promotion of civil and political rights. This included the eradication of discrimination between individuals and groups, and the strengthening of their political participation and representation in the centers of political power.<sup>[94]</sup> The system of proportional representation enables competing parties to secure a number of seats proportional to the votes they obtain, and as such it does not exclude smaller parties nor incur considerable waste in votes.<sup>[95]</sup>

### 1. Types of Proportional Representation Systems

There are many types of candidate lists found in PR systems including: proportional list systems, and the single transferable vote.

#### 1.1. Proportional list system

This is the most widely adopted system of proportional representation. In most cases, elections in such a system are held in large multi-member electoral districts in order to achieve more proportionality. Each of the competing parties and groups puts forward a list of candidates, and the electoral then votes for their list of choice, and not for individual candidates. Models for electoral lists vary, as they can be closed such that voters cannot make any modifications to the order in which candidates are listed or open such to enable voters to give preference to one or more candidates, or free such that a voter may completely rearrange the list of candidates. When the votes are counted, each party receives a share of seats equal to its percentage of the vote. The winning candidates are selected according to their position in the list. The formula for calculating votes differs from one model of proportional list system to another, as some adopt the largest remainder method, and others adopt the highest-averages method, with each method having different formulas used to calculate seat distribution.

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[94] For more, see Riad Shayya, *ibid.*

[95] Elections in proportional representation systems are held between electoral lists, while the majoritarian system sees competition between individual candidates.

**Table 6: Simulation of electoral process using the closed list system**

List	Number of Votes	Percentage of votes	Number of seats
Unity	450	45%	45
Peace	350	35%	35
Liberty	250	25%	15
Future	50	5%	5
<b>Total</b>	<b>1000</b>	<b>100%</b>	<b>100</b>

### **1.2. Single transferable vote system:**

This is one of the most complex electoral systems, as it requires repeated counting, sorting and distribution of votes several times in order for the electoral process to be more fair in the representation of voters in Parliament. Voting under this system is often in favor of the candidates rather than the parties, but it may be used under the party list system.

## **2. Variables of Proportional Representation Systems**

The adoption of a proportional representation system requires taking into account a set of guidelines that impact the results of the electoral process from a technical standpoint, and that inevitably entail repercussions at the political and electoral levels. The most prominent of these variables are:

### **2.1 Electoral threshold and electoral quotient**

Proportional representation systems require obtaining a certain percentage of the vote, which means the minimum number of votes that an electoral list must secure in order to be allowed to be represented in an elected body. The electoral threshold is one of the main variables that affect the effectiveness of the proportional system, as it varies from one system to another. Some countries adopt a sliding scale electoral quotient, while others adopt an electoral threshold system. In this sense, the result is dynamic and linked to the number of seats and the number of voters, while the threshold is fixed and uniform in all electoral districts. The higher the threshold, the more the system favors larger lists at the expense of small lists, and vice versa.

## 2.2 Electoral district size

This system requires multi-candidate electoral districts so as to represent the number of seats in each district. Therefore, the size of electoral district is of great importance, as it can affect the accuracy of election results and how much they reflect the political preferences of voters. Within PR systems, there is no standard size for electoral districts, as the higher the number of seats in each district, the more effective the proportional system will be, the more it will mitigate wasted votes and enhance the representation of smaller lists.

## 2.3 Type of electoral lists (closed, open, or free)

Usually, the proportional list system is based on political parties or their blocs formulating closed candidate lists. However, this does not negate the possibility of working with open lists as it is possible for the PR system to work in a way that allows voters to choose between individual candidates, in addition to choosing between various parties. This means that there are three methods that can be adopted: closed lists, open lists, and free lists.

Accordingly, it is the political party that determines candidates to be elected, and thus political parties can include in their lists candidates that may find it difficult to win election by another means (such as minority candidates or women candidates, etc.). As for the disadvantage of closed list systems, it is the inability of voters to determine which individual candidates represent them within the list of the party for which they vote. Moreover, closed lists are considered less capable of responding to rapid changes in the political landscape.

## 3. Advantages and Disadvantages of Proportional Representation

The proportional representation (PR) system enables competing parties to obtain a number of seats proportional to the votes they secure. Therefore, unlike the majoritarian system, the PR system ensures that small parties are not excluded and that no votes go to waste.

The main disadvantage of proportional representation is that especially if a small electoral threshold is adopted, it may lead to the arrival of small parties to parliament that may be extremist. Moreover, the dispersal of the electorate's votes across smaller political parties will invariably produce political instability and hinders the emergence of a capable government with a stable majority in parliament that could enable it to introduce radical reform, especially in transitional periods that require such decisions to be made<sup>[96]</sup>.

One of the advantages of the proportional representation system is that it increases the chances of minorities to achieve representation in legislative bodies, as this system motivates parties to present balanced lists of candidates in order to obtain the

[96] See the Electoral Knowledge Network, date of visit 27.06.2022 at the link:

<https://aceproject.org/ace-ar/topics/es/627644646640638645/646640638645-62764462a64064562b64a640644/64564a64063262762a-62764462a64064562b64a640644>

support of the widest possible segment of the electorate. At the same time, it provides the appropriate environment to increase the number of women elected to legislative bodies. Among the disadvantages of the PR system is that power is restricted to the hands of party leaders who decide the candidate's position on the party list (as we note the absence of internal preparatory election mechanisms within political parties in our region). Furthermore, voters do not have any possibility to identify the individual candidates, which creates weak links between voters and their representatives, especially if a closed list system is adopted. The proportional representation system requires the presence of healthy party politics, which is one of its most important pillars. This renders its implementation difficult in some emerging democracies or countries in a process of democratic transition which lack effective parties.

### **Third: Mixed Electoral System**

This system is based on combining the proportional and majoritarian systems in order to benefit from the advantages of the two, as both systems work in a mixed or parallel manner, and the majoritarian system is usually at the level of smaller districts, while the proportional system is at the level of one or more large district. In this system, each voter is entitled to two votes, one for the small districts and the other for the large district. The system is of two types:

#### **1. Mixed Member Proportional (MMP) System**

Here, the proportional representation system and the majoritarian system are combined such that elections are conducted through mechanisms based on the distribution of proportional seats to compensate for imbalances in the proportionality of results for the seats of single-member electoral districts under one of the plurality/majority systems, or one of the other systems that make up the mixed system. “For example, if one party wins 10 per cent of the vote nationally but no district seats, then it will be awarded enough seats from the PR lists to bring its representation up to 10 per cent of the seats in the legislature. Voters may get two separate choices, as in Germany and New Zealand. Alternatively, voters may make only one choice, with the party totals being derived from the totals for the individual district candidates.”<sup>[97]</sup>

#### **2. Parallel Systems**

This system is based on the distribution of electoral districts across two independent systems according to different scenarios. The districts may be divided between a proportional system and a majoritarian system, in which case districts may be determined to be majoritarian at the level of the state as a whole, or as parts using proportional representation. Typically, there are two ballot papers for candidates/lists, one majoritarian and one proportional (Japan, Lithuania, Thailand), and no compensation for seats exists in this system.

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[97] Mixed Member Proportional System, ACE Electoral Knowledge Network, link: <https://bit.ly/3lk1jdl>, accessed 28 May 2021.

## **Fourth: The Political Impacts of Adopting an Electoral System**

To achieve stability in a country, it is not sufficient merely to establish an electoral system. Each system has its advantages and disadvantages, and any system that has achieved some success in a particular country and time, may not constitute a successful formula ready to be adopted in another country, or in the same country at a different time in its history. The issue is contingent to a variety of factors in each country including its social developments, historical data, the consolidation of democratic life, lifestyle, different values, and cultures, etc. In addition to this, there are the desired outcomes for adopting any electoral system. There is no doubt that the adoption of an electoral system results in direct and indirect political impacts, and repercussions on political life in a country. There are many theories and interpretations of the best system to be adopted, and the discussion diverges by focusing on the stages of democratic transition which constitute an essential stage in rebuilding a new political system or developing an existing one. This may be achieved according to the majoritarian, proportional, or mixed system. For example, Tunisia has adopted the proportional system without an electoral threshold, while Libya has opted for a mixed system. However, since 2011, political stability has not been achieved in either country. Does the issue lie in the new political system? Or in the electoral system? What are the political implications of adopting each electoral system?

In fact, the adoption of any system of proportional representation, or any majoritarian system, or any mixed system, has direct and indirect impacts on many aspects in shaping political life in the country. This can manifest whether in participation, decreasing or increasing it, and in terms of regulating party life or otherwise leaving it unregulated. This also relates to the representation of minorities, marginalized groups, women, and the youth.

## **Chapter 2: Electoral Districting**

An electoral district is defined as “a geographically determined unit, inside or outside the country created for the purpose of holding elections. Both a geographic and demographic unit, electoral districts allow voters registered in an area to elect one or more representatives to the elected legislative body. An electoral district may also be known as a legislative district or a constituency. A number of seats is allocated to each electoral district within the elected body, which is known as ‘district magnitude.’ The districting and delimitation of electoral districts are no less important than the choice of electoral system, as both have a significant impact on the outcomes of elections including whether the system of government that they introduce reflects the religious, ethnic, and linguistic diversity of the country. Gerrymandering, or the manipulation of electoral districts, may, intentionally or unintentionally, result in the exclusion of certain groups from political representation, and lead to voter inequality in terms of the weight or value of their vote.

Countries vary in how they set up the legal basis for the delimitation of electoral districts, which may take place through the constitution or/and the general election law, or a special law issued for this purpose, as is the case in Egypt.<sup>[98]</sup> As for the institution tasked with delimitation, it is typically parliament, but may be the election authority, or a body independent of the executive and composed of experts, whose work is based primarily on census data or voter databases, taking into account the specificity of the country as well as international standards.<sup>[99]</sup> This section will explore the criteria and types of electoral district division, before highlighting the impact of the delimitation of Syrian electoral districts on the accuracy and fairness of representation.

## **First: International Standards for Electoral District Delimitation**

Across different countries, there are several criteria that govern the process of district delimitation, and they are not completely unified or separate, including: the demographic criterion; the geographic criterion; the minority or “communities with common interests” criterion; and the criterion associated with the results of previous elections.

### **1. Demographic Criterion**

Many countries attempt to balance electoral districts in relation to their population sizes. Countries differ in their approach to this issue, as some adopt the number of registered voters (such as Belarus), others the number of eligible voters (Lesotho), or the total population (most European countries).

Due to the impossibility of establishing completely equal population districts, the term “deviation percentage” arose, which allows for differences in the number that are allowed to exist and differ from one country to another. New Zealand allows a deviation of approximately 5%, while New Guinea allows a deviation of 20%.

### **2. Geographic Criterion**

According to this criterion, electoral districts are established based on the administrative divisions already adopted in the country (provinces, governorates, districts, etc., as each governorate, for example, can be considered an electoral district.<sup>[100]</sup> In Britain, electoral districts are drawn according to administrative divisions, while in the United States there are two types of districting, as Senate districts are based on the representation of each state by 2 senators no matter how big or small, while the House of Representatives is elected on the basis of the population criterion (the number of voters). As for Lebanon, with Law No. 25/2008, the country was electorally divided into 26

electoral districts according to the administrative districts (with exceptions where other districts were divided and merged together).

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[98] See Law No. 202 of 2014 issued on December 21, 2014, regarding electoral district delimitation for parliamentary elections. In its third article, this law stipulates consideration for fair representation of communities and governorates, as well as equal representation of voters in the division and delimitation of electoral districts.

[99] For more on the body supervising district delimitation, see: Arab Electoral Dictionary, op. cit, pp. 149-150.

[100] For instance, the United Kingdom adopts the same administrative division in electoral districts regardless of the population size of each.

Perhaps the adoption of the district division system in Syria in the future according to the administrative divisions in the country is the best to ensure that the voter does not go to the major districts.

### 3. Minority 'Communities of Common Interest' Criterion

In many countries, cultural, ethnic, and religious diversity creates challenges related to the accurate and correct representation of these communities. Therefore, several countries have tried to find ways to secure participation in candidacy and voting by allocating seats or by creating their own electoral districts. However, issues arise when these communities do not exist in specific and limited geographic spaces. In Pakistan, for example, there are three types of seats: general seats (according to a simple majority system), seats reserved for women (proportional representation), seats reserved for non-Muslims (Christians and Hindus, proportional representation, Pakistan one electoral district within closed party lists).

As for the countries that adopt proportional electoral systems, they imposed on the lists the presence of districts that cannot be reconsidered because they represent minorities (Croatia).

In this regard, New Zealand has legal provisions that allow a minority (Māori, descendants of the indigenous population) to be represented in parliament at approximately their proportion of the population. As such, it has established special electoral districts for them to run and vote, provided that the Māori voter determines in advance his registration in one of these districts. It is an optional registration, and the selection process takes place between this type of district or the registration and voting in the public districts instead of the allocated districts.

### 4. The Criterion Associated with the Results of Past Elections

This is a criterion that is used as a means of controlling the electoral process, specifically by non-democratic regimes, whereby elections constitute a kind of consolidation of the ruling regime by transforming elections from a way to renew the political class into a way of perpetuating the control over power by a certain party or parties. While unrecognized as an international standard, this is the most popular and most influential method of voiding elections of their substance. The results of the past election cycle prompt political forces and powerful parties either to maintain the existing delimitation of districts, or to conduct redistricting by dividing or merging districts in order to reach better results that would allow them to obtain a greater number of seats.



## **Second: Types of Electoral Districts**

No matter how different the criteria are used in delineating them, electoral districts vary in relation to their number of seats. There are several types of electoral districts that may differ depending on the electoral system adopted. There are single-member districts in majoritarian systems, whereby one person is elected from each district via “one person, one vote.” Presidential elections are typically held across all national territory as a single electoral district, and there are electoral districts with multiple seats that are used in majoritarian block voting systems. Meanwhile, in proportional representation systems, there is less need for redistricting as their “boundaries generally correspond to administrative divisions.”<sup>[101]</sup>

However, despite the disadvantages of the single-member district, requiring constant reconsideration of the number of seats or the delimitation of its boundaries, it nonetheless has a number of advantages, namely the direct relationship between the electorate and their representatives whom they can hold accountable and avoid snap elections in the event of failure. Moreover, the increase in the size of the electoral district contributes to the representation of small parties by increasing the number of elected representatives, thus decreasing the electoral threshold.<sup>[102]</sup>

Therefore, designing a decentralization system in Syria is of high importance, so that the relationship between the voters and their representatives is secured at the municipal level and at the national parliamentary level.

Finally, electoral districts can be established outside the territory of the state concerned, in order to allow citizens residing abroad to exercise their voting rights. These districts located abroad follow the same laws in effect inside the concerned country, being either single-member or multimember districts. Voters abroad may belong to the same districts from which they are originally, and thus their votes can be added to those collected in these districts. To achieve this, two envelopes may be used such that the name of the district to which the voter belongs is written on one in order to facilitate the sorting of ballots.

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[101] Delimiting Districts: Proportional Representation, ACE Electoral Knowledge Network, link: [https://aceproject.org/ace-en/topics/bd/bda/bda01/default?set\\_language=en](https://aceproject.org/ace-en/topics/bd/bda/bda01/default?set_language=en), accessed on 28 May 2021.

[102] For more, see: District Magnitude, ACE Electoral Knowledge Network, link: [https://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e01?set\\_language=en](https://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e01?set_language=en), accessed on 28 May 2021.

## Chapter 3: The Electoral System and District Division in Syria Undermines Credibility and Fairness of Representation

It is not possible to reform the electoral system, without knowing the defects and problems in the effective election law, and its negative effects on the entire electoral process. It is both an objective and technical challenge at the same time, because it greatly affects the will of the voters, and the role of the electoral system, in building a pluralistic political system and democratic. This chapter touches on the most prominent gaps and defects, which indicate the conflict of the Syrian electoral system with international standards for elections, especially the accuracy and correctness of representation. This applies both to the majoritarian system, and to the division of electoral districts and the distribution of seats in them.

### First: The negative impact of the Syrian electoral system on the accuracy and validity of representation

The parliamentary electoral system in force in Syria is a majoritarian system with open lists applied in multi-member electoral districts, i.e., a block voting (BV) system. According to this system, a voter may vote for a number of candidates equal to the number of seats reserved for their electoral district, with the ability to cross out names listed on the ballot, write them, and rearrange them as they wish.<sup>[103]</sup> Thus, candidates are voted in as individuals, and votes that each candidate secures are counted separately, and candidates are then arranged in descending order to reach the election results. In this system, a relative or simple majority is followed to designate winning candidates, regardless of the percentage they obtained of the vote. No second electoral round is held to ensure an absolute majority, that is, more than 50% of the vote.<sup>[104]</sup>

The block vote system favors parties that are more organized, and which have more capacity (and power) to heavily direct the electorate towards voting for an entire list, and to limit as far as possible the crossing out of candidate names such that votes are not split. Meanwhile, less organized, and disciplined parties suffer from this system, as they often fail to obtain even a single seat. Thus, this system enables the victory of the party or the bloc that obtains a simple majority in the elections, as they secure all seats in an electoral district, while votes for parties or individuals that fall short of a majority go to waste. This explains the sweeping victory of the ruling Arab Socialist Baath Party, and independents and parties under its control, particularly parties within the NPF that formed what is known as the National Unity List in the last Syrian People's Assembly elections of 2020.<sup>[105]</sup> In these recent elections, the Baath Party won 167 of the 250 seats in the People's Assembly, while its allied parties won 16 seats, and the remaining

[103] Interview with an election expert who opted not to be named, conducted on 16 June 2021.

[104] Ibid.

[105] Held on 19 July 2020.

67 seats were distributed to so-called “independents” all of whom were affiliated with the National Unity List.<sup>[106]</sup>

The majoritarian block system is also applied to local elections organized by the Baath Party, especially through the issuance of the National Unity List through the party’s Regional Command. Meanwhile, the other list consists of so-called “independents” with 30% of the lists of candidates.<sup>[107]</sup> As representatives of the executive authority, governors have very broad powers to interfere in elections, including the power to issue relevant regulations, and assign the number of seats.<sup>[108]</sup>

## **Second: The negative impact of electoral districting in Syria on accuracy and fairness of representation**

In Syrian People’s Assembly elections, the administrative division of the governorates is currently adopted to delimit electoral districts, such that “each governorate is an electoral district for the election of its representatives as members of the People’s Assembly, except for Aleppo governorate, which consists of two electoral districts, namely the district of Aleppo City and the district of Aleppo Regions.”<sup>[109]</sup> It is noteworthy that the number of seats in each governorate was not assigned in proportion to its population,<sup>[110]</sup> as this determination was instead left to the President of the Republic,<sup>[111]</sup> in flagrant violation of the principle of separation of powers on the one hand, and to the equal value of votes on the other. For example, the Aleppo Regions district, with an estimated population of 2,735,900, was allocated 32 seats, while the Aleppo City district only received 20 seats despite its estimated population of 2,132,100, as applied in the People’s Assembly elections that took place on July 12, 2020.

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[106] The list of winning candidates was announced via Decree no. 208 for 2020.

[107] Enab Baladi, “Local Administrative Council Elections Commence in Syria” (Arabic), September 16, 2018, link: <https://www.enabbaladi.net/archives/252009#ixzz6y1Vtvf58>

[108] For more, see: 2014 Law on General Elections.

[109] This is according to Article 20 of the Law General Elections No. 5 of 2014.

[110] This is achieved by dividing the number of residents (or voters) in each district by the number of seats allocated to it.

[111] See, for example: Article 2 of Decree No. 63 of 2016 on the 2016 parliamentary elections which specified the number of members for each electoral district, including that allotted to workers and farmers. As for the People’s Assembly elections of 2020, the number of seats in each district has been determined as per Article 2 of Decree No. 76 of 2020.

**Table 7: District Magnitude in Aleppo and Aleppo Regions**

District	Number of Seats	Population	Population per Seat
Aleppo	20	2,132,100	106,605
Aleppo Regions	32	2,735,900	85,495
Difference	12	603,800	

In the latest legislative elections, we can also trace discrimination against voters in some Syrian governorates favoring voters in other governorates such as Damascus, Latakia, and Tartous, as these districts were allocated a large number of seats compared to their population sizes.

At the level of local council elections, it can also be noted that there is discrimination between voters in terms of the disparity in the value of their votes, while the allocation of numbers of seats is left as an arbitrary decision made at the discretion of the executive. In Article 26 of the 2014 Law on General Elections, it is explicitly stated that, it is left to the discretion of the Minister of Local Administration to determine the number of electoral districts for governorate councils, provincial capitals, and other administrative units. The same article adds that, “Seats are distributed in the districts specified for the governorate councils and cities divided into districts by a decision of the governor.”

### **Third: Electoral Systems and Districting During the Transitional Period in Syria**

Electoral districting and delimitation are complicated processes, and this is especially the case in Syria which lacks fair district division, in a context of conflict that has so far led to significant change in the demographic, sectarian, and ethnic composition of the population. The electoral law, or even the future Syrian constitution, is required to provide for broad guidelines related to the division of electoral districts, and a certain body must be authorized to realize these legislative texts during the delimitation process. Following a political transition in Syria, this process may be left to the independent EMB formed in the manner addressed earlier, or to an impartial body with high technical and political expertise created specifically for this purpose. In all cases, the new voter register, and updated census data, are essential components that must be prepared before the process of delineating districts in a manner that assists the concerned authority in this difficult task. The independence and impartiality of this body is also essential in order to prevent new parties, or those representing the remnants of the former regime, from influencing districting and delimitation processes.

As for legislative elections, districts can follow the administrative boundaries of governorates. However, legal texts must be drawn up for this purpose, whether in the election law or in a special law on the electoral district division, in order to achieve vote equality i.e., the proportionality of the number of representatives to the number of residents in each district, as well as the fair representation of various governorates.<sup>[112]</sup>

At the same time, voting by members of minorities should not be restricted to candidates belonging to those same minorities. In this regard and considering that this research does not support the adoption of a quota for minorities, a system of proportional representation based on electoral lists that include candidates belonging to different religions, sects, and ethnicities will serve as a way out of sectarian and ethnic electoral behavior. It is therefore important to prevent the formation of parties on an ethnic, religious, sectarian, tribal, or regional basis, and to spread electoral awareness and reduce religious, sectarian, and ethnic polarization during electoral campaigns. As for the formation of electoral districts outside the country, this is of great importance in Syria, from which more than six million people have left during the last decade. It is noteworthy that non-Syrians residing abroad are currently not permitted to vote in legislative and local elections, while they have the right to vote in presidential elections,<sup>[113]</sup> in Syrian embassies known for their role in the exclusion and persecution of Syrian dissidents.

It must be emphasized that there is no optimal electoral system for every context, and that many political, social, and demographic factors play a key role in determining this system according to the country in question. In the Syrian case, it is necessary to put forward an electoral system that takes into account the specificity of the Syrian context, especially its religious and ethnic diversity, on the one hand, and the state of dictatorship and conflict experienced by Syrians, on the other. In order to identify the best models, this section will present the criteria for choosing an electoral system before presenting a list of objectives, of what is to be achieved and averted in the Syrian case. As such, a set of models can be proposed, one of which can be applied in Syria during the transitional period.

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[112] Discrimination between governorates is only one of the many forms of discrimination in the composition of the Syrian People's Assembly. Others include the exclusion of non-regime supporters and non-members of the Baath Party, as well as the overrepresentation of those belonging to the Alawite community compared to their proportion of the total population. For more, see: Ziad Awad and Agnès Favier, Elections in Wartime: The Syrian People's Council (2016-2020), Research Project Report, 30 April 2020, p. 33, link: [https://medirections.com/images/dox/RPR\\_2020\\_07.pdf](https://medirections.com/images/dox/RPR_2020_07.pdf). Also see: IDRAC Centre for Studies & Consultations, "Legislative Elections in Syria Between (2012 - 2020)" (Arabic), October 2020, p. 29, link: <https://idraksy.net/wp-content/uploads/2020/11/Syria-Parl.pdf>

[113] See Article 99 of the 2014 Law on General Elections.

## 1. Criteria for choosing an electoral system and district delimitation

There are various ways of defining an electoral system, but most of them revolve around the mechanism through which votes are translated into seats in various bodies.<sup>[114]</sup> The electoral system thus regulates the relationship between voters and candidates, or winners, of elections. The type of electoral system varies depending on several basic factors, especially electoral district magnitude, that is, the number of seats allocated to it; the composition of the ballot through which options are granted to the voter; as well as the method used to tally the results and thus determine the winners.

In countries with religious and ethnic diversity, especially those that have experienced social tensions and division, the electoral system must ensure good representation and diversity in elected bodies. Legislative, executive, and administrative bodies must reflect the demographics of the country not only at the level of religious and ethnic diversity, but also geographical, regional, and ideological representation, as well as the representation of women and marginalized groups. Furthermore, the choice of electoral system contributes to managing conflicts, alleviating tension between different social groups, and achieving national reconciliation following internal conflicts. In this context, the electoral system can motivate parties that may represent certain population groups to seek alliances and coalitions or work to expand their base of support by presenting national programs that go beyond their particular communities, thus avoiding the confinement of politics within narrow frameworks that exacerbate rifts and tensions between citizens.

The choice electoral system can also contribute to the emergence of stable governments, or lack thereof. A system that provides for the representation of a large number of political parties in parliament will make it difficult for a strong government to emerge that is able to self-sustain and introduce reforms. It is also well known that majoritarian systems produce stronger governments, while proportional representation systems contribute to the emergence of coalition governments with a significant parliamentary opposition. However, the presence of this opposition is essential to maintain checks on the legislation adopted, pressure the government to ensure the proper performance of its tasks, as well as defend the interests of other social groups less represented in parliament and in government.

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[114] Arabic Electoral Dictionary, *ibid.*, p. 279. Also see: Stina Laserud and Rita Taphorn, *Designing for Equality: Best-fit, medium-fit and non-favorable combinations of electoral systems and gender quotas*, International Institute for Democracy and Electoral Assistance (International IDEA), 2007, p. 5, link: <https://www.idea.int/sites/default/files/publications/designing-for-equality.pdf>, accessed on 1 August 2021.

## 2. Desired outcomes of the electoral system and electoral districting in Syria

■ We believe that the formulation of the Syrian electoral system should take into account the following objectives, listed in order of importance:

■ Ensure the representation of all segments of Syrian society including religious and ethnic minorities, women, youth, people with disabilities, and other marginalized groups in the next Syrian parliament, based on equal citizenship rights, and in a manner that guarantees fair representation without any discrimination between those components.

■ Mitigate the religious, ethnic, sectarian, and regional fissures and tensions that were exacerbated by the recent years of conflict. This includes reducing electoral behavior based on sub-national affiliations, in favor of strengthening national programs.

■ Consolidate democracy in the long term, which involves strengthening the legitimacy of the legislative, executive, and judicial branches of government, achieving complete separation between them, as well as maintaining a parliamentary opposition.

■ Form a strong non-coalition government capable of advancing the process of comprehensive political and legislative reform.

■ Encourage reconciliation between the conflicting political parties and encourage rapprochement within the parties themselves.

■ Form an effective parliament capable of exercising oversight over the government's work and ensuring its stability.

■ Encourage citizens to participate in politics, whether by voting or running, especially by simplifying the electoral process.

■ Move away from the culture of political personalization, and cults of personality, that Syrians have suffered for decades under an authoritarian regime, thus promoting voting for programs and not for individuals, which also curtails the influence of political money.

## 3. Recommended Models

It is self-evident the Syrian electoral system will be the product of political consensus and may be adopted within the framework of the planned political settlement in Syria. In this context, it can be among the following models –not listed in order of preference. At the outset, two major electoral models will be presented that are close to the one currently adopted in Syria. Two electoral models will then be presented within a proportional representation framework, which we argue are more favorable than a majoritarian system. Finally, there are mixed models that political negotiations might opt for.

### 1.3 First model: The majoritarian system

In this model, Syria is divided into 250 electoral districts according to the population census, such that one representative is elected for each district. It would also be preferable if such a system is implemented in the transitional period, to adopt two-round elections and a closed electoral list. In addition to the advantages and disadvantages listed for the first model, it can be added that its adoption will necessitate the arduous task of district delimitation. However, the latter model may contribute to good representation for social groups, creating smaller districts in the places where they reside –in accordance with international standards. However, it will be difficult to properly represent women and people with special needs under such a system, given the difficulty of implementing quotas.

According to the electoral system currently in force in Syria, 250 parliamentary seats are distributed across fifteen districts.

#### Advantages of this model:

- Forming a strong government, as the winning party holds the majority of seats and can thus take decisive decisions aimed at reform.
- Avoiding the difficulty of district delimitation, such that the current administrative division is followed, with the possibility of merging some districts according to the number of residents there. The law will determine the number of seats in each district in proportion to its population size.<sup>[115]</sup>
- Create direct rapport between the electorate and their representatives, holding them accountable and avoiding snap elections in the event of negligence or malfeasance.
- The simplicity of this system will encourage citizens to actively participate in political life. <sup>[116]</sup>
- Form a government of the winning party holding the most seats, and consequently making decisive decisions toward reform. It is the role of Parliament to form the government.

#### However, the main disadvantages of such a system are:

- Too many votes go to waste.
- Failure to ensure the accuracy and fairness of representation, as it leads to the exclusion of some minorities, and to inadequate women's representation unless quotas are adopted for these groups.

[115] However, a census must be conducted so that seats are distributed according to the number of residents or voters in each district.

[116] The poor level of electoral acculturation, and sometimes education, of Syrians leads to narrowing the choices of electoral systems, i.e., away from ones with complex ballots, in order to facilitate understanding by voters.



- The possibility of reproducing an autocratic regime through hegemony by an authoritarian party.
- Maintaining cults of personality and thus voting takes place for individuals, possibly based on their affiliations, not for candidates' electoral platforms.
- Promoting narrow geographic/subnational affiliation.
- Enables the emergence of entrenched local leadership.

### Distribution of percentage of the vote

Candidate	Number of Votes	Percentage of the Vote
A	6,000	6%
B	40,000 (winner)	40%
C	15,000	15%
D	39,000	39%
<b>Total Votes</b>	<b>100,000</b>	<b>100%</b>

### 2.3 Second model: Proportional representation system with electoral districts at the governorate level

According to this model, a system of proportional representation is adopted with the division of Syria into 15 electoral districts, as it is applied today. However, this system would use closed lists for the reasons mentioned above, as alternative or preferential voting may adversely impact the prospects of women and minorities on the one hand and enable vote-buying considering the current state of corruption and political money, on the other.

#### Advantages of this model are:

- Each political party, or community, is granted a number of seats proportional to the number of votes it secures, and as such no votes go to waste except by minimal margins. <sup>[117]</sup>
- This system allows for the representation of all segments of society, especially under a prohibition of forming parties on a religious or ethnic basis. This contributes to

[117] This is proportional to the electoral threshold adopted.

good representation, on the one hand, and the neutralization of sectarian and ethnic electoral programs in favor of national programs, on the other. This would also take place within a framework of encouraging consensus between political parties.

- The large number of seats in each district ensures diversity of representation and encourages the forming of alliances and coalitions between parties.
- It makes feasible implementing a women's quota in electoral lists, whereby parties are required to include the names of female candidates in their party lists.
- It averts the hassle of districting and delimitation, as it follows existing administrative boundaries of governorates.
- It promotes the representation of smaller political parties, considering the large number of elected representatives, and consequently the low electoral threshold.

Meanwhile, the most prominent disadvantages of this system are that it enables the arrival of smaller parties to parliamentary sessions, and negatively impacts the prospect of forming coalesced governments with clear political programs. This could undermine political stability, and therefore it may be important to raise the electoral threshold so as to limit the arrival of such parties as much as possible.

Illustrative example:

Number of valid votes: 191,000

Number of seats: 9

The method of calculating the votes: largest remainder method

### Distribution of votes across electoral lists

Participant list	Votes
Blue list	66,000
Yellow list	62,000
Red list	29,000
Green list	23,000
Gray list	11,000

### Scenario 1: Adoption of an electoral quotient

Electoral quotient: number of valid votes / number of seats

Electoral quotient:  $191,000/9 = 21,000$

The gray list is excluded from the race because it did not reach the electoral quotient, and a new electoral quotient is calculated in which the votes of the qualified lists are counted. The new electoral quotient is calculated as follows:

$191,000 - 11,000 = 180,000$

Electoral quotient: number of valid votes / number of seats

Electoral quotient:  $180,000/9 = 20,000$

### **Distribution of seats across electoral lists**

List	Number of votes	Seats	Remainder	Seats	Total Seats
Blue	66,000	3	6,000	-	3
Yellow	62,000	3	2,000	-	3
Red	29,000	1	9,000	1	2
Green	23,000	1	3,000	-	1
Total	180,000	8			9

### **3.3. Third model: Adoption of a proportional system with medium electoral districts, smaller than governorates.**

According to this model, a proportional representation system is adopted as shown in the previous model, with the size of electoral districts reduced so that the number of seats reserved for each does not exceed 15. In addition to the advantages mentioned in the previous model, and although it requires the delimitation of electoral districts, adopting this model will contribute to achieving the following:

- Creating direct rapport between voters and their representatives.
- Enhancing women's political participation, with the low financial resources required for electoral campaigns which wealthy men can often afford.

- Enhancing the representation of minorities, considering the smaller electoral districts in the geographical areas where they are distributed.

As for its disadvantages, they mainly consist of the difficulty of electoral district delimitation, and the potential rise of small parties as discussed in the previous model.

Illustrative example:

Number of valid votes: 96,000

Number of seats: 9

The method of calculating the votes: largest remainder method

### Distribution of votes across electoral lists

Participant lists	Votes
List A	33,000
List B	32,000
List C	14,000
List D	12,000
List E	5,000

#### Scenario 1: Adoption of an electoral quotient

Electoral quotient: number of valid votes / number of seats

Electoral quotient:  $96,000/9 = 10,666$

List E is excluded from the race because it failed to reach the electoral quotient, and a new electoral quotient is calculated in which the votes of qualified lists are counted. The new electoral quotient is calculated as follows:

$96,000 - 5,000 = 91,000$

Electoral quotient: number of valid votes / number of seats

Electoral quotient:  $91,000/9 = 10,111$

### Distribution of seats across electoral lists

List	Number of votes	Seats	Remainder	Seats	Total seats
List A	33,000	3	2,667		3
List B	32,000	3	1,667		3
List C	14,000	1	3,889	1	2
List D	12,000	1	1,889		1
<b>Total</b>		<b>8</b>			<b>9</b>

#### 3.4. Fourth model: A mixed system based on proportional districts at the governorate level, and a majoritarian system

In this model, the mixed-parallel system will be adopted in which voters choose their representatives using two different electoral systems - one system of proportional representation and the other a multi-member system. This model was applied in the Palestinian legislative elections of 2006.

##### Options available for the adoption of a mixed system:

**First option:** The 250 seats are divided, half (125) are contested via proportional representation, and the other half (125) is contested for the majority of seats using the block system in constituencies ranging from 5-7 seats, or about 20 districts.

**Second option:** The 250 seats are divided into two thirds elected via a proportional system (160) and one third (90) using a majoritarian system to be contested for the majority of seats using block voting in districts ranging from 3-4 seats, or about 20 districts.

**Third option:** The 250 seats are divided as follows: half (125) are contested via proportional representation, and the other half (125) are contested via a majoritarian system using a single district across 125 districts by combining a number of districts.

One of the main advantages of this model is that it takes advantage of both the majoritarian and proportional representation systems explained above. It also avoids, as much as possible, the disadvantages of each. The mixed system, in particular, may contribute to a good religious and ethnic representation in the individual districts established in demographically mixed areas, on the one hand, and at the same time it allows these groups to vote on a larger geographical scale at the level of proportional districts.<sup>[118]</sup> The mixed system will also contribute to the formation of a fairly strong government.

As for its main disadvantages, it may be complicated for Syrians who lack electoral culture,<sup>[119]</sup> and it will therefore discourage citizens from active political participation, whether by voting or running for office. It may also create forms of inequality between candidates in light of their different chances of success in proportional districts and individual districts. This may also lead to inequality between voters in terms of the weight of their votes.

Finally, regardless of the model adopted, the largest remainder method can be applied to the allocation of seats. However, in the event that a seat becomes vacant, such as due to the death or resignation of a representative after the end of an election, the seat is then awarded to the second candidate on that representative's list.

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[118] An interview with Walid Fakhreddine, a Lebanese elections expert, 11 May 2021.

[119] The EMB will have a more difficult task in terms of electoral education.

## Part III

# Election Management and International Election Support in Syria



## Part III: Election Management and International Election Support in Syria

Under decades of the Baath regime's rule, there has not been an independent and impartial body in Syria tasked with the management of elections. Instead, the most recent Law on General Elections of 2014 introduced the Higher Judicial Committee for Elections, a body that manages presidential elections under the supervision of the Supreme Constitutional Court. This Committee was also tasked with the full supervision of referendums, People's Assembly elections, and local administrative council elections. While composed exclusively of judges, this Committee is under the executive authority's control as its seven members are appointed via presidential decree after being nominated by the Supreme Judicial Council, itself headed by the President of the Republic. Over many presidential and parliamentary elections in recent decades, the Committee has been unable to conduct a free or fair election, and its work is marred by a lack of transparency, independence, and impartiality. Moreover, it had an active role in distorting the electoral process and cover up many violations and transgressions of electoral law, and of international standards and conventions for elections.

In the Syrian case, it seems highly likely that there will be an international role in the management of elections during the transitional period. On December 18, 2015, the Security Council adopted Resolution No. 2254, concerned with the political process and the peaceful transfer of power in a manner that guarantees a permanent solution to the Syrian crisis. This resolution, which was unanimously agreed by all members of the Council, stipulated the start of peace talks in Syria at the beginning of 2016, in a step that confirms that the Syrian people are the ones who decide the fate of their country and draw the frameworks for the future stage. Therefore, he called for an immediate halt to all attacks and acts of violence against civilians, and for the formation of a transitional government and the holding of elections sponsored and guaranteed by the United Nations. It refers to the Security Council's support for N-facilitated Syrian-led political process that leads to: Formation of credible non-sectarian governance, drafting of a new constitution for the country, and holding of free and fair elections pursuant to the new constitution under UN supervision.



## Chapter 1: Electoral Management Body

The independent electoral administration is a safety valve in countries with democratic transition or countries emerging from a totalitarian and authoritarian regime, where the elections were sham and marred by many violations and fraud, which produced a certain victory for the "ruling party" or its representatives and allies amid doubts about the integrity and transparency of the electoral process. The EMB can consist of one body (Lithuania), several bodies (Spain) and often two bodies (Romania), and powers can be shared between them or between one of them and the executive branch (Hungary). It can be temporary independent, permanent independent, mixed (Japan), and it can be centralized (Canada), decentralized (Australia) or entirely under the executive branch (Lebanon 2008). Below we will address the most important topics of relevance to an EMB.

### First: The Legal Framework Establishing the EMB

The basis to form an EMB is the legal framework regulating it which must, on the one hand, contain provisions that guarantee its independence, and on the other hand obligate it to carry out its duties faithfully, competently, and impartially. The legislation regulating the work of an EMB differs from one country to another, depending on many factors including the system of government and social structure.<sup>[120]</sup>

There are two legal sources for the establishment of the electoral administration, the constitution, and the law, in addition to a third source which is international conventions.

#### 1. Constitution

Many countries go to a constitutional provision for the establishment of an EMB to ensure its continuity, leaving the body's rationale, composition, tasks, and powers to laws.

Some countries going through a democratic transition tend to establish the presence of the EMB with a constitutional text that protects and consolidates its existence. Bitter experiences in the electoral process play a major role, especially in countries that have witnessed decades of tyranny and one-party rule dominating political life and state institutions.

What should be pointed out in terms of mechanisms related to electoral management in constitutional texts is that it is limited to the general, not the detailed, and that differs from one country to another. The difference appears in the way the EMB is formed, the extent of its independence, the diversity of its powers and tasks, the right to vote, rules for candidacy, the role of the Constitutional Court, periodic elections, voter registration... etc.

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[120] Training Manual on Elections, *ibid.*, p. 20.

## 2. The Law

Details of the EMB's work, its composition, powers, and tasks are often left to laws, and like all institutions and devices, these change with the passage of time and evolution of countries and their needs for updates. Here lies the role of the legislator in crystallizing these growing needs in response to developments in the electoral process. In some countries, the EMB may be part of the electoral laws, and in others it may have its own law that sponsors and ensures its existence.

## 3. International pacts and conventions

In some countries experiencing crises and armed conflicts, the presence of the EMB may come as a result of international pacts and conventions as part of the hoped-for peace process.

The Dayton Peace Agreement (December 1995) between the conflicting groups in Bosnia and Herzegovina is an example of how such international agreements facilitate the electoral process. The Organization for Security and Co-operation in Europe managed the elections in Bosnia and Herzegovina (6 electoral processes between 1996-2000), and this agreement established a transitional election committee consisting of 7 local members with an international presidency, which was later transformed into an independent central body in 2001.

The Oslo Accord (September 1993), signed between the Palestine Liberation Organization (PLO) and Israel, included some provisions related to the electoral process.<sup>[121]</sup>

In all cases, regardless of the legal framework establishing the EMB, its consolidation and its success is conditional upon subjective realities specific to each country, as well as upon its ability to gain the confidence of voters and competing political forces.

## Second: Membership, Selection of Members of EMB and Their Independence

Certainly, the formation of a non-governmental EMB is not sufficient to achieve its effective independence, as there are many other important factors. Paramount over these is the mechanism for appointing members: “The manner in which the EMB members are selected and dismissed, and the procedures for hiring, dismissal and promotion of professional staff in the EMB, have a strong impact on the extent to which it will be able to take and enforce independent decisions.”<sup>[122]</sup> The method to select or appoint members of the EMB varies from country to country. In some countries, either the executive authority, the legislature or both take part in the appointment process. The president may be involved in other countries. In others, political parties may send their

[121] Article 3 of the agreement stipulated the holding of general, direct, and free political elections for the Palestinian Legislative Council, under agreed-on international supervision and monitoring.

[122] Letter dated 29 November 1995 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General: The Situation in Bosnia and Herzegovina, A/50/79C, Security Council -General Assembly, Fiftieth session, Agenda item 28, pp. 14.

[https://peacemaker.un.org/sites/peacemaker.un.org/files/BA\\_951121\\_DaytonAgreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf).

representatives within the EMB, or the latter may consist only of experts in elections, democracy, and human rights.

We have to distinguish in the appointment process between members and the head of the EMB, as the role of each grows the more supporting mechanisms and the method of appointment are transparent and independent.

As for the head of the EMB, “he may be appointed directly by the Head of State or Head of Government (Pakistan, Uruguay), which gives him higher powers than the rest of the members, or he may be directly elected by Parliament (Tunisia) or appointed by the President (Governor-General of Australia). The head of EMB enjoys the status of head of the judiciary in Pakistan, the status of minister in Romania and Tunisia, and the status of deputy prime minister in Yemen. As for members, theirs is often a rank that enjoys trust and respect. In India they are like judges in the Supreme Court, and in Yemen they are like ministers. Their number varies from one country to another. In Canada there is only one member, in India there are 3, and in Tunisia there are 9 members<sup>[123]</sup>.

As for member term, it also varies according to the country and the democratic life and the extent of its consolidation. Some EMBs prefer a one-time term, concluding shortly after the electoral process is concluded, within six months to one year, while others adopt different mechanisms with two terms as a maximum. In other countries, EMB member terms only conclude at the retirement age of members.

### **Third: The Tasks of EMBs**

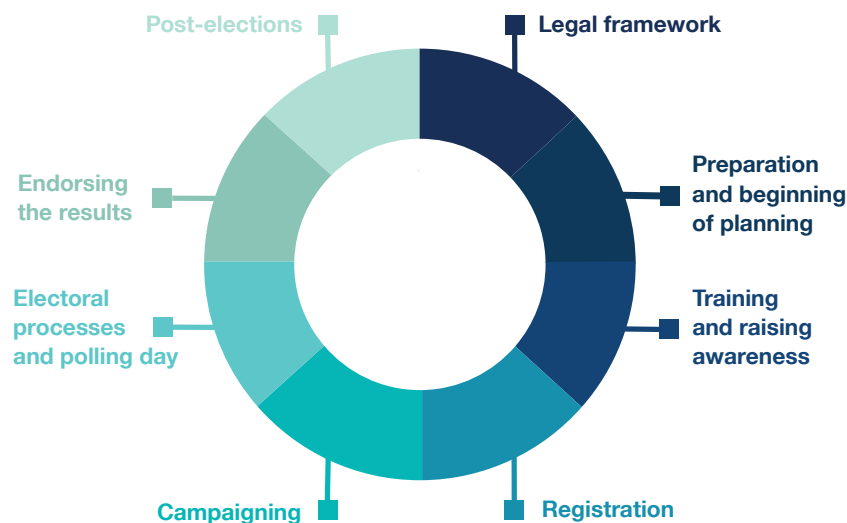
As we follow an electoral cycle, it becomes clear how much work is being done by those in charge of the electoral process. At first glance, it seems that the electoral process is limited to the polling day and the preparations that precede it, but reality is very different. The amount of work needed is no longer within the capacities of ministries, specifically the Ministry of the Interior, and elections are now a complex process that requires the presence of specialists and qualified professionals to do work without influences or pressures. This is especially the case in countries experiencing a democratic transition. Here, it appears at first that the electoral process is limited to three simple stages.

But that could not be further from the truth. The electoral cycle is by no means limited to these three stages, as each has its own tasks and preparations, as shown in the following figure.<sup>[124]</sup>

[123] Electoral Knowledge Network (ACE), available at:<https://aceproject.org/ace-ar/topics/em/ema>. Accessed on: 22.07.2022.

[124] Bridge Presentation.

## The Electoral Cycle



The electoral management body is expected to assume broad powers during the transitional period in Syria, especially considering the lack of trust in state institutions which will continue to lack consolidated democracy, capabilities, and the trust of citizens. Conversely, the formation of an EMB through one of the means delineated above can grant it the legitimacy to carry out tasks usually entrusted to the executive, and even the judicial and legislative, in well-established democracies. This places great responsibility on the emerging electoral body to carry out these tasks, requiring it to obtain all forms of support including financial, technical, and political. As for the most prominent of these tasks, which can instead be called duties or a mandate, they are as follows:

### 1. Issuing Regulations and Directives

These tasks may include the interpretation, application, or regulation of matters related to elections, in cooperation with a judicial body whose task is to review regulations issued and ensure their constitutionality and compliance with the electoral law in effect. It is imperative that the executive be stripped of the power to issue such regulations –the case in Syria today. The EMB may also be granted limited legislative powers, in particular involvement in the drafting of the new electoral law<sup>[125]</sup> in the event that the EMB is formed before the emergence of an elected parliament, in addition to further cooperating with the concerned authorities to amend this law at a later time. The EMB should also be given the power to issue codes of conduct for its staff, as well as for

[125] The commission must be constantly involved in the process of legal review of electoral frameworks. After each electoral process, it can submit an assessment of these frameworks to the legislative body, which must involve the commission in any new legal formulations related to elections.

the various parties, candidates, and the media,<sup>[126]</sup> especially in light of the weak electoral culture necessary for these various parties that had not experienced free and fair elections in the past.<sup>[127]</sup>

## **2. Voter Registration**

This is one of the main tasks of any electoral commission and may also be the most arduous considering the waves of internal and external displacement that Syria has witnessed over the past decade, on the one hand, and the large number of Syrians lacking necessary identification papers, on the other. Essentially, the EMB must include the names of people who were excluded from the previous electoral registers for political reasons related to their opposition to the Assad regime. The EMB must also receive candidacy applications and ensure their registration if they meet the legal requirements.

## **3. Recruitment and Contracting**

The EMB must not only form and supervise electoral sub-committees, but also contract with permanent or temporary staff during election seasons, thus removing this mandate from the Ministries of Interior and Local Administration which carry out this task under the current Syrian election law. As such, the role of the EMB is strengthened at the district level, and its representation ensured outside the country as well in order to facilitate the participation of Syrians residing abroad. Finally, the EMB may contract with consultants and international and regional bodies and agencies to facilitate the electoral process.

## **4. Electoral Education and Training**

The EMB will also be responsible for training its staff and contractors, as well as carrying out awareness-raising activities about the electoral rights of citizens which are not limited to election periods but are undertaken throughout the year. For example, the EMB should prepare educational brochures and videos to be circulated online, with the aim of spreading awareness of electoral rights. It must also focus on matters suited to the Syrian environment, such as promoting the participation of women and marginalized groups, reducing religious, ethnic, and racial polarization, etc. The EMB may also conduct periodic research studies and opinion polls related to the obstacles that prevent the proper political participation of these groups, before taking the necessary measures to address them.

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[126] Frank McLachlin, *ibid.* p. 22.

[127] Moreover, codes of conduct may motivate the rejection of discrimination, violence, sectarian and ethnic rhetoric, and corruption, in exchange for the contribution of all parties to strengthening the national discourse and ensuring the proper conduct of the electoral process.

## 5. Organizing and Managing the Voting Period

This includes total supervision of the voting process, the counting and tallying of votes, and the announcement of results. The EMB must also follow up on all election aspects including their aftermath and the period preceding them, aspects such as fraud, vote buying, and non-compliance with electoral silence (campaign silence), permitted campaign spending, or other election-related violations that may be made by candidates or the media that do not respect laws in effect. Within this framework, the EMB shall receive complaints before processing them or referring them to the competent judicial authorities, when required. It is also necessary to prepare reports following the voting or polling process and ensure record keeping and archiving.

### Fourth: Types of EMBs, and Optimal Models for Syria

Main types or forms of EMBs differ from one country to another. Electoral experts, however, tend to classify EMBs<sup>[128]</sup> into 3 main forms:<sup>[129]</sup>

#### 1. Independent EMB

It is a body that enjoys financial and administrative independence and a legal personality, and its employees are not public or state employees. An example of this in the Arab region is the Independent High Authority for Elections in Tunisia. Despite the independent character of this EMB, its obsession with its independence remains great, along with fears of a dominant ruling political system, especially in the stage of democratic transition. This prompts it to work hard to mobilize support and provide legal and political guarantees for its independence.

#### 2. Governmental EMB

It is the traditional apparatus that has been known for many years, and it is mostly formed by the executive authority through one of its ministries (Lebanon in the past, Kuwait), which is often the Ministry of Interior or Justice, as is the case in Syria today. This EMB is subject to the directives of the government, which is usually politicized and represents the interests of those in power, especially in authoritarian states or where no independent government agencies subject to the rule of law exist.

#### 3. Mixed EMB

This consists of two bodies that share the powers over the electoral process: a completely or almost completely independent body, and a governmental body. It is worth mentioning here the differences in the role of the independent EMB between one country and another. As such, its jurisdiction may expand (Madagascar) or narrow (Sene-

[128] Luis Antonio Sobrado Gonzalez and Eliana Aguilar Olivares, Electoral Management Systems Design, Costa Rica: Supreme Electoral Court, Electoral Knowledge Network (ACE), available at: [Costa Rica: The Supreme Tribunal of Elections – \(aceproject.org\)](#), last accessed August 22, 2021.

[129] Alan Wall et al., Forms of Electoral Management, *ibid.*, p. 25; López-Pintor Rafael, Electoral Management Design: The International IDEA Handbook, Bureau for Development Policy United Nations Development Programme, 2000.

gal), and its tasks and powers may be many, especially in light of the complexity of the relationship between a governmental and an independent institution. This is the case in France and Spain. <sup>[130]</sup>

This type of EMB is likely a transition between two stages, and often ends with the establishment of an independent body. In the Syrian case, an independent EMB may be the best model given the traditionally dominant role of the executive, especially through a legislative arsenal devoted to autocracy which will not be easy to abolish in the foreseeable future or ensure the good functioning of a government body and its conduct of free and fair elections.

In turn, the United Nations Development Programme (UNDP) on Electoral Management asserts that, “The need for an independent EMB has been identified in most emerging democracies, and all post-conflict elections.”<sup>[131]</sup>

Finally, it should be noted that a temporary EMB is expected to be formed in Syria<sup>[132]</sup> with the sole purpose of managing elections during the transitional period, to take place within the framework of international engagement in accordance with Security Council Resolution 2254, which referred to elections, on the one hand, and the need for international electoral assistance, on the other.<sup>[133]</sup> In such a case, the EMB would be referred to as a transitional EMB, and would be composed of international and local experts, as occurred in Afghanistan in 2004 and in South Africa in 1994.<sup>[134]</sup> The formation of this body would be part of the political settlement as was also the case under the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Accords), whereby an EMB was established, and its third annex was devoted to detail organizing free and fair elections under the supervision of the Organization for Security and Co-operation in Europe. <sup>[135]</sup>

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[130] Pamela Qortbawi and Mario Abu Zaid, *ibid.*, p. 20. For more on the types and forms of electoral administration in the Arab countries, see Ali el-Sawy, *Democracy of Elections: Administration or Will? Elections and Democracy in the Arab World*, p. 52 and beyond.

[131] United Nations Development Programme (UNDP), *Comparative Experience in Electoral Administration and the Arab World*, April 2011, p. 14, available at: <https://www.undp.org/publications/comparative-experience-electoral-administration-and-arab-world>. Also, Frank McLachlin, *ibid.* p. 19; *Electoral Administration in the Transitional Period: Challenges and Opportunities*, Policy Paper, IDEA, November 2015, p. 8.

[132] However, it is necessary to establish a permanent electoral management body, in the event of strengthening state institutions and achieving political stability in Syria, because reliance on temporary committees makes it difficult to prepare for elections on a regular basis, especially organizing the necessary training for new members who will not benefit from the lessons of previous electoral experience in order to avoid Repeat their mistakes and thus achieve better results. Also, the commission’s continued presence is essential to carry out tasks between elections, such as investigating any complaints or loopholes and working to avoid them, as well as carrying out electoral education. However, the permanence of the committee should not lead to the continuation of the membership of its members for an indefinite period, but rather it should be for one or two sessions at most, in order to avoid monopolizing the electoral matter by certain people who may be subjected to influences and pressures. For more, see the document of the Arab Organization for Electoral Administrations on the guiding criteria for the independence of electoral administrations, *ibid.*, p. 21.

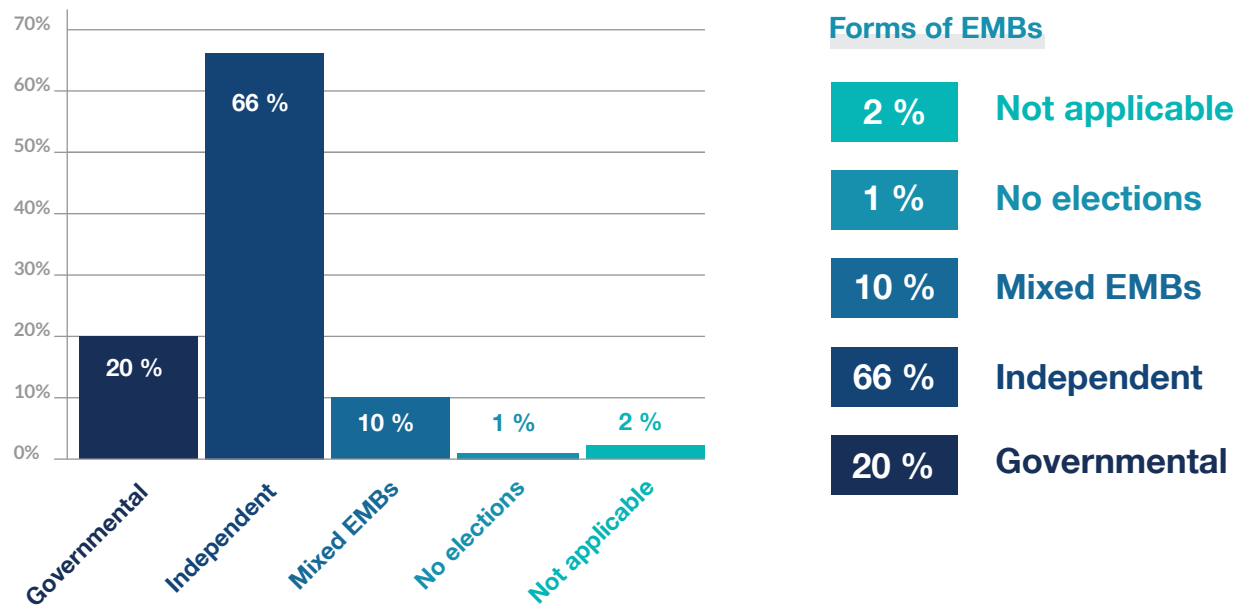
[133] For more, see Frank McLachlin, *ibid.*, p. 17.

[134] Pamela Cortbawi and Mario Abou Zeid, *ibid.*, p. 21.

[135] Letter dated 29 November 1995 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General: The Situation in Bosnia and Herzegovina, A/50/79C.Security Council-General Assembly, Fiftieth session, Agenda item 28, pp. 56-57.  
[https://peacemaker.un.org/sites/peacemaker.un.org/files/BA\\_951121\\_DaytonAgreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf)

The United Nations was also involved in the electoral process in Namibia in order to contribute to achieving a political settlement in the late 1970s, and in the framework of this, the UN Security Council resolution stipulated “ensure the early independence of Namibia through free and fair elections under the supervision and control of the United Nations...”<sup>[136]</sup> The role of the international community in managing future electoral processes in Syria will be detailed below.

### Comparing EMBs around the world<sup>[137]</sup>



[136] Resolution No. 632 of 1989, Meeting No. 2848, February 16, 1989, link: <https://digitallibrary.un.org/record/56654?ln=en>, last accessed on August 2, 2021.

[137] Electoral Administration Systems Design, Electoral Knowledge Network (ACE), ibid.



## Chapter 2: The Role of the International Community in Managing Future Elections in Syria

The United Nations has previously provided electoral assistance in accordance with the specific needs of each country: “Electoral assistance by the United Nations is provided only upon a specific request made by the Member State concerned, or on the basis of a mandate issued by the Security Council or the General Assembly. Prior to agreement on assistance, the United Nations assesses the needs of Member States to ensure that assistance is proportional to the specific needs of the country or situation.”<sup>[138]</sup> This assistance carried out by the United Nations Electoral Assistance Division (UNEAD) of the Department of Political Affairs (UNDP), differs from one country to another depending on its circumstances and conditions, and it is not limited to countries undergoing democratic transition. Any country can request assistance, and since 1991, more than 100 countries have requested electoral assistance and these countries have received it.

Through UNEAD, the United Nations has played an important role in providing support and assistance which led to the success of electoral experiences in many nascent or newly independent nations. The Division has provided vital electoral assistance to countries that have suffered from states of conflict, and in the past thirty years, the management of elections in countries suffering from post-conflict issues has become one of the primary tasks of the United Nations. However, inherent to this task are many challenges and difficulties that need to be identified and resolved in a manner that ensures the development of the necessary response, in order to reach the desired success of international electoral assistance and support.

### First: The Role of the United Nations in Supervising the Syrian Elections in Accordance with UN Resolution 2254

Election supervision is one of the most important electoral support roles provided by the DPPA. According to this agency, the supervision of elections is a role opted for on rare occasions, such as the case of Syria, and it is one that requires authorization by the General Assembly or the Security Council. Such authorization is required because activities like electoral support require the active intervention of the United Nations, and it requires the relevant government to “cede this sovereign activity to the control of the United Nations.”<sup>[139]</sup> This process requires the United Nations to “certify and approve each stage of the electoral process in order to establish the general credibility of the elections. It can require direct participation in setting up election mechanisms such as the [election] date, the issuance of regulations, ballot drafting, polling station monitoring, vote counting, and conflict resolution support.

[138] Elections, Political Affairs and Peacebuilding, United Nations, available at: [Elections | Department of Political and Peacebuilding Affairs \(un.org\)](https://www.un.org/peacebuilding/Affairs), accessed March 13, 2021.

[139] United Nations Focal Point for Electoral Assistance, ‘Principles and Types of UN Electoral Assistance’ (United Nations 2012) Policy Directive 11.

When the United Nations is not satisfied with electoral procedures or their implementation at a particular stage, the electoral management body conducting the process must act on the recommendations of the United Nations and make all necessary adjustments, as the progress of elections is subject to the approval of the United Nations at each stage.”<sup>[140]</sup> Among the previous experiences of supervising elections are the contexts of Namibia in 1989, Cambodia in 1992, Bosnia in 1996, Eastern Slovenia in 1997, and finally East Timor in 2001.

Since United Nations supervision is primarily subject to the approval of the relevant UN agency at all stages of the electoral process, it is worth noting that the electoral cycle methodology as adopted by the Electoral Knowledge Network (ACE) defines the electoral cycle in three basic stages: First, the preparation stage which is the pre-election process including all logistical preparations and the creation of a safe and democratic environment for holding free and fair elections. Second is the election stage, which includes the process of polling and voting on the election day, and this involves the supervision of voting, especially in the event of absentee voting, in addition to vote counting and the announcement of results. Finally, the post-election stage includes contesting results, final evaluations, and archiving, in addition to institutional development and legal reforms.<sup>[141]</sup>

## **Second: The supervisory role of the United Nations in Syrian pre-elections**

The experiences of previously discussed countries indicate that the election supervision role of the United Nations, under the mandate of the Security Council or the General Assembly, typically take place during the post-conflict stage as per a peace agreement aimed at establishing a democratic system and political stability in the country. It is worth noting that the state of instability in the countries newly emerging from conflict requires the United Nations mission to make additional effort to provide an appropriate electoral environment for free and fair elections, one which enhances political stability and leads to a democratic transition in the country in question. Therefore, it is vital before starting the electoral process to ensure military/security stability and the presence of a regulating legal and policy framework that includes the constitution, legislation, electoral system, and codes of conduct.

Since Syria is in a state of non-international armed conflict, it is natural/to be expected that there will be a serious dispute between various conflict parties over the form of government and the electoral process, and this may require a prior agreement on the form of a political solution and mechanisms of transition in the post-conflict phase, including the electoral mechanisms that It will be supervised by the United Nations, as well as the presence of UN peacekeeping forces in the aftermath of armed conflict to ensure the integrity of the electoral process.

[140] UN Department of Political and Peacebuilding Affairs (n 3).

[141] ACE Electoral Knowledge Network, 'The Electoral Cycle' <<https://aceproject.org/ero-en/images/the-electoral-cycle/view>> accessed 8 May 2021.

In order to ensure the integrity and integrity of the political and electoral process, the Special Representative of the Secretary-General in the mission was required to endorse each stage of the electoral process, and was also authorized to make suggestions and recommendations regarding any aspect of the process.<sup>[142]</sup> In Cambodia, the Paris Peace Agreement referred to the declaration of a transitional period in which a Constituent Assembly would be elected through free and fair elections organized and ratified by the United Nations. This assembly approves a constitution for the country and transforms itself into a legislative assembly, after which a new government is formed. Therefore, the signatories called on the Security Council to establish the United Nations Transitional Authority in Cambodia (UNTAC), consisting of civilian and military components, under the direct supervision of the Secretary-General of the United Nations through his Special Representative, as was the case in its predecessor, Namibia.<sup>[143]</sup>

The UN intervention in the aftermath of the Bosnian war was not different in principle, as the Security Council and its resolution 1035 of 1995 established the UN International Police Force (IPTF) and a UN civilian office in accordance with the peace agreement signed by the leaders of Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia. The UN full intervention mission became known as the United Nations Mission in Bosnia and Herzegovina (UNMIBH). This mission was headed by the Special Representative of the Secretary-General, who oversaw the International Police Force and coordinated other UN activities in Bosnia and Herzegovina in relation to, inter alia, elections. <sup>[144]</sup>

It is clear that preparing the political, legal and security environment for free and fair elections requires major UN intervention in the workings of the country. In order for this intervention not to conflict with the principle of state sovereignty, the UN obtains a mandate from the Security Council, in addition to agreeing with said country on the powers of the UN during the supervision process. As was indicated earlier, the existence of a political agreement regulating the details of the UN's supervisory intervention in the electoral process has not happened in Syria. For example, Cambodia's Supreme National Council delegated all necessary powers and authorities to the UN mission, giving it full supervision power over relevant administrations such as the Department of Foreign Affairs, National Defense, Finance, Public Security and Information to ensure the impartiality and integrity of the electoral process.<sup>[145]</sup> The Representative of the Secretary-General in Cambodia had broad powers such as the appointment of UN staff in Cambodian administrative bodies and offices so that they could have unfettered access to all operations and information, as well as the ability of the Representative of the Secretary-General to demand the reassignment or dismissal of any staff of

[142] UN Security Council, 'Proposal for a Settlement of the Namibian Situation' (UNSC 1978) S/12636 para 5.

[143] UN General Assembly and UN Security Council, 'Letter Dated 30 October 1991 from the Permanent Representatives of France and Indonesia to the United Nations Addressed to the Secretary-General: Final Act on the Paris Conference on Cambodia' (1991) A/46/608-S/23177 Art 1-2.

[144] Resolution 1035 (1995), UN Security Council, S/RES/1035 (1995), 21 December 2021. paras 2-3;: United Nations Mission in Bosnia Herzegovina - Mandate, UNMIBH. <https://peacekeeping.un.org/en/mission/past/unmibh/mandate.html>, last accessed 17 May 2021.

[145] Letter Dated 30 October 1991 from the Permanent Representatives of France and Indonesia, *ibid*, Article 6.

these agencies and bodies and administrative offices, and to identify the civilian police personnel needed for law enforcement in Cambodia.<sup>[146]</sup>

### **Third: The supervisory role of the UN during the election day in Syria**

After completing the pre-election preparations, the most sensitive phase of the electoral cycle begins, which is the phase of supervising the conduct of the electoral process. Given the effects of the armed conflict in Syria, the loss of confidence between the various parties and the spread of Syrians in scattered geographic areas, organizing the election day in a manner that ensures the participation of all without intimidation while monitoring the integrity of the electoral process is essential to achieving the peaceful transfer of power and political and security stability in the country. This requires a high supervisory authority in the hands of the UN over all relevant decisions and operations.

Naturally, organizing this large number of operations requires specialized committees that supervise the integrity of the electoral cycle. According to the Syrian election law, the Supreme Judicial Committee, sub-committees and polling center committees organize the election of the President of the Republic for the presidential elections under the supervision of the Supreme Constitutional Court.<sup>[147]</sup> It is worth noting that the Supreme Judicial Committee for Elections consists of seven members named by the Supreme Judicial Council, which is chaired by the President of the Republic.<sup>[148]</sup> Its work is also subject to the supervision of the Supreme Constitutional Court, which decides on appeals regarding the validity of the election of the President of the Republic by a final decision.<sup>[149]</sup> It is important to recall that the judges of this court are named by the President of the Republic.<sup>[150]</sup> In addition, the Supreme Judicial Committee for Elections is responsible for naming the members of the sub-committees, defining their headquarters, and supervising their work.<sup>[151]</sup> Where the subcommittees are considered bound by the decisions issued by the Supreme Judicial Committee, they work under its supervision and according to its directives.<sup>[152]</sup> This would call into question the credibility of these agencies' supervision of the electoral process.

In the general framework, the role of the UN in the elections phase includes supervising and approving the voting process and voting on the election day, especially in the event of an external vote, in addition to counting votes, verifying, and scheduling results, and considering appeals. and complaints. The role of the UN also includes defining all conditions and procedures that preserve the objectivity and integrity of elections and supervising their proper implementation. This is such as defining the date and place of holding the elections, monitoring the integrity of the voting process, and the ability of voters to have just access to exercise their electoral right without fear or intimidation.

[146] Ibid., Annex 1 (Section B, 4).

[147] The 2014 General Elections Law, *ibid.*, Article 38.

[148] The 2014 General Elections Law, *ibid.*, Article 8, second paragraph, and the 2012 Syrian Constitution, *ibid.*, Article 133.

[149] The 2014 General Elections Law, *ibid.*, Article 82.

[150] The Syrian Constitution of 2012, *ibid.*, Article 88.

[151] The 2014 General Elections Law, *ibid.*, Article 10, para 5.

[152] The 2014 General Elections Law, *ibid.*, Article 11, fourth paragraph.

As well as voter registration, controlling the behavior of the media and governments, procedures for counting votes and announcing final results.

Based on the foregoing, it becomes clear that the supervisory role of the UN during the election period varies according to the local context of each case, as it faces a set of practical challenges, and this is normal as a result of the difficult circumstances that these countries have gone through and given the circumstances and data specific to each country separately.

#### **Fourth: The supervisory role of the UN after the end of the elections in Syria**

While free and fair elections are the cornerstone of democratic transformation processes, the sustainability of this democratic culture in a political and security context that respects human rights and preserves this democratic experience is considered extremely important. Thus, this process should not be separated from the path of a political solution, security stability, legal, judicial, and constitutional reform in Syria, as well as the need for the country to remain under UN monitoring for a short period of time until it is ascertained that it is able to move forward after the end of the conflict.

Elections are a means, not an end, and the ultimate goal is the process of democratic transition in a peaceful and permanent manner and working to find serious and sustainable reasons and indicators to build an electoral culture based on accepting results. Continuing the periodicity of elections on time and consolidating the idea of peaceful transfer of power.

### **Chapter 3: Other roles of the UN in the elections in Syria**

In addition to supervising the elections, the UN provides a variety of assistance and services, as its assistance varies from one country to another, and its services vary from one case to another. Because of the unstable situation in Syria, it is useful to have additional roles for the international community in the elections. The following is an overview of the types of electoral assistance provided by the UN and its various entities that may be relevant to the Syrian context.

#### **1. Technical assistance**

"Technical assistance is by far the most extensive form of electoral assistance provided by the UN. It can be defined as legal, operational, and logistical assistance provided to develop or improve electoral laws, processes, and institutions. It can cover all or some aspects of the electoral process. It can focus on a single electoral event, or it can be long-term, and include a number of electoral events according to mandate or demand and needs assessment. While the technical assistance provided by the UN focuses primarily on the administration of elections and institutions, it may include assistance provided to a number of other stakeholders and institutions. Technical assistance may be provided on the basis of a request by a Member State or following authorization by the Security Council or the General Assembly."

From the logistical point of view, the UN has long experience with logistical support operations, starting with data collection and census, and electoral districts with the help of the latest technological means, through voter registration processes and the provision of electoral materials and appropriate counting centers, and ending with the collection and announcing the results. An example of this in the Syrian context is a technical evaluation of existing electoral procedures and processes.

## **2. Providing support to create an enabling environment**

“Department of Peacekeeping Operations missions, through its military, police and civilian presence, may also assist in stabilizing the security situation, which is necessary to create an environment conducive to elections. In accordance with their mandates, the OHCHR and UN Women may also decide to monitor the human rights or situation with regard to women’s participation in a country before, during or after elections, in order to create an environment conducive to credible elections and to ensure that they respect relevant international standards. In specific circumstances, such as countries in transition or at risk of violence.”

Syrian civil society institutions will have a constructive role in stimulating dialogue and societal discussions necessary for a fair drafting of laws and a participatory electoral process. It will contribute to civic and voter education processes, and it will also monitor all stages of the elections, detect fraud attempts, and write professional and impartial reports on the progress of the electoral process, accompanied by recommendations to strengthen the democratic process. In the Syrian context for example, the OHCHR can provide training and advice on human rights monitoring in the context of elections, support, and campaign for violence-free elections, monitor and report on human rights violations during electoral processes and participate in advocating for compatible electoral laws and institutions with human rights.

## **3. Organizing and conducting the electoral process**

“If the UN is mandated to organize and hold an election or referendum, the organization assumes the role normally played by national electoral authorities. In such cases, the UN has full authority over the process.”

## **4. Ratification**

The term “ratification” is widely understood in electoral practice as the legal process by which a national authority approves or “endorses” the final results of a national election. However, in rare cases, the Security Council or the General Assembly may request the Secretary-General to play a role in the issue of “ratification”. In such cases, the UN is required to certify the credibility of all, or some aspects of the electoral process conducted by the national electoral authority. The UN must issue a final statement attesting to the correctness of the elections.”

Ratification of elections in countries in transition is an essential part of building confidence in the results and the authority that will emerge from it to lead modern Syria, and

this matter is not limited to UN institutions, but there are other international observers belonging to other international and regional organizations that have a long history and experience in following up electoral processes in many countries of the world.

## **5. Monitoring**

Electoral monitoring consists of the systematic collection of information about the electoral process by direct observation on the basis of existing methodologies, often analyzing qualitative and quantitative data. The monitoring process usually leads to an evaluation public statement about the general conduct of the electoral process. Election observation at the UN entails the deployment of a mission to observe each stage of the electoral process and report to the Secretary-General, who will issue a public statement on the conduct of the elections. Monitoring elections at the UN, which is extremely rare, requires authorization from the General Assembly or the Security Council.

## Part IV

# Guarantees of Election Integrity in Syria





## Part IV: Guarantees of Election Integrity in Syria

In addition to a legal framework that meets international standards, and an electoral system that guarantees true and accurate representation, one of the necessary conditions to ensure free and fair elections is the existence of neutral and independent government institutions that exercise their powers in accordance with the principle of the rule of law. This section addresses the importance of these institutions as one of the guarantees of free and fair elections, and the roles they must play in the context of future elections in Syria. The first chapter discusses the various roles played by the judiciary as one of the most important guarantors of election freedom and integrity, in addition to the legal obstacles that can inhibit the proper performance of its role and proposes constitutional and legislative reforms required to enable the judiciary to carry out this task. The second chapter deals with the role of the security services in providing electoral security in Syria, reviewing the challenges that could hinder security institutions from performing their role, and the reforms required so that security forces can exercise their role as one of the guarantees of free and fair elections. Finally, the third chapter tackles the important role of the media as another guarantor for free and fair elections, and the roles that the media must play in the context of the elections in Syria, and also discusses the most important challenges that will face the work of the media and proposed solutions to regulate election media and enable it to carry out its role effectively as one of the guarantees of elections in Syria.

### Chapter 1: The Role of the Judiciary in Ensuring Electoral Justice

In modern political systems, the judiciary is considered a safety valve of political life and plays a prominent role in electoral processes due to its presumed independence, impartiality, and integrity. It exercises judicial oversight over administrative and electoral committees, adjudicates electoral disputes, and examines all electoral crimes and violations that may be committed during the various stages of an election process. Judicial institutions are among the most substantive guarantees that preserve the electoral rights of citizens from violation and abuse. Moreover, it is typically the responsibility of the judiciary to provide legal protections to all parties to an election, in order to realize fully democratic practice<sup>[153]</sup> in a manner that achieves the desired electoral justice.

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[153] Jawad al-Daraji, "The Role of Judicial, Administrative and Political Bodies in the Electoral Process in Algeria" (Arabic), Master's Dissertation in Constitutional Law, Faculty of Law and Political Science at University of Batna, Hadj Lakhdar, Academic Year 2014-2015, p. 31.

## **First: The Tasks of the Syrian Judiciary in Electoral Disputes in Accordance with the Laws in Force**

In Syria, the General Elections Law granted the judiciary the power to decide on electoral results. The types of courts looking into electoral cases vary according to the type of elections: presidential, parliamentary, or local. It also granted the criminal judiciary the power to consider electoral crimes that could occur during those electoral processes. However, the legal texts related to this matter are subject to some ambiguity and deficiency. Although the role given to the Syrian judiciary regarding electoral disputes is very limited and formal, it did not play the role assigned to it for several reasons, the most important of which is its lack of independence and impartiality, and this is what will be discussed below.

### **1. The Tasks of Supreme Constitutional Court**

The current election law grants the Supreme Constitutional Court the task of supervising the work of the Supreme Judicial Committee with regard to managing the process of electing the President of the Republic. Applications for candidacy for the Presidency of the Republic are submitted to the Court by the candidate himself/herself or his/her legal representative. The Court scrutinizes the applications and makes its decisions in this regard, and then announces the names of those whose candidacy it decides to accept. Those whose candidacy application was rejected may file a grievance against this decision before the same court, which decides on this grievance within the three days following its submission with a final decision.<sup>[154]</sup>

The Constitutional Court decides on appeals regarding the validity of the election of the President of the Republic and the validity of the elections of members of the People's Assembly by a final decision. Appeals are submitted by the candidates who did not win the elections (Articles 82-83), but the role of this Court is absent in this regard. Over more than four decades, it did not issue any rulings regarding the validity of the elections that took place in Syria, and no challenge to the validity of the elections was registered before it.

The Supreme Constitutional Court is also competent to consider the constitutionality of laws and legislative decrees, including, of course, those related to elections.

### **2. The Tasks of the Administrative Judiciary**

The current Syrian election law grants the administrative judiciary the right to consider appeals that may be received against the instruments of appointment of the members of local administrative councils only. These courts must issue their decisions within a period of fifteen days from the date of filing the case, and these judgments are subject to appeal before the Supreme Administrative Court. The latter decides on them with a final judgment within fifteen days from the date of filing the appeal (Article 84). The law does not stipulate who has the right to challenge the deed of appointment for the

[154] General Elections Law No. 5 of 2014, previous reference, Articles 34 and 35.

members of the local administrative councils, but according to the articles related to challenging the results of the parliamentary and presidential elections, the appeal can be submitted by the candidate who did not win the elections.

### 3. The tasks of the Criminal Judiciary

The Syrian election law did not explicitly mention the role of the criminal judiciary in electoral processes, but rather mentioned electoral crimes, and stipulated the penalty for each of them, either a fine, imprisonment, or both. The penalty of imprisonment did not exceed three years, and the attempt to commit these crimes in accordance with the aforementioned law was considered a complete crime. It was also stipulated that the penalties under this law do not preclude the application of the most severe penalties stipulated in other laws in force. Perhaps, what is meant by the laws in force here is General Penal Code No. 148 of 1949, where electoral crimes were mentioned in Articles 321, 322, 323, and 324. These texts were phrased in a general and comprehensive language, and thus, describing the offense (legal description) and determining whether the committed act constitutes an electoral crime was left to the court looking into the case. In addition, the texts contained in the Elections Law gave the court examining the criminal case the right to apply the most severe penalty stipulated in the laws in force, if the defendant is found guilty of the offense charged.

## **Second: International Standards and Principles for Resolving Electoral Disputes and how Compatible is the Reality of the Syrian Judiciary with them**

### 1. International Standards for Resolving Electoral Disputes

Many international treaties and covenants such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Basic Principles on the Independence of the Judiciary of 1985 stipulate a set of standards that must be met by any entity that adjudicates judicial disputes, including electoral ones, and compliance with these standards is necessary to protect the electoral rights stipulated in the aforementioned charters, and consequently, ensuring free and fair elections. Since Syria is a state party to the international covenants,<sup>[155]</sup> it is obligated to respect and protect the rights it stipulates, including electoral rights, such as the right to a fair trial, non-discrimination, equality before the law, and other rights. Therefore, the body that will decide on electoral disputes in Syria is obligated to fulfill the required standards.

Article 2 of the International Covenant on Civil and Political Rights affirms that each state party undertakes to respect the rights recognized therein and to guarantee these rights to all individuals within its territory and within its jurisdiction, without any discrimination as to race, color, sex, language, religion, political or other opinion, national or social origin, wealth, lineage, or other grounds, and undertakes to take, in accordance with its constitutional procedures and the provisions of this covenant, whatever legislative or non-legislative measures, and to ensure that an effective remedy is available

[155] Syria ratified the covenant on 21 April 1969, see the official website of the United Nations, the status of ratifications, available at the link: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx), last accessed March 31, 2021.

to any person whose rights or freedoms recognized in the present covenant have been violated, even if the violation has been committed by persons acting in their official capacity, and to ensure for each complainant who claims that his/her rights have been allegedly violated that these rights will be decided by a judicial, administrative, or competent legislature or any other competent authority provided for by the legal system of the state, and to enhance the possibilities of judicial complaint, as well as to ensure that the competent authorities enforce the judgments issued in favor of the complainants.

The measures taken to fulfill the rights stipulated in the covenant as per the provisions of the above Article 2 are final and have an immediate effect, and failure to comply with this obligation cannot be justified by reference to political, social, cultural, or economic considerations within the State.<sup>[156]</sup> Article 14 of this covenant also affirms that all people are equal before the judiciary, and it is the right of every individual to have his/her case examined in a fair and public manner by a competent, independent, and impartial court established by law. The best way to guarantee these rights is the existence of an independent and impartial court or body to hear alleged violations of those rights. The enjoyment of the rights recognized in the covenant can be effectively guaranteed by the judiciary in various ways, including the possibility of directly applying the provisions of the covenant, or the application of similar constitutional or other provisions of law, or the interpretative effect of the provisions of the covenant in the application of the provisions of national law. There is a particular need to give effect to the general obligation to investigate allegations of abuse promptly, thoroughly, and effectively by independent and impartial bodies.<sup>[157]</sup> The members of these bodies must have this capacity, to ensure that electoral disputes are considered without fear or intimidation, and without anyone having the power to pressure them in a way that undermines the validity and integrity of the electoral process and violates electoral rights.

## 2. The Reality of the Syrian Judiciary Contradicts International Standards

There is no doubt that the Syrian judiciary, in its current situation, is unable to play its role as one of the guarantees of free, fair, and transparent elections, due to several factors that affect its independence and impartiality, and mainly the overrun of the executive authority and its absolute control over it, in addition to corruption, tyranny, and the absence of the concept of the rule of law that has accumulated over decades. This situation was exacerbated by the ongoing war in Syria. This section discusses the Syrian authority's violation of the international standards required to resolve judicial disputes, including electoral disputes, by studying the factors that affect the work of the judiciary and its inability to meet international standards for the settlement of electoral disputes, which are summarized in this report as follows:

[156] Human Rights Committee, Comment No. 31 on the nature of the general legal obligation imposed on states parties to the International Covenant on Civil and Political Rights, issued by the 18th session of 2004.

[157] Human Rights Committee, Comment No. 31, *ibid.*

## 1.2 The Defect in the Composition of the Supreme Constitutional Court

The roles granted to the court are completely suspended as the President of the Republic, who is the head of the executive authority, appoints its judges, without any procedures or controls indicating the availability of standards of integrity and transparency in the appointment process. The judicial appointment process is essential in the establishment or reformation of the constitutional courts, and it indicates the extent to which laws conform with their provisions. Thus, the institutions that are granted the appointment authority exercise a great influence on the work of the court. A court whose judges are appointed only by the executive authority without the participation of any political or civil entity has a very limited capacity to function independently.<sup>[158]</sup> This is exactly the case in Syria, which necessitates withdrawing this authority from it and granting it to the judicial authority, the legislative authority, or both authorities. The constitution must specify the principles by which the members of this court are appointed and protect its composition from the domination of other authorities.<sup>[159]</sup>

## 2.2 The Executive Authority Controls the Supreme Judicial Council

The Supreme Judicial Council supervises the work of the ordinary judiciary in all its forms and supervises its independence. It oversees the appointment, promotion, disclination, dismissal, retirement, leaves, accepting their resignation, and all that is related to their tasks and functions under Article 67 of the Judicial Authority Law. However, the Council is not independent and is practically subject to the control of the executive authority as we can notice through its composition a clear dominance of the executive authority over it. It is headed by the President of the Republic, represented by the Minister of Justice, and both are from the executive authority. The Minister of Justice is practically the head of the Judicial Authority and half of the Judicial Council are employees from the Ministry of Justice. The Assistant Minister of Justice is an employee in the Ministry of Justice; the head of the Judicial Inspection Department, according to the Judicial Authority Law, is an employee answerable to the Minister of Justice; and the Minister of Justice heads the Public Prosecution.<sup>[160]</sup> Thus, he has authority over the Public Prosecutor who follows his orders, and this maximizes the influence of the Minister of Justice over the members of the judiciary, robs the judiciary of its independence, and further tightens the executive authority's control over it.<sup>[161]</sup> The involvement of some judges in some of the systems and bodies that supervise or monitor the electoral process, or are supposed to settle electoral disputes, will not be impartial, as long as the Supreme Judicial Council includes four members of the executive branch out of seven. This calls for the consideration of re-forming the Supreme Judicial Council in a

[158] For more details see Sujit Chowdhury et al., *Constitutional Courts after the Arab Spring, Appointment Mechanisms and Relative Judicial Independence*, Center for Constitutional Transitions at New York University Law School, and IDEA, 2014 p. 14.

[159] Constitution Working Paper, ESCWA, National Agenda Program for the Future of Syria, 2016, p. 130.

[160] Syrian Constitution 2012, previous reference, Article 137.

[161] Ibrahim el-Hudaybi, *Judging the Judges: The present crisis facing the Egyptian judiciary*, Arab Reform Initiative page, dated December 2014, available at:

[Judging the Judges – The present crisis facing the Egyptian judiciary – Arab Reform Initiative \(arab-reform.net\)](http://arab-reform.net), accessed August 15, 2021.

way that frees it from the domination of the executive authority, so that all its members are judges, as is the case in most of the countries in the world.

### 3.2 Exceptional Judiciary in Syria

There are many exceptional courts in Syria, such as the Courts-Martial, and the Counter-Terrorism Court, which was established in 2012 as an alternative to the Supreme State Security Court, which was abolished in 2011. There are no clear controls to determine the types of cases that these courts consider. It does not have to adhere to the rules stipulated in the legislation in force in all the roles and procedures of prosecution and trial and has the jurisdiction to try civilians and military personnel, adults, and juveniles. Following the onset of the Syrian revolution, the Syrian Regime used these courts to get rid of its political opponents and legal activists. This practice escalated over the years that followed the beginning of the Syrian Revolution. Thus, it prevented political opponents from enjoying their electoral rights, and they can be used in the future to prevent civil society organizations from exercising their oversight role over the electoral processes. The same applies to the military judiciary under the Minister of Defense, which has jurisdiction over the military and civilians. According to the basic principles of judicial independence, exceptional courts may not be created.<sup>[162]</sup> This requires abolishing such courts and prohibiting their creation in the future and limiting the powers of the military judiciary to trying military personnel only for crimes and violations they commit while performing their military duties.<sup>[163]</sup>

### 4.2 The existence of laws and regulations that hinder the work of the judiciary

Syrian legislation contains a number of legal texts that grant immunity from prosecution to members of intelligence branches, internal security forces, the Political Security Directorate, and customs police. according to these texts, the judiciary is prohibited from prosecuting any members of the above agencies<sup>[164]</sup>, meaning they cannot be held to account as there is no authority which can prosecute them in the event of electoral crimes or violations. This is to be expected, as these agencies have an interest in the success of a particular party or candidate in the elections, and their practices have devastating effects on the entire electoral process. Therefore, we call for the abolition of these texts in order to enshrine the rule of law for everyone.

### 5.2 Lack of material and human resources for the judiciary, and its electoral inexperience

The judicial system in Syria does not have an independent budget, and instead the budget is set by the executive authority without any intervention by the judiciary itself. This further subordinates' judges to the executive, to the extent that the Supreme Judicial Council does not have the mandate, as specified in Article 67 of the law, to set

[162] Basic Principles on the Independence of the Judiciary, 1985, op.

[163] Fair Trials Handbook, previous reference, p. 223.

[164] For more details, see: Law No. 14 of 1969 establishing the State Security Administration, and Decree No. 64 of 2008 amending Article 47 of the Penal Code and Military Procedures.

or even propose a budget for the Supreme Judicial Committee for Elections. Recently, however, this matter was resolved with regard to the Supreme Constitutional Court and the State Council (administrative courts).<sup>[165]</sup>

There is a shortage of judges in Syria when contrasted with the immense number of cases brought before them, as each court, at times, has to hear approximately 200 cases per day.<sup>[166]</sup> This renders the judiciary incapable of giving electoral cases their due examination and scrutiny, while they continue to suffer a lack of experience in deciding electoral disputes, because Syria has not witnessed real elections over the past decades.

## 6.2 Politically affiliated judges

Article 81 of the Judicial Authority Law stipulates that judges are prohibited from expressing political opinions and affiliations, or engaging in politics. However, the reality in Syria is contrary to this, as the vast majority of judges are members of the Arab Socialist Baath Party<sup>[167]</sup>. This means that judges tasked with resolving electoral disputes, and who are supposed to be impartial, will in fact be biased towards members and leaders of their party, at the expense of members of other political parties. Thus, we call for the prohibition of judges from being affiliated with political parties.

## Third: Strengthening the role of an independent Syrian judiciary in electoral disputes

Assuming that all or most of these faults are resolved, there nonetheless remain shortcomings in the tasks assigned to the Syrian judiciary regarding electoral processes and settling expected disputes according to current electoral legislation. This calls for strengthening the role and effectiveness of the judiciary, expanding its scope, and removing the deficiencies and ambiguities that exist in some legal texts, as follows:

### 1. Strengthening the role of the Supreme Constitutional Court

It remains to be seen what title for this court will be agreed upon between the parties of the Constitutional Committee in Geneva which is expected to draft a new constitution for Syria, as it may continue to be the Supreme Constitutional Court or be changed to the Constitutional Council, the Constitutional Court, or otherwise. Nevertheless, this court has a large and important role to play especially in regard to elections that are set to be held in Syria in accordance with UNSC Resolution 2254 of 2015. The court is the guardian of the Constitution,<sup>[168]</sup> and the constitution is the guarantor of all rights including electoral rights. Therefore, this section will discuss the role that the Constitutional Court is supposed to play in protecting electoral rights and proposes some urgent and

[165] Law of the Supreme Constitutional Court No. 7 of 2014, *ibid.*, Article 137; State Council Law No. 32 of 2019, Article 90.

[166] Democratic Transition Plan in Syria, The Syrian Expert House, *ibid.*, p. 101.

[167] For example, in 2000, 1,000 judges out of 1307 judges in Syria joined the Baath Party, Shams al-Din al-Kilani, Introduction to Syrian Political Life: From the Establishment of the Entity to the Revolution, Arab Center for Research and Policy Studies, Beirut, 2017, p. 73.

[168] Sujit Chowdhury and others, *ibid.*, p. 19.

necessary reforms to address the obstacles that prevent the Constitutional Court from performing its role.

### **1.1 Considering the constitutionality of laws and legislative decrees**

The primary role expected of a constitutional court is to monitor the constitutionality of laws and legislative decrees, including those related to elections, whether currently in force or that will be issued in the future. This is provided that the opinion of the court is binding, that it is stipulated in the constitution, and that matters are not left to the discretion of the legislative authority as was previously the case.

In some countries, it falls within the jurisdiction of the constitutional court to consider the fairness of electoral district division as it is considered part of electoral law. This division is supposed to take place periodically, with intervals that vary from one country to another.<sup>[169]</sup> The importance of this issue stems from its relation to the principle of equal opportunity, which requires districts to be distributed in a fair and sensible manner, achieve justice, and create a balanced level of contribution to the elected council by citizens. Therefore, some systems have allowed the filing of appeals against the present delimitation of electoral districts.<sup>[170]</sup>

### **2.1 Considering the extent to which laws are compatible with international conventions binding for Syria**

It may also be useful to grant the Constitutional Court the power to consider the extent to which laws and legislative decrees comply with international law and international treaties and charters binding on Syria,<sup>[171]</sup> especially those related to human rights such as the Universal Declaration of Human Rights and International Covenants on Civil, Political, Economic, Social and Cultural rights.

### **3.1 Consideration of specific issues relating to presidential and parliamentary elections**

The Constitutional Court is supposed to have the authority to consider applications for candidacy for the position of the President of the Republic, and the extent to which conditions are met by the candidate for this position. This same must apply to People's Assembly elections, and the Court's decisions must be binding on all public authorities, especially the Higher Commission for Elections. Thus, in the event that the court rules the validity of the appeal submitted by the candidate who did not win the presidential election, and decides that those elections are invalid, then they must be repeated. Moreover, the constitutional court has the power to consider electoral appeals related

[169] The time period allowed for the delimitation process, the ACE Electoral Knowledge Network, available at: [Length of Time Permitted for the Delimitation Process — \(aceproject.org\)](#) accessed May 16, 2021.

[170] Yaish Tammam Shawky, Mechanisms of Electoral Division, Journal of Legal and Political Sciences, Issue 5, June 2012, p. 240.

[171] Because we suppose that the new constitution will stipulate the supremacy of international treaties and agreements, especially those already ratified and those that will be ratified by Syria, over internal laws.



to the results of legislative elections.<sup>[172]</sup>

The Constitutional Court also reviews and scrutinizes the final accounts of electoral campaign revenues and expenses for each candidate within a specified period from the date the results are announced. Even though Syrian election law stipulates this matter, it does not specify what the outcome of such a review would entail. This report considers that if the court were to find serious and unacceptable violations in the final accounting reports, and those violations had a significant impact on the candidate's victory, the Constitutional Court would thus have the power to nullify the election results and repeat the elections.

#### **4.1 Considering the legality of the Election Management Body (EMB)'s instructions and interpretations**

In the event that the new constitution or a new electoral law grants a limited legislative role to the EMB, such as granting it the power to issue regulations, procedures, and controls that are binding for all partners in the electoral process.<sup>[173]</sup> The EMB also has the power to interpret legal texts that are the subject in dispute between political parties. The Constitutional Court must be granted, in parallel, the power to consider the extent to which these instructions, decisions, and interpretations are compatible with the Syrian Constitution, with international election standards, and with election laws, and its decision must be binding on the EMB, and all parties and entities involved in the electoral process.

#### **5.1 Monitoring the declaration of a state of emergency and its entry into force**

The courts must be given the authority to monitor the declaration of a state of emergency since, during the state of emergency that Syrians have experienced for nearly half a century, the martial law overseers have enjoyed dangerous and exceptional powers that can restrict most of the rights stipulated in the constitution, including, of course, electoral rights. Therefore, the Constitutional Court must be given the power to monitor the constitutionality of declaring a state of emergency, to ensure its compatibility with existing laws.

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[172] Algerian Electoral Law of 2012, Article 127; And the French Constitution of 1958, including its amendments up to 2008, Article 59.

[173] The document of the Arab Organization for Electoral Administrations on the guiding criteria for the independence of electoral administrators, *ibid.*, p. 24.

## 2. Strengthening the role of the administrative judiciary in settling electoral disputes

It is necessary to give the administrative judiciary a greater role in the local administration council elections, such that it considers appeals received for all decisions regarding these elections, as well as appeals that may be received against decisions related to the preliminary work on presidential elections and People's Assembly elections. The administrative judiciary is the body most competent to consider the administrative decisions issued by the committees that will be formed by the Higher Electoral Commission, in order to organize the conduct of the electoral process. This is at the core of its competences,<sup>[174]</sup> granting it over time a level of specialization and experience, as well as its own jurisprudence, which will guarantee greater rights for voters, candidates, and all parties involved in the electoral processes, and lead to the timely and professional resolution of electoral disputes.

Under the current election law, the role of the administrative judiciary is nominal and entails the right to consider appeals received against members of local administration councils. This role will not achieve the desired goal of elections, to enact the true will of voters and translate it on the ground, since the success of elections is not only limited to an appeals process in response to the election results, but also to all the processes and procedures that take place prior to the elections, including those accompanying the voting procedure, and ending with vote counting and the announcement of results. If these procedures are not proper and legal at all stages, the judiciary cannot then correct defects once it is given the authority to consider appeals in response to election outcomes. Thus, there must be a real guarantor of electoral processes throughout all their stages, this guarantor being the judicial system.

## 3. Strengthening the role of the criminal court

Most countries grant the criminal court the mandate to look into electoral crimes committed during an electoral process, starting with the registration of candidacy applications, through to the electoral campaign, to voting, counting votes and announcing the results. The law often includes a breakdown of the types of electoral crimes: violations, misdemeanors, and felonies. This section deals with strengthening the role of the criminal court in Syria so as to adjudicate electoral crimes, review the idea and type of these crimes, decide which courts are able to consider them, and the consequences of establishing the commission for dealing with these crimes.

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[174] State Council Law No. 32 of 2019, Article 8.

What is interesting here is that Syrian legislation does not mention what the consequences result from proving electoral crimes that have been committed, especially when they significantly affect the outcome of elections. For example, what if an [electoral crime] were committed that would change the results as a whole in a polling center or even in an entire electoral district by resorting to violence to change the will of voters, or by distributing sums of money as bribes to voters, by destroying ballot boxes or changing their content, and other very serious crimes that affect the proper conduct of the electoral process? It is important to establish clear and conclusive legal texts on this matter, including the need to repeat elections in one or more polling centers or even in an electoral district were a crime or electoral violation that affects the proper conduct of elections, and thus their results, to be committed.

Thus, the jurisdiction to consider such crimes must be handed to criminal courts qualified to deal with crimes that entail prison sentences of more than three years. For example, electoral law stipulates a prison sentence of one to three years for anyone who storms a polling station by force to prevent voters from choosing a specific candidate or anyone who forces a voter by threat to change his/her opinion (Article 112). Such an act is considered criminal, and its penalty therefore should be severe.

## **Chapter 2: The role of Security forces in Syrian Elections**

In response to the governance requirements mentioned in the UN resolution, electoral security must be provided as one of the most important requirements for the desired safe and neutral environment. In a country that has been suffering from armed conflict, such as Syria, for more than a decade, and with the multiplicity and spread of armed militias in it, electoral security will be missing, which requires working first to provide it in order to reach a safe and neutral environment that paves the way for fair and honest elections.

This report attempts to shed light on all these questions, with the aim of searching for appropriate solutions to achieve the conditions stipulated in the aforementioned UN resolution, by identifying the standards required in the work of the forces responsible for providing electoral security, identifying the security reality in Syria and comparing it with those standards, and the expected role from these forces during the period that will follow the expected political agreement. The report then comes up with recommendations that may help Syrians and the active actors in the Syrian file to reach a secure electoral environment.

## **First: The Conceptual Framework for Electoral Risk Management, or Basic Concepts for Electoral Risk Management**

### **1. The Concept of Electoral Security**

Electoral security, as one of the most important prerequisites for a secure environment. It is not possible to hold democratic elections in an atmosphere where actors and stakeholders fear the consequences of participating or expressing their opinions freely. Providing security during electoral processes is necessary to create a calm and safe environment to enable voters to participate, without fear or intimidation, before, during and after voting. Ensuring electoral security provides a safe and sound environment for the rotation of power.<sup>[175]</sup> This task lays with law enforcement officials. Amnesty International interpreted the term “law enforcement officials” to mean all legal professionals, appointed and elected, who exercise Police powers, in particular the power to arrest and detain people. The interpretation of the term must be as broad as possible, to include military and security personnel, as well as immigration officials wherever they exercise those powers.<sup>[176]</sup>

### **2. The Concept of Electoral Risk**

Electoral risks are the sum of deeds and actions that could disturb the safe environment required for electoral processes and could impede their conduct. In the event of conducting electoral process, it could lead to unfair results that do not reflect the voters’ true will. Such risks may occur before, during or after the elections, such as forging, stealing, or destroying candidates and voters’ registries, or bribing voters or coercing them into voting for a specific candidate or abstaining from voting for a another. Some parties participating in the electoral processes may amount to kidnapping or killing the competing candidate, as well as storming polling stations and adding incorrect papers, affecting the voters’ will, destroying papers in the ballots. They could also intimidate members of polling committees to achieve their illegal ends, or even intimidate members of committees and courts adjudicating electoral disputes that may arise before or after the results are announced, and other innumerable risks.

### **3. The Forces Responsible for Guaranteeing Electoral Security<sup>[177]</sup>**

The forces that can play an influential role in limiting the risks that may arise during the electoral processes in Syria can be limited to the Internal Security Forces (the Police), and to a lesser extent the security services and the Army.

[175] Mathias Hounkpe, Alioune Badara Gueye, *ibid.*, pp. 24.

[176] 10 Basic Human Rights Standards for Law Enforcement Officials, Mawarid Magazine, Amnesty International, No. 18 of 2012, p. 14.

[177] The report uses the term security forces to denote the internal security forces (the police), while the term security services is used to denote the security branches with their various names, while the term Army will be limited to the Army or defense forces. laws.

## **Second: The Inability of the Security Forces in Syria to Manage Electoral Risks**

In order for the security forces to carry out their security tasks and to reduce the risks that may interfere with the electoral process, risks that are more likely to arise in Syria given that it will be emerging from a devastating war, it is necessary to provide in these forces the minimum required standards.

These standards can be extracted from a set of documents that dealt with the duties and powers of law enforcement forces, such as the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly in its resolution No. 34/169 of 1979, 10 Basic Human Rights Standards for Law Enforcement Officials prepared by Amnesty International and the International Standards on Policing. The absence of said standards will undoubtedly affect negatively the provision of electoral security required to achieve a safe environment for elections

### **1. Required standards and the extent to which the security forces in Syria fulfill them**

#### **1.1 Clarity of the legislative framework regulating the role of security forces in the electoral process**

There is no clear legislative framework for the role of security forces regarding electoral processes. Everything mentioned in Articles 17-63 of the Syrian Elections Law No. 5 of 2014, is limited to the possibility of the Internal Security forces' intervention when necessary and at the request of the head of the polling center committee to maintain public order. There is also no clear law regulating the work of security services in general, and regarding elections in particular, as their branches are numerous, and their competencies intertwine. This often led to conflicting behaviors and decisions.<sup>[178]</sup> This law did not address any role of the Army or security services in interfering when there is any danger threatening the proper conduct of electoral processes.

To ensure the effective participation of security forces in electoral processes, an appropriate and comprehensive legislative framework is required, and this includes legal articles and their executive regulations. This legal framework should be known by the stakeholders specially Police forces, political parties, members of elections committee, civil society, and citizens in general.

#### **2.1 Subordination of the security forces to civil administration**

In general, armed forces, Police, and security services (the intelligence) must be observant of the constitution and its institutions, and be subject to civilian oversight, while also being protected from partisan abuse by civilian authorities. One of the unifying pillars of civilian oversight is the establishment of civilian ministries at the top of the command structure of each security sector agency, thus ensuring that there is a civilian

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[178] Security Change in Syria, a group of researchers, Omran Center for Strategic Studies, 2017. (P: 76)

who takes political responsibility for the actions of each agency and is responsible for receiving reports from it.

### **3.1 Integrity and impartiality**

Security Forces and agencies are considered a tool in the hands of the ruling regime. These forces have expressed their full compliance with the regime's instructions by participating in the suppression of the protests that began since 2011. The Army and Security Forces have used excessive and continuous force, including the use of lethal force, while confronting the demonstrators, and even the mourners. It must be emphasized that when the security forces and the Police provide security protection for the candidates and enable them to practice their political activities in a way that does not contradict the laws in force in the country, they must do this with the utmost impartiality and professionalism, without discrimination on grounds of sex, race, color, language, religion, opinion, social origin, wealth, birth or any other condition. Police forces must also make every effort to use the special and unique powers granted to them to combat acts of racism. Every person has the right to enjoy the protection of the law, on an equal footing and without discrimination on any grounds.

### **4.1 Ensuring accountability**

The purposeful intervention of the Police or Security Forces in electoral processes requires that the applicable legal framework regulating the work of these forces include a reasonable degree of accountability for them, with the aim of limiting the development of a culture of impunity harmful to the democratic process. It is necessary to impose mechanisms to control and punish the lapses and missteps attributed to these forces, and the legislative framework should specify ways to address these errors. There is a necessary need to get rid of the feeling that the citizen may have that these forces are above all law, and that they can violate the law without any accountability, because in the absence of such measures it will not only be considered as a license for these forces to violate laws and infringe on the rights and freedoms of citizens, but will also lead to mistrust between them and the forces responsible for providing electoral security.<sup>[179]</sup>

In order to achieve this criterion, there must be transparency in the work of the forces responsible for the proper conduct of the electoral process, so that these forces are not used as a tool to get rid of some political opponents for the benefit of others, and in order not to arrest some candidates and voters, before and during the electoral processes, or even after it with the aim of influencing the results of the elections.

### **5.1 Competence and professionalism**

The state must work on creating some kind of training programs to qualify police personnel in the field of human rights.<sup>[180]</sup> Effective training of the forces responsible for electoral security will help provide a safe environment for the elections and will reduce

[179] Mathias Hounkpe and Alioune Badara Gueye, *ibid.*, pp28.

[180] Muhammad Al-Tarawneh, *Police and Human Rights*, Mawarid Magazine, previous reference, p. 65.

the risks that the parties to the electoral process may face. Any irresponsible behavior by these forces, even unintentionally and as a result of inexperience, will disturb the electoral process and shake confidence in its results, and may undermine the required electoral security. Law enforcement forces at their various levels in Syria do not have the minimum competence and professionalism required to provide a safe environment for electoral processes, as recruitments in the Police, Army and Security Services are based on loyalty to the ruling authority and favoritism, not on the basis of competence, and there are no training programs for these to raise their competencies especially with regard to the culture of human rights.

### **6.1 Respect the principles governing the use of force**

The ones who violate human rights in Syria the most are members of security forces, meanwhile they are the ones who are supposed to protect and preserve these rights. Torture, arbitrary detention, and extrajudicial killing are among their basic features. They should be prohibited from using force that leads to death except when it is strictly necessary either for self-defense or to protect the lives of others.<sup>[181]</sup> They must fully comply with the principles governing the use of force, which are legality, necessity, proportionality, and accountability. The goal of the use of force is to achieve legitimate law enforcement goals, and that it be used only when all other peaceful means fail to achieve electoral security.

## **2. Contradictions between the reality of Syrian security forces and international standards**

There is no doubt that the absence of these standards from the Police, security and Army system in Syria is among the challenges that the Syrians will face in the future with regard to the implementation of the provisions of UN Resolution 2254, which laid out the road map for a way out of the crisis that Syrians have been experiencing for more than a decade. The aforementioned resolution stipulates its “support for free and fair elections, pursuant to the new constitution, to be held within 18 months and administered under supervision of the United Nations, to the satisfaction of the governance and to the highest international standards of transparency and accountability, with all Syrians, including members of the diaspora, eligible to participate”. But if these forces, which are supposed to provide that environment, remain as they are, it will be impossible to talk about elections that meet the requirements of governance and international standards related to transparency and accountability mentioned in the aforementioned resolution, as these forces, throughout their long history of corruption, nepotism, and bloodshed, will be part of the problem and will be an obstacle to reaching the safe environment required to hold the desired elections.

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[181] 10 Basic Human Rights Standards for Law Enforcement Officials, Mawarid Magazine, Amnesty International, No. 18 of 2012, p. 14.

### **Third: Roles Needed from Forces Responsible for Electoral Security**

The electoral process consolidates the concept of legitimate competition for power, and it is important in this context to acknowledge that elections cannot avoid confrontation, but rather focus on managing it and containing its acceptable limits. This is considered among the core tasks of the forces responsible for electoral security, which is an integral part of the electoral process. However, achieving this task will never be easy in the Syrian case because there are many challenges that will face the required reform process for those forces so that they can better perform the roles required of them in the framework of the electoral processes. Those challenges were mentioned in previous lines. This paragraph of the report will address these roles, and then it will present two possible scenarios in the Syrian case regarding the expected elections.

#### **1. The ability to reform the security and military services before the elections**

This scenario assumes that, during the period specified for 18 months as stated in Security Council Resolution 2254, those law enforcement forces have been reformed, in terms of institutional and organizational terms, so that what should be resolved from them, integrate what should be integrated, and restructure what should be restructured. That way, it would set the appropriate legislative framework for its work, defining clearly the boundaries between the tasks of each agency or institution, and eliminating the overlap in the competencies between them, subordinating them to a civil administration, and to judicial oversight. Militias and foreign forces from Syria, with the help of the good-faithed international community, will aim to achieve all these things.

The report acknowledges the difficulty of achieving the desired reforms and arrangements in the security and military sectors, as these forces have obtained many gains and privileges on the ground during the previous period, and it will not be easy to strip them of those privileges. In addition, the officials of these forces will fear the issue of accountability later for the crimes and violations they might be accused of committing. Therefore, there will be fierce attempts from them to keep the situation as it is. This applies to foreign militias as well, just like the Syrian forces and militias, and it is not surprising that these militias allied themselves with each other in the future to prevent these reforms and arrangements, despite the differences and ideological conflict among them. The Argentine experience with regard to the path of transitional justice that President Raúl Alfonsín tried to follow in 1983 tells us, when the Argentine judiciary summoned senior military officials to stand trial for crimes committed under the previous regime, junior officers felt fear that the judiciary would extend to them, so they fabricated violent incidents that led to chaos in the country, which prompted Alfonsín to negotiate with them fearing a civil war, and based on this negotiation, he issued two laws, the first of which set a final date for accepting any complaint against military leaders and was called the “end point”, and the other exempts any army officer below the rank of colonel from legal responsibility for the killings because they are soldiers carrying out command orders, which was considered a setback in the course of Transitional Justice.



## 2. The inability to reform the security and military services before the elections

In the event that the elections are implemented as stipulated in UN Resolution 2254, and the desired reform is not achieved via those forces, and all the militias deployed in Syria have not been dissolved, and weapons have not been withdrawn and confined to the hands of the institutions of the Syrian state, then in this case, the international community, especially the active stakeholders in Syria, may have a pivotal role in ensuring the neutralization of these militias, and preventing them from interfering in the electoral processes decisively, and issuing a binding resolution from the Security Council to hold the countries that support these militias accountable if it is proven that they were involved in interfering in the electoral processes and influencing its results.

Elections are a sovereign process; and yet the national forces in charge of law enforcement may need international support to help them better perform their required role, especially in the transitional elections in the post-conflict period. The Syrian army forces must also be neutralized and prevented from interfering in the country's politics, including electoral processes, as well as security services, with the exception of their limited and exceptional roles mentioned previously in this report. The forces and stakeholders who benefit from the state of insecurity and chaos in the country will be hindrances to the reform and democratic transition process, and this requires that all these matters be taken into account by the transitional governing bodies and the bodies charged with managing elections.

## Chapter 3: Regulation of Electoral Media

The role of the media is particularly important in periods of democratic transition, and especially in countries like Syria, where elections will be one of the most important elements of the country's transitional period. There is no doubt that the current state of media institutions in Syria, whether public or private, do not have the capacity to perform these various roles, since they are completely controlled by the ruling authorities, and are restricted by a set of laws which contravene the most basic international standards for free and independent media. On top of this come a set of security and economic challenges, as well as insufficient training of media personnel around journalistic standards and the function of the media during elections.

### First: The Role of the Media in Elections

#### 1. Public awareness-raising

Media outlets have a huge amount of influence in setting the political agenda in states and parties, making them a key pillar in the building of popular opinion.<sup>[182]</sup> These outlets play a pivotal role in encouraging political participation in elections, through reports on where to cast one's vote; explanations on the procedures of candidacy and voting; letting the public know about the candidates and their manifestos; and opening spaces allowing voters to express their views, aspirations and concerns. Media does not only transmit information, but also employs a set of clarifying and analytical tools (such as graphs, opinion polls, interviews, etc.) which help voters understand the electoral process and the candidate manifestos and take informed and forward-looking decisions. The media can also play an important role in granting equal opportunities to women, national and religious minorities, and vulnerable social groups, such as those with disabilities, to exercise their rights in candidacy and election.<sup>[183]</sup>

Further to this, the media plays an important role as a platform by which candidates can introduce themselves to voters, along with their parties and their programs, in order to clarify their manifestos and encourage people to vote for them. In this context, the media, in particular public media, has a political, social, and legal responsibility to identify itself as a neutral platform for all candidates, without showing bias towards one party over another by giving airtime for public appearances, paid advertisements, or social media.<sup>[184]</sup>

[182] Julie Ballington et al., *Inclusive Electoral Processes: A Guide for Electoral Management Bodies on Promoting Gender Equality and Women's Participation*, 2015, p. 88, URL: <https://cutt.us/VgBfq> (accessed 25 May 2021)

[183] For more information see: Media outlets and elections, The Electoral Knowledge Center, url: <https://aceproject.org/ace-ar/topics/me/mea/mea01d> (accessed 17 June 2021)

[184] Media outlets and elections, The Electoral Knowledge Center (see above)

## 2. Oversight and evaluation

This role depends entirely on transparency in obtaining and transmitting information. This begins with the development of the electoral process, including communicating information about the Electoral Governing Body, its members, and its relationship to the authorities. It also includes providing information about candidates; enabling [the public to] hold to account, and discuss the legitimacy of, all the candidates, the governing body, and the electoral process; and placing all of this in the frame of public conversation. With the launching of the electoral process, the media's oversight role expands, by monitoring violations and irregularities, and launching journalistic investigations. This is further to the monitoring of incidents of fraud by being present at the polling centres and observing the vote counting and ensuring freedom of expression and right of [electoral] choice. The media also monitors the rhetoric of candidates and voters, and cases of polarization, and tries to block hate speech and other kinds of speech that could lead to acts of violence.<sup>[185]</sup>

Once elections have drawn to a close, the various media outlets have an essential role in evaluating the electoral process in its entirety. This includes the performance of the candidates and their speeches; the performance of the body regulating the elections; the rates of political participation; the extent to which the candidates' and parties' actions are in keeping with their manifestos; and everything related to the quality of the elections, and how they correspond to international standards of democracy, in terms of how free, fair, transparent, secret, and equal they have been.<sup>[186]</sup>

Despite the generally positive view of the role of the media in overseeing and evaluating elections, the media's role can also be a negative one. It can change facts and data by controlling which information it disseminates, and which information it withholds or obstructs, in the interests of one party over another. This creates confusion in public opinion and fosters political attitudes that are not in keeping with the wishes of citizens but which serve those who hold the power of the media.

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[185] Media outlets and elections, The Electoral Knowledge Center (see above)

[186] Media outlets and elections, The Electoral Knowledge Center (see above)

## Part V

# Promoting Participation in Elections in Syria



## Part V: Promoting Participation in Elections in Syria

Since 1963, Syria has not witnessed any free and fair elections, whether presidential, parliamentary, local councils, or even at the level of trade unions, student unions and political parties. Restrictions on fundamental freedoms since the 1963 coup in Syria and the takeover of power by the Arab Socialist Baath Party have been an obstacle to any democratic practice, preventing Syrians from participating in the actual selection of their representatives through free and fair elections. These restrictions have also contributed to the abolition of political pluralism and the perpetuation of a one-party system that has dominated all walks of life, including political, economic, social, and cultural. This has also led to the absence of independent political parties and any active and genuine role for Syrian civil society in the elections, whether in terms of supervision, oversight, or awareness-raising and electoral education.

This section initially deals with enhancing participation in the Syrian elections through four main themes. The first chapter deals with women's political participation in elections. The second chapter deals with the issue of participation of refugees and displaced persons in the elections. The third chapter discusses the opportunities and challenges facing the ability of political parties to participate in the electoral process. The fourth chapter reviews the role of Syrian civil society in the elections, especially in the transitional period.

### Chapter 1: Promoting women's political participation in elections

This section therefore lays the foundations for building an electoral system that promotes women's political participation within the Syrian context, with its political, legal, and social complexities that shape the fragile reality of Syrian women at all levels.

#### **First: Women's Political Participation in International Conventions and Documents**

International conventions and resolutions since the Universal Declaration of Human Rights have so far focused on the issue of women's political participation on an equal footing with men, to enshrine the complete enjoyment of full inalienable human rights. The integration and effective participation of women's rights in politics is a prerequisite for democratic development and contribution to the good governance of any country<sup>[187]</sup>.

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[187] Julie Pallington et al., Empowering Women for Stronger Political Parties, Good Practice Guide to Promoting Women's Political Participation, UNDP, National Democratic Institute of International Affairs, 2011, p. 43. Link: <https://www.undp.org/publications/empowering-women-stronger-political-parties>, accessed on 19 April 2021.

The International Covenant emphasized that women and men are equal in enjoying civil and political rights<sup>[188]</sup>, participating in running their country's public affairs, whether directly or through freely selected representatives, and exercising their right to candidacy and voting in a fair election held periodically by universal suffrage and on an equal footing between voters and by secret vote, ensuring the free expression of the will of voters and equal access to public office in their country<sup>[189]</sup>. The Covenant also emphasized equality before the law, protection, and the prohibition of any form of discrimination on the basis of sex.<sup>[190]</sup>

The convention addressed the issue of women's political participation in a detailed and comprehensive manner. It emphasizes the right to equality between women and men and preventing discrimination on the basis of sex and provided a detailed definition of discrimination on the basis of sex. It defined the term "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, or in any other field, or to weaken or to frustrate her enjoyment or exercise of these rights, regardless of her marital status and on the basis of equality between her and men.<sup>[191]</sup>

Security Council Resolution No. 1325 of 2000 called on States to find guarantees to increase women's representation at all levels of decision-making in national, regional, and international institutions and mechanisms for conflict prevention, management, and resolution, as well as measures to ensure the protection and respect of the human rights of women and girls, particularly with regard to the Constitution, the electoral system, the police and the judiciary<sup>[192]</sup>. Security Council Resolution No. 2254 of 2015 on Syria also emphasized the promotion of meaningful participation of Syrian women in the political process.

The United Nations issued the 2030 Agenda for Development in September 2017, which includes 17 goals, and the fifth of which provides for achieving gender equality and empowering all women and girls. This goal includes achieving five objectives, including: ensuring women's full and effective participation, and equal opportunities of leadership with men at all levels of decision-making in political, economic, and public life.<sup>[193]</sup>

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[188] International Covenant on Civil and Political Rights, *ibid.*, Article 3.

[189] *Ibid.*, Article 25.

[190] *Ibid.*, Article 26.

[191] Convention on the Elimination of all forms of discrimination against women, *ibid.*, Article I.

[192] Security Council Resolution No. 1325 of 2000, Item I, and Paragraph C of Section VIII.

[193] Howaida Ali, Mona Ezzat and others, *Women's Political Participation*, Friedrich Ebert Foundation, Egypt Office, 1st edition, pp. 25 and 26. Available at the link: <http://library.fes.de/pdf-files/bueros/aegypten/15390.pdf>. Website accessed June 26, 2021.

In conclusion, the criteria for women's political participation in accordance with international conventions are based on four pillars:

- Full equality between women and men and the prevention of gender-based discrimination.
- Taking all necessary transient positive measures that can contribute to bridging the historical gap between men and women.
- Empowering women by increasing their ability to participate in decision-making and leadership. <sup>[194]</sup>
- The role of appropriate electoral systems in increasing the rate of women's political participation.

On March 24, 2016, during the "Geneva 3" talks, the UN envoy, Mr. Staffan de Mistura issued a document on the common points between the regime and the opposition, and one of its clauses stipulated that: "Women shall enjoy equal rights and fair representation in all institutions and decision-making structures, with a percentage of representation of at least 30% during the transitional phase and beyond." It should be noted that this clause was added as a result of the persistent demands of feminists for its inclusion.

## **Second: The reality of women's political participation in Syria contradicts international standards**

Framing the political participation of women in Syria requires a distinction between two phases, the pre-2011 phase and the post-2011 phase. The outbreak of the Syrian revolution.

### **1. The Issue of Women's Political Participation under a Dictatorship**

The reality of political life in Syria before 2011 under the dictatorial regime can be summarized with: depriving citizens of free and equal enjoyment of their political rights in a general atmosphere of political violence that has been practiced for decades by criminalizing any political action outside the framework of the ruling Baath Party. This was accompanied by the absence of independent parties and the absence of democracy, especially with regard to the elections, the results of which were placed in the corridors of security and through the branches of the Baath Party, which at the time was the leading party for the state and society.

The stagnation of political life in Syria has weighed on women's political participation as well, and in more severe ways in many cases, although Syrian women were one of the first Arab women to enjoy the right to vote and run for office. The 1953 constitution was the first Syrian constitution to grant women the right to vote and the right to run for

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[194] Declaration of the Beijing Platform for Action, *ibid.*, Strategic Objective "G".

legislative councils just like men. The presence of women in the parliament increased from 5 women out of 186 members in the first legislative cycle (1973 – 1977) to 31 women out of 250 members in the legislative cycle of (2012 – 2016) at a percentage of 12%. The focus on the participation of women is only an image enhancing process carried out by authoritarian regimes for purposes that have nothing to do with women's rights, in so far as it relates to access to international funding and support.<sup>[195]</sup> This form of participation for women is not only dangerous because it is not real and does not represent the reality of women, but also because it justifies oppression of women's demands on the grounds that their rights are protected.

## 2. The Persistence of the Issue of Women's Political Participation After 2011

In addition to the lack of significant changes in the rate of women's political participation in areas controlled by the Syrian government after 2011, we find that entrenching pro forma participation of women was not limited to the regime only, but the opposition parties and their alliances too. Many feminist political activists who had participated in several bodies and parties affiliated with the opposition stated that they resigned after discovering that their existence was just a formality.

The political participation of Syrian women is affected by other factors, including the stereotyping of the role of women on the grounds that they should contribute to reducing political discord in the Syrian scene<sup>[196]</sup> without any regard for any political opinions that they hold and may be part of this disharmony. It should be noted that political conflicts in Syria are not only based on the separation between the military and civil or peaceful and armed struggle, but also on a political orientation toward democracy, the rule of law, and the protection of human rights on one hand, and another orientation towards dictatorship as a need in this delicate stage of Syria's history. The usurpation of the Syrian national decision, severity of international intervention in Syrian affairs, and the fact that men are at the forefront of the political scene, in addition to the absence of democratic platforms that enhance women's political participation and provide equal opportunities between them and men to reach decision-making positions, and the ease of personal targeting and defamation of women working in public affairs all contribute to obstructing any endeavors to enhance the political participation of women.<sup>[197]</sup>

[195] Lama Kannout, previous reference pp. 16, 17 and 23.

[196] Lama Qunoot, The Political Participation of Syrian Women, previous reference, pp. 16, 17 and 23.

[197] For example, see the Syrian Penal Code, *ibid.*, Articles 285, 286, and 288.



### **Third: Obstacles to the Political Participation of Syrian Women**

The structures that discriminate against women in Syria interact and intersect directly at times and indirectly at others. They are also linked to several contexts at several levels, including legal, social, economic, security, and the state of war contexts. We list here some of those obstacles, as examples that facilitate the process of reading the reality of Syrian women. Thus, offering solutions that fit this reality in specific.

The reality of Syrian women is governed by a legislative system that discriminates against women in favor of men.<sup>[198]</sup> The most prominent example in this context is the Nationality Law which denies Syrian women the right to grant their nationality to their husbands and children,<sup>[199]</sup> and this is an infringement of the right of citizenship. The law presumes that women are incapable of conferring their nationality. Women are granted nationality but cannot grant it. They are treated as if they are not citizens in the actual sense of citizenship, but a legal personality that is linked to a man and derives its basic rights from him. This discrimination against women is asserted in the Syrian personal status laws for Muslims,<sup>[200]</sup> and non-Muslims, the Penal Code,<sup>[201]</sup> and other laws that cannot be mentioned here. This discrimination leads to the inferior status of women in comparison to men which is reinforced by the absence of a definition of violence against women – whether it is domestic, sexual, or other.

Customs and traditions are one of the most important factors that affect the life of Syrian women, some are legal, and others aren't. However, customs and traditions in Syria often prove their strength in confronting laws. For example, girls are deprived of their inheritance in the countryside, under the pretext that the land should remain the property of the family, and not to go to the property of another family - the in-laws. Customs and traditions have direct effects on women's political participation. According to social norms, women are supposed to marry, have children, and take care of them. But engaging in political participation is a challenge for women, whether they choose not to marry, not to have children, or become mothers. It is necessary to have procedures and policies that help mothers in particular and encourage them to participate in politics. Such policies and procedures include choosing meeting dates that suit women who take care of their children; ensuring childcare when women attend any activities required for their political participation; and ensuring that the women's role as mothers is doesn't cause -directly or indirectly - discrimination or exclusion against them or force them to choose between two options: political participation or motherhood and childcare. These challenges accumulate over time and affect generations of Syrian women, and this matter is pivotal, as achieving equality in political participation between women and men does not happen overnight.

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[198] Concluding observations on the second periodic report of the Syrian Arab Republic, United Nations, Committee on the Elimination of Discrimination against Women, CEDAW/C/SYR/CO/2, 24 July 2014, p. 7.

[199] Syrian Nationality Law, previous reference, Article 3.

[200] Law No. 4 of 2019 amending some articles of the Personal Status Law for Syrian Muslims No. 59 of 1953, Articles 12, 20, 73 and 88.

[201] Syrian Penal Code, op. reference, Articles 473 and 474.

Political action is cumulative at the national and individual levels as well. Therefore, activating this participation requires fair and encouraging laws and a serious and responsible view of the reality of women who have been deprived of their essential rights, leading at some point to effective political participation.

#### **Fourth: Adopting a Women's Quota: The Obligatory Passage Towards Enhancing the Political Participation of Women in Syria**

International agreements emphasize the need to adopt special measures towards increasing the effectiveness of women's political participation, called quotas. Quotas require allocating a certain percentage or number of seats to women in certain bodies such as, lists of candidates, the parliament, commissions, or the government. Quotas aim to increase women's representation in elected or publicly appointed institutions such as governments, parliaments, and local councils.<sup>[202]</sup>

Despite the presence of a quota of 50% for workers and farmers in Syria, other forms of Legal quotas are lacking.

##### **1. The Concept of Women's Quota**

The use of the quota has spread as a term that is concerned with allocating seats in Parliament to some ethnic or religious minorities, or to some marginalized societal groups, whose right to representation is difficult to ensure by usual means. The aim of the parliamentary quota is to provide these groups with access to the elected representative councils; involve them in decision-making processes and the development of all aspects of social, economic, and political life.

As a form of parliamentary quota, the women's quota system is based on the principle of allocating seats for women in government positions, which is a kind of "temporary positive measure" to enable women to assume decision-making positions in the country. It is resorted to in order to eliminate the gap represented by gender-based inequality in the exercise of political life, especially in representative councils. In addition, it aims to encourage women to practice politics, and to address the problem of activating the exercise of their legal right to representation on an equal basis with men.

The quota system also seeks to "allocate" and grant a quota or percentage of seats to women in elected bodies. This quota can reach 20%, 30%, 40% or 50%.

Most quotas aim to increase women's representation because the problem lies the under-representation of women. Women make up more than 50% of the population in most countries, but worldwide they hold less than 16% of parliamentary seats.

[202] Julie Ballington and others, *Women in Parliament: Beyond Numbers*, A Revised Edition, International Institute for Democracy and Electoral Assistance 2005, p. 141

<https://www.idea.int/sites/default/files/publications/women-in-parliament-beyond-numbers-a-revised-edition.pdf>. Accessed 18 August 2021

Regardless of the type of quota, it's a system that might that has proven its effectiveness. Because of the women's quota system, countries such as Argentina, Costa Rica, Mozambique, Rwanda, and South Africa are now competing with the Nordic countries, which have been at the forefront for many decades in terms of female representation in parliament.

## 2. Variables of Applying the Quota Under the Proportional System

There is a correlation between the types of electoral systems and the advancement of women as elected officials. Even in countries where the state of economic development and cultural traditions do not bode well for such advances in general, the number of women elected according to proportional systems rather than majority, plurality, or mixed systems is increasing. However, this is not a standard that can be adopted, as it is necessary to study the impact of each electoral system within the context of a country on promoting women's political participation, and vice versa.

Proportional systems are more able to achieve quotas than majority systems - without the pressure of winning under majoritarian/plurality (winner-take-all) systems and where parties may be more willing to present a significantly diverse slate of candidates that may include a greater number of women. Proportional representation systems also provide a greater opportunity for small parties with narrow-issue agendas to stand out. This led to the emergence of women's parties in some countries of the Organization for Security and Co-operation in Europe. In this context, the application of the quota under the proportional system requires a set of necessary technical rules to ensure proper application of the quota and obtaining the desired results. Its effectiveness depends to a large extent on the process and method of implementation and enforcement.

The type of party list adopted in a proportional system affects the representation of women. In a closed list system, candidates are listed in a fixed order that is not subject to change by the electorate. In some countries that use a system of proportional representation with an open-list electoral system, voters can downgrade female candidates (or promote male candidates), thereby nullifying women's chances of winning. Open list systems allow voters to change the order of candidate lists, as voters—including women voters—tend to support male candidates, pushing many female candidates to lower positions on the candidate lists. Therefore, closed list systems are best suited for women candidates, provided they are placed high enough on these lists.

## Chapter 2: Participation of the Displaced and Refugees in the Elections

Political participation in public life based on the rejection of political or identity discrimination, and the adoption of equal rights and duties among the citizens of any country, whether they reside within or outside its geographical borders, is the cornerstone in building any democratic society. It is a key indicator of respect for human rights and the rule of law while guaranteeing the right of assembly and freedom of opinion and expression in any country.<sup>[203]</sup> This participation becomes especially important in countries experiencing situations of violent local conflicts, namely those that witness waves of internal displacement or external asylum of individuals or human groups fleeing the direct and indirect causes resulting from acts of violence, political persecution, and identity discrimination. Good examples are situations of local or civil conflicts in Syria, Iraq, Afghanistan, Bosnia, Congo, and Rwanda.

The direct effects of the participation of refugees and displaced persons on the various dynamics of post-conflict phases can be divided into four main points:

- Giving political and societal legitimacy to any post-conflict political arrangement or consensus, especially in conflict situations in which displaced, and refugee communities constitute a high proportion of the total population than the pre-conflict phase.<sup>[204]</sup>
- An indicator of the democratic condition of a state in the process of political transition. This indicator results from expanding the margin of effective and sustainable political participation of male and female citizens in public life and in decision-making at the institutional levels of the state.<sup>[205]</sup>
- Restoring national identity and social cohesion and building peace in a more sustainable way,<sup>[206]</sup> especially when the state recognizes within its constitution or laws and legislation the right of safe, voluntary, and dignified return of all displaced and refugee men and women without discrimination or exclusion.

Accordingly, any future electoral law for Syria in a post-conflict phase will not have political legitimacy or community ownership and will not contribute to strengthening political consensus and social and economic recovery in the country, unless it includes clear definitions and stipulations that recognize the Syrian refugee and displacement crisis and guarantee the right of the displaced, refugees and expatriates to participation in politics, and legislative or presidential elections. More specifically this never seen before ignoring of Syrian refugees and displacement in modern history, means

[203] Factors that impede equal political participation for all and the steps to be taken to overcome these challenges, The Annual Report of the High Commissioner for Human Rights at 27th Session of the Human Rights Council, No. A/HRC27/29/30 June 2014.

[204] Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections, Ibid, p. 9.

[205] Ruvy Ziegler, and Goodwin-Gill, *GS Voting Rights of Refugees*, 1st edition., Cambridge University Press, 2017.

[206] Brett Lacy, *Building Accountability, Legitimacy, and Peace: Refugees, Internally Displaced Persons, and the Right to Political Participation*, IFES, Washington, DC, July-August 2004, p. 4.

marginalization and exclusion of nearly half of the total population<sup>[207]</sup> who have been forced to leave their places of origin and settle elsewhere, inside or outside the country, due to direct acts of violence and political, social, ideological and identity persecution.

This section deals with the international legal reference for the involvement of refugees, migrants, and residents outside their usual places of residence in political life in their countries, including their participation in the entire electoral process in their countries of origin.

### **First: Political Participation of Those Residing Outside Their Countries of Origin in the International Legal Framework**

Many international mechanisms and treaties affirm the right of refugees and residents outside their places of origin to participate in public political life, including elections in their countries as a prerequisite for non-discriminatory and non-exclusive political participation aimed at consolidating democracy in any country. Most of these international mechanisms and treaties stemmed primarily from the Universal Declaration of Human Rights, which, although it did not explicitly mention the political and legal meaning of the term “refugees”, it considers that rights, duties, and mechanisms for political participation are not linked to the current place of residence and are not subject to change of place. As its second article stipulates that no discrimination in rights and duties is allowed based on “national origin” or “based on the political, legal, or international status of the country or territory to which a person belongs.” The first clause of Article 21 asserts that “every person has the right to participate in the management of the public affairs of their country, either directly or through freely chosen representatives,” without placing restrictions or limitations on the place of residence or the legal status of individuals outside the political borders of their countries.

Article 5 of the Covenant prevents any state from “imposing restrictions on fundamental human rights recognized or enforced in any country, and application of laws, agreements, regulations or customs, which this Covenant does not recognize.”

While Article (41) and Article (42) of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families stipulate the right of “migrant workers and members of their families, to participate in public affairs in their state of origin, to vote and to be elected in elections held in that state”. It also urges the state parties to follow this convention and to take all legal and legislative measures to “facilitate the exercise of these rights” and establish “institutions through which, whether in countries of origin or countries of work, the special needs, aspirations and obligations of migrant workers and members of their families can be taken into account” in a manner that guarantees their right active participation in the decision-making and management of local communities' lives.

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[207] According to the statistics of the United Nations High Commissioner for Refugees. For more, see: Operational Data Portal, Refugee Cases, Ibid.

## Second: Refugee and Displacement Crisis in the Syrian Context

This report is based on its definition of a “refugee” on the Convention relating to the Status of Refugees, which was adopted by the General Assembly of the United Nations on July 28, 1951, whereby Article 1 - Clause A of this Convention defines a refugee as every person outside the country of his nationality “ out of fear for oneself” justified by being persecuted for reasons of race, religion, nationality, membership of a particular social group or political views... cannot, or does not want, because of that fear, protect oneself at that country”. A Syrian displaced person and refugee is every person who was forced to leave his/her village, city, or district of origin in any period of time after March 2011, either to another area within the political borders of Syria, in the case of an internally displaced person, or to any country outside Syria, with refugee status, for reasons directly related to the conflict and violence in the country. The latter includes bombing, kidnapping, arrests, security prosecutions, political persecutions, identity discrimination, gender-based violence, disruption of livelihoods, or the destruction of basic infrastructure. As for the immigrant or the expatriate, this paper defines them as the Syrians who left the country at any time before March 2011 for political, social, economic, or cultural reasons and settled in other countries outside the political borders of Syria.

The High Commissioner for Refugees estimates the number of external refugees and internally displaced persons due to the ongoing conflict in Syrian to be about 12 million people. In other words, more than half of Syria's pre-conflict population is now residing outside their usual place of residence since 2011. Of these, some 5.6 million Syrians who were forced out of Syria because of direct violence, repression and persecution have legal refugee status. Most of them reside in countries neighboring Syria, specifically in Turkey (65%), Lebanon (15%), Jordan (12%), Iraq (4%) and Egypt (2%). The rest of the Syrian refugee communities are distributed in several European countries such as Germany, France, the Netherlands, Sweden, Norway, and Denmark.<sup>[208]</sup> As for the internally displaced, the United Nations estimates their number to be about 6.2 million displaced inside Syria, more than half of whom have been forced to flee repeatedly and for long periods of time.

The Syrian refugee and displacement crisis is considered the largest of its kind in modern history, as the number of Syrian refugees constitutes more than 25% of the total number of refugees from all other countries experiencing various types of violent local conflicts and strife.<sup>[209]</sup> Therefore, any future political solution in Syria will not be of political value or societal legitimacy without taking into consideration the unprecedented situation of displaced Syrians and refugees, when it comes to their political rights, participation in elections, their representation in constitutional bodies and elected councils, and their ability to influence the state's public policies.

[208] UNHCR Statistics, Operational Data Portal, Refugee Cases, Ibid.

[209] Syrian Refugee Crisis Explained, USA for UNHCR, February 5, 2021, <https://www.unrefugees.org/news/syria-refugee-crisis-explained>, last accessed April 29, 2021

### **Third: Restrictions related to the electoral participation of Syrians who are residing outside their original place of residence**

This section addresses the legal, political, and logistical constraints faced by individuals residing outside their original and usual places of residence, including the internally displaced, external refugees or expatriates, on their participation in the presidential, legislative, and local electoral process, whether in terms of their right to vote and vote or their right to run for these elections.

#### **1. The right to vote and be elected**

Although Article (49) of the 2012 Syrian Constitution stipulates that “election and referendum are a right and a duty of citizens, and their exercise is regulated by law” without explicitly specifying the requirement to reside within the state’s territory as one of the basic conditions for exercising the right to vote; article (99) of the General Elections Law and its executive instructions restricts the right for political participation to residents outside the country to vote exclusively in the presidential elections. It also places many administrative, logistical, and political conditions and restrictions on this participation. A citizen residing outside Syria applies to one of the Syrian embassies for the purpose of “registering their names at the embassy of their choice with all the required information related to their identity within a specified period” (Article 101). Afterwards, the embassy “verifies that the name is in the electoral register... and is among those who meet the legal requirements for voting” (Article 102). The actual election takes place ten days before the date set for the presidential elections inside the country (Article 103), by voting of a person “with his/her regular valid Syrian passport, stamped with an exit stamp from any Syrian border crossing” (Article 105). After this step, the embassy sends papers and records to the electoral commissions inside Syria through the Ministry of Foreign Affairs (Article 107). The conditions and executive instructions contained in the General Elections Law have denied and will deprive millions of Syrians from actively participating in any future elections in the period after the political solution.

##### **1.1 Voting in Syrian consulates and embassies**

This prevents the political participation of a large number of Syrians residing outside the country, and for the following reasons:

- The absence of Syrian consulates or embassies in many countries of asylum and immigration, particularly those that suspended diplomatic relations with the Syrian regime since the beginning of 2012.
- The inability to reach these embassies and consulates. This could be due to legal reasons related to fear of revocation of refugee status in several countries, such as Germany and Denmark, or for security reasons stemming from fear of arrest, detention or security harassment or harsh treatment in one of these embassies and consulates, especially if the refugee has a political position opposing the Syrian regime. This could also be due to logistical reasons stemming from a refugee’s lack of finan-

cial ability to travel to the location of the nearest embassy or because of restrictions imposed by several countries on the ability to move between regions without prior permission from the host country, as is the case in Turkey, for example.

- The general lack of confidence in embassies and consulates due to the complete domination of the Syrian regime over them, and their use for intelligence and security purposes aimed at intimidating Syrian opponents residing abroad or obtaining their personal information to restrict security against them and their families, inside and outside Syria.

- In addition to the legal obstacles that impede the participation of refugees and residents outside Syria, there are a few difficulties not related to the electoral law that restrict their participation. These include the political position of the host countries, which may consider holding elections on their territory as a unilateral political act, which affects their political position as to allow, or not allow, the holding of elections within embassies and consulates within their territories.

## 2.1 Local and legislative elections

Restricting the electoral participation of those residing outside Syria, whether refugees or expatriates, to presidential elections only, and excluding them from participating in local and legislative elections contradicts the principle of equality in political participation to those residing inside the country. This principle is stipulated by a wide range of international agreements and instruments, as mentioned previously. This deprivation also leads to long-term political, economic, and social consequences that impede any genuine democratic transition in the country in the post-conflict phase, including:

- Restricting the right of safe and voluntary return of refugees to their places of origin.
- Weakening the participation of refugee and Syrian communities in the reconstruction and economic recovery processes.
- Destroying community ownership towards any future political solution.
- Perpetuating of the political and identity polarizations resulting from the conflict.

The failure to promote the principle of equal citizenship, and the corresponding rights and duties, between Syrians inside and outside the country.

The denial of political participation in the local and legislative elections is not limited to residents outside Syria but extends to the internally displaced who were forced to leave their original cities and villages to settle in other regions and governorates within Syrian territories. Article (59) of the General Elections Law restricts the right to participate in local and legislative elections to what is described as the electoral domicile, that is, the location of the voter's civil registration records. Article (3 - Clause 2) of the law prohibits the exercise of the electoral right by proxy. In other words, in the context of local elections a displaced person is not entitled to participate in these elections unless he/



she voted while physically present at the electoral center of his civil registration in his original place of residence. This deprives the internally displaced, who are unable or unwilling, for security, political or economic reasons, to return to their places of origin from exercising their right to vote.

## 2. Right to run for office

Limiting the political rights of refugees and those residing outside Syria goes beyond the right to vote and suffrage, it also extends to placing broad restrictions on their right to run in either the presidential elections or the elections for the People's Assembly and local councils. Article (84) of the 2012 Syrian Constitution stipulates the eligibility requirements for running for the post of President of the Republic, which it limits to the following:

- Be over forty years of age.
- Have Syrian Arab nationality by birth, from parents who have Syrian Arab nationality by birth.
- Enjoy civil and political rights, and not have been convicted of a heinous crime, even if he/she has been rehabilitated.
- Not be married to a non-Syrian.
- Continuously reside in the Syrian Arab Republic for a period of no less than ten years when applying for candidacy.

The legal texts derived from the previous constitutional article, specifically Article (30) of the General Elections Law and Article (23) of its executive instructions include additional conditions for the eligibility of the presidential candidate. These include:

- Not hold any nationality other than the nationality of the Syrian Arab Republic.
- Not be denied of the right to vote.

These eligibility requirements do not account for the exceptionality of the Syrian case, regarding the unprecedented number of waves of foreign refugees in recent history, and the consequent fundamental changes in political, constitutional, and legal dynamics, and extremely complex social and identity transformations. Therefore, when considering the specificity of the Syrian case with respect to the affairs of refugees and residents outside their places of original residence, we find that each of the previous conditions leads, directly or indirectly, to the exclusion of millions of Syrians from their right to run for the post of President of the Republic.

Moreover, the requirement that both parents enjoy Syrian citizenship from birth, deprives many expatriates who descend from a Syrian father and a non-Syrian mother, or vice versa, from their right to run for office. Here it should be noted that the Syrian Personal Status Law gives a non-Syrian woman married to a Syrian man the right to obtain Syrian nationality, but this right does not apply to a non-Syrian man married to a Syrian

woman, which deprives the Syrian woman of her natural right to give her nationality to her husband, to her children, and her male and female grandchildren.

## Chapter 3: Strengthening the political participation of parties in the elections

In democratic societies, parties are the basic structures that allow the political participation of all citizens<sup>[210]</sup> that make decisions and public policies in the state, either directly or through representatives chosen by them. The importance of parties lies in their ability to bring together public interests and represent social groups by putting forward programs that would be converted to public policies when winning elections based on the legitimacy granted to them by the voters. Parties also play a role in training political leaders to exercise power. They provide a higher level of accuracy to the journey of political candidates in elections compared to independent candidates.

The purpose of this report is to study the Syrian laws and legislation and what they produce in order to understand their suitability for securing a safe and neutral electoral environment. The international references emphasize free, fair, periodic, and secret elections in the ballot to guarantee equality as the only tool for accessing power. The pluralist party system must come at the heart of the purpose of the report.

### First: International guarantees for the freedom to establish and operate political parties

Most of the international charters and agreements do not explicitly mention in their articles the criteria for forming political parties. However, through these agreements, we can derive many criteria that constitute clear determinants that represent a reference for every country that wants its party system to be compatible with its commitments to international law.

#### 1. International standards for freedom of party formation

The right to freedom of opinion, freedom of expression, and the transfer and circulation of information provided for in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights can be a solid basis for the formation of political parties, especially Syrian where the commitment of the parties " to operate" in line with the principles and objectives of the Baath Party in unity,

[210] Norm Kelly and Sivakur Ashyaghpur, *Political Parties and Democracy in Practice and Theory: Parliamentary Groups*, National Democratic Institute. Washington, 2006. p. 3 is available at: [https://www.ndi.org/sites/default/files/Parliamentary-Groups\\_EN.pdf](https://www.ndi.org/sites/default/files/Parliamentary-Groups_EN.pdf). Website accessed on July 23, 2021.

freedom and socialism<sup>[211]</sup> lasted for a long period between 1973 and 2012. Adoption of any views contrary to the ideology of the Baath Party will deny them the right to work in Syria. The right to freely hold and communicate opinions, along with the concerns of the social groups that make up each society, necessarily leads to the formation of groups that agree on the same opinions and seek to integrate them into the state's general policies. Through these groups, parties can be formed as international law preserves the right of people to gather and participate in meetings. International law also stipulates voluntarily joining these gatherings without coercion. This is stipulated in Article 20 of the Universal Declaration of Human Rights and Article 21 of the International Covenant.

International law emphasizes the freedom to form political parties. It sets general and clear determinants at the same time for the limits of freedom that can be dealt with during the formation of parties. However, the exercise of these restrictions requires in the first place a democratic society, because it is possible for countries governed by authoritarian authorities to exploit these restrictions to establish their hegemony over societies. In Syria, the Supreme State Security Court issued several rulings against the freedom of political opponents and members of opposition parties based on accusations that could fall under the third paragraph of Article 21 of the International Covenant (harming national security or public order) or “weakening national sentiment.” ...etc).

## **2. International standards for the formation of parties in line with the provision of a neutral electoral environment**

Ten criteria can be drawn from the articles presented in international conventions. They can be considered a legal and human rights reference based on international law and human rights during the elaboration of a legislation for political parties and it guarantees a pluralistic party system. The criteria are:

- The state must guarantee to its citizens the freedom to form and join parties.
- Joining a party or participating in its formation must be free and voluntary, and no party has the right to compel citizens to join it by any means, whether by using tools of violence, or by giving privileges to its members such as granting them government positions or facilitating their work in the private sector through governmental performance, or any other means that strips away the voluntary character of their membership to a party.
- The state should keep the same distance from all political parties.

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[211] The parties authorized to operate in Syria until 2012 were none other than the NPF parties that were permanently headed by the Baath Party. These parties adhere to the National Socialist line of the Baath Party and the National Progressive Front which is a political entity that defines itself as an “important national event and an objective product.” The Blessed Corrective Movement was achieved in our country by the immortal leader Hafez al-Assad, as a dedication to partisan and political pluralism, and serious openness to the masses of the people. Among the parties affiliated with the Front alongside the Arab Socialist Baath Party are the Socialist Union Party, the Syrian Communist Party, the National Covenant Party, and the United Syrian Communist Party, among other parties.

For more information on the entire National Progressive Front parties, it is available at:  
[http://www.pnf.org.sy/?page=category&category\\_id=113](http://www.pnf.org.sy/?page=category&category_id=113). Website accessed on July 23, 2021.

- The formation of parties cannot be refused under any pretext, and the operation of any party cannot be suspended unless its suspension is in accordance with clear and specific legal texts and based on a court ruling.
- It is prohibited for political parties to possess any kind of weapons or tools of violence.
- Police and military personnel have no right to form or join political parties. Otherwise, the state has the right to impose special legal restrictions on them.
- The party must abide by the democratic system and political pluralism. It must commit to democracy in choosing its leaders and cadres.
- The party shall adhere to the constitution and the law and shall not engage in any illegal practices under any pretext.
- The party has the right to compete for power by peaceful means, through free, fair, and periodic elections, and by secret ballot.
- Any party that calls for hatred or war or incites hostility or violence is prohibited by law.
- Parties are prohibited from adopting any ideology, program or behavior that leads to discrimination on the basis of race, sex, color, ethnicity, religion, sect, or on any other basis. Nor adopt ideas that lead to combating freedoms, suppressing opinions, or showing belittlement or disregard to the rights of minorities or infringing on them.

## **Second: Syrian legislations contradict international standards for the formation of parties**

The Syrian legislative system has a set of laws and articles that guarantee the dominance of the single party over the Syrian state. They guarantee its ability to exclude or purge any opposition, no matter how simple, in society and the state.

### **1. One-party control under the rule of the Baath Party**

Since its seizure of power, the Baath Party has been hostile to democracy, which came to “replace unity,” and it was “democracy of the enemies of the people,” as the party explicitly expressed in its first coup communiqué on the morning of March 8, 1963.<sup>[212]</sup> On the morning of the coup, the party also declared a state of emergency in accordance with Decree 51 issued in 1963, which grants the executive authorities absolute powers over the legislative, judicial and executive authorities, by naming them a martial ruler.<sup>[213]</sup>

[212] Text of Communiqué No. 1 of the March 8, 1963 coup, National Council for the Leadership of the Revolution, March 8, 1963, Contemporary Syrian History, available: <https://syrmh.com/1963/03/08/communication-No.-1-of-the-Arab-al-Baath-party-coup/>, last accessed April 16, 2021.

[213] The Emergency Law promulgated by Decree 51 of 1962, and the emergency law as mentioned in many websites in this report continued until 2011 and was canceled in an attempt to absorb the popular anger that ignited after the revolution.

Accordingly, no elections were held during the ten years following the Baath coup, as the legislative authority was appointed each time, until 1971, after it was named the People's Assembly and it wrote the Syrian constitution of 1973, and for this reason it was also called the "Appointed Council." This violates the principles of freedom and equality in political work between the parties that must be provided and bound by the Syrian state, and there was no law regulating the work of parties in Syria until 2011.

Prior to that year, the formation of parties was completely prohibited, and every political or partisan action outside the scope of the Baath Party was considered against the law.

During the Baath rule, the Syrian legislator fought against political pluralism to protect the discriminating reality of the Baath Party and issued a set of legislations after its coup. Some of these legislations were to protect the Baath itself from its opponents, such as the Law for the Protection of the Revolution in 1964, which allows the formation of exceptional courts to try opponents of the Baath, and as a result, a law was issued to create the Supreme State Security Court in 1968. It prosecuted Baath opponents both individuals and other parties, giving them loose charges such as stirring up sectarian strife, affiliation with terrorist organizations, or the weakening of national sentiment... without any evidence or proof, and as a result, everyone who was politically active outside the framework set by the Baath, whether Islamist, communist or nationalist parties and individuals, was prosecuted.<sup>[214]</sup> The State Security Court was abolished in 2011<sup>[215]</sup> and so was the state of emergency<sup>[216]</sup> in an attempt to attenuate popular anger following the outbreak of the March 2011 revolution. A new anti-terror law<sup>[217]</sup> was issued and another law to create a terrorism court<sup>[218]</sup> to compensate the Baathist dominance and Baath use of the "judicial" power as an instrument to consolidate its rule against its opponents.

The Baath Party works to use state institutions to serve its expansion, in violation of the standard that demands commitment to the state's neutrality towards parties, and this was not limited to the period before 2012, but after issuing the 2012 Constitution, which abolished the discriminatory protection of the Baath Party and recognized partisan pluralism. The Baath Party remained dominant over state institutions either directly or through auxiliary institutions that met its objectives in consolidating its authority. Thus, the Baath took control of unions and syndicates, and included the syndicates of workers and farmers within the components of the National Progressive Front, whose parties it controls. Civil society institutions were an auxiliary to the Baath Party, such as the Union of Journalists, the Union of Publishers, and others. The party would have half plus one in all the leading bodies of trade unions and professional associations.

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[214] On the Fifth Anniversary of its Cancellation: The State Security Court Repression in the Form of a Court!, SHRC report on the court published by the network's website on April 21, 2016, available at: <https://www.shrc.org/?p=25466>, last accessed on August 8, 2021.

[215] The Supreme State Security Court was abolished by Legislative Decree No. 53 of 2011.

[216] The state of emergency was terminated by Decree No. 161 of 2011.

[217] Law 19 of 2012

[218] Law 22 of 2012 to create a court to look into terrorism cases.

## 2. The Parties and Elections laws violate international standards in terms of partisan pluralism

It is assumed that the parties and elections laws came in the context of a reform process and in response to popular demands, as well as the 2012 constitution. However, the reality that these legislations resulted in was nothing but a greater authority for the Baath Party over the state due to the lack of seriousness in dealing with these laws. Many provisions of these laws go against international standards that organize partisan work in the state and society.

- **Freedom to form parties:** The Political Parties Law issued in 2011 in Syria undermines the freedom to form parties and links them to the decision of the executive authority through the Minister of Interior, who is naturally Baathist. Articles 7 and 8 of the law stipulate the formation of the Parties Affairs Committee, which decides whether to accept or reject the application for licensing parties and even decides on the amendment of the parties' rules of procedure.
- **Voluntarily joining a political party:** The Law of Parties does not mention in any of its articles that joining a political party is voluntary, and the Baath Party continues until the moment of writing this report to be active in student ranks and referring secondary school students and it still gives preference to members of the Baath Party in obtaining government jobs.
- **Neutrality of the state towards political parties:** The state does not stand at the same distance from all parties, and the Parties Law supports this discrimination in favor of the Baath Party. In the Parties Law, Article 5 D prohibits the establishment of parties on a regional, tribal, religious, or sectarian basis, or on the basis of race, gender or color. On the other hand, the law does not mention any prohibition on discrimination on nationalistic or linguistic grounds, and this is what the Baath Party is based on, whereby the Syrian citizen is defined as an Arab citizen whose Arab identity is based on language and belonging to the Arab nation, and therefore every Syrian citizen who does not believe in belonging to the Arab nation does not have the right to join the party,<sup>[219]</sup> which translates as discrimination on a national basis against non-Arab minorities.
- **Article 24 of the Elections Law states that 50% of the members of the People's Assembly must be workers and farmers.<sup>[220]</sup> This article impedes political pluralism because it gives priority to parties with a socialist orientation over other parties.**

[219] General Principles of the Constitution of the Arab Socialist Ba'ath Party-Syria, Article 10.

[220] General Elections Law No. 5 of 2014, Article 24.

### **Third: Repercussions of the reality of partisan work on the elections**

The Syrian legislations that governed the electoral process before the 2012 constitution (which recognizes political pluralism) and the elections and parties' law, or after them, were drawn up by the legislature in a manner tailored to giving preference to the Baath Party and consolidating its control over the legislative and executive authorities.

#### **1. The Baath Party's absolute control over the course of the electoral process**

Under the 1973 constitution, which places the Baath as the leader of the state and society, the outcomes of the electoral process were guaranteed in favor of the Baath. The nomination of the president of the republic is issued by the party's regional leadership and the NPF list always guarantees the Baath a percentage of half +1 of seats in parliament and local administration councils, and it is rarely allowed that a ballot falls into the ballot box without the NPF list being on it.<sup>[221]</sup> The Baath Party has full control over the NPF's lists and over the workers' and peasants' sectors, given that the two unions are in the NPF headed by the Baath, and the rest of the independents whose candidacies are not accepted until they obtain the security approval that comes from the security branches loyal to the regime and made up of Baathist elements<sup>[222]</sup> that turned the elections into an occasion for profiteering, corruption and building clientelist relations between the influential leaders in the Baath party and those who wished to become parliamentarians.

After the promulgation of the Parties Law in Syria in 2011, 20 parties got licensed in Syria, including 10 parties in the NPF.<sup>[223]</sup> These parties were unable to achieve popularity, due to the way in which the authority represented by the Assad family and the Baath Party manage public policies and the party system in the country.

The NPF only served as the "House of Subordination" to the Baath Party. Its parties could not gain any privileges, positions, and membership of the People's Assembly, except through the Baath, which separated the NPF from the social groups that it is supposed to represent. The parties could only obtain privileges, positions, and membership of the People's Assembly through the Ba'ath, which separated them from the social groups they were supposed to represent, and turned them into annexes and small pockets of the Ba'ath Party in power. On the other hand, the parties that opposed the hegemony of the Ba'ath were excluded and prevented from engaging in public affairs and political life through a set of laws that enable the authority to deal with its opponents with excessive brutality.

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[221] Muhammad Barmo, independent member of the People's Assembly for the 2007-2012 cycle, said that he was not personally directed to print electoral papers with the NPF list on it, but it is known that those who do not print it will face consequences given that the electoral committees based on the ballot boxes are made up of Baathist employees. Ali al-Bish, Baathist member of the People's Assembly for the same cycle, said that independents cannot form a list that may affect the NPF's list, but can rather complement that list. Usually, candidates print their ballot papers individually or list their ballot papers containing their names added to the names of the NPF's lists.

[222] The previous and current election law does not mention security approval as a condition for accepting candidacy. However, the matter is well-known among Syrians, and was confirmed by Ali al-Bish, Baathist member of the People's Assembly, in an interview for the purpose of this report.

[223] The licensed parties in Syria until January 21, 2015 are found on the official website of the Syrian People's Assembly, available at: <http://parliament.gov.sy/arabic/index.php?node=5518&cat=14094&>, last accessed on April 30, 2021.

If we compare the last five legislative cycles in Syria, those that preceded the promulgation of the 2012 Constitution and the Parties Law in two terms followed with two others, and during the 2012 session, we note that the rates of political participation have decreased until they reached nearly half of what they were in 2003, and it decreased to extremely low levels. The participation rate fell from 63% in the 2003 elections to 33.17% in the 2020 elections.

## 2. Regulating party activity in a manner consistent with ensuring free, fair, and transparent election

The political and partisan reality in Syria, bolstered by a package of legislation that violates international law and human rights as contained in the UDHR, has prevented, or hindered any electoral process taking place in a neutral environment. In order to arrive at free and fair elections that are transparent and compatible with international law, we must first emerge from the discriminatory reality that the Baath Party has created. This may be achieved either through repealing laws that maintain the current position of the party, or by eliminating the gains that the party has accumulated, illegally, through its authoritarian control over the state during the past sixty years. Moreover, the state must have an independent and impartial judiciary capable of making decisions free of pressure from any party. In this regard, what is first required is the separation of powers and checking the executive as represented by the President of the Republic from the judicial authority.<sup>[224]</sup> There must also be measures to prevent any opportunity, constitutional or legislative, that may lead to monopoly over government power or the possession of any tyrannical control.

For a truly pluralistic political system, the state must be separated from the Baathist ideological thought across all its institutions,<sup>[225]</sup> and there must be a dismantling of totalitarian “popular” organizations that adopt the Baath party’s ideology in their systems and principles.

An electoral system that combines both features may be better suited for a society such as Syria where it is possible to raise the electoral threshold to ensure the formation of strong governments (7-10%). On the other hand, when calculating the electoral quotient, it is possible to add “guaranteed representation” seats granted to parties that were unable to surpass the electoral threshold during the election. Such small parties can therefore ally themselves and offer a representative in the event that the total of their electors exceeds the electoral threshold. This process helps to avert wasting the electorate’s votes and protects their right to representation. It also helps new parties to gain experience in political practice while entering parliament, and to negotiate their programs in order to agree and reach alliances, coalitions, and consensus with other parties to arrive at the threshold.

[224] According to the Syrian Constitution in force since 2012, the President of the Republic is the guarantor of judicial independence (Article 132). The President also heads the Supreme Judicial Council (Article 133) and names members of the Supreme Constitutional Court (Article 141).

[225] The preamble, for instance, continues to adhere to the Baath Party’s nationalist ideology and objectives.



The state of social disintegration that Syrian society has suffered may lead to the emergence of a political system based on an ethnic, nationalistic, or sectarian basis as is the case in Lebanon and Iraq. During the transitional period, the Syrian state must encourage the formation of political parties on a national basis that include in their ranks Syrians from all communities. Therefore, any new constitution in the country must not include any restrictions on the formation of political parties such as those mentioned in Article 8 of the current Syrian Constitution. Partisan activity must not require a license as Paragraph A of Article 8 is formulated with “licensed political parties contribute...”. Instead of this wording, it must be “political parties contribute...”.

In Syria, legal reform of the party system can only succeed within a comprehensive reform package that covers the entirety of Syrian legal text –both constitutional and legislative. It must also, primarily, seek to abolish the discriminatorily privileged status of the Baath Party which is supported by this same body of legislation. The legislative system in Syria is almost entirely constituted, as the report clearly demonstrates in more than one instance, as a legal structure supportive of tyranny and resistant to democracy.

## Chapter 4: The Role of Civil Society in Elections

The participation of civil society, free and independent, in the public space has always been considered one of the most important indicators of the scope of public freedoms in any country, and an essential factor in expanding the scope of democracy and consolidating a culture of respect for human rights. This is especially the case since the space available to civil society actors is usually closely linked to the scope of freedom of expression and assembly and guaranteeing the right of individuals and groups to political participation which influences policies and laws, and the exercise of accountability over the state and government institutions. The direct involvement of civil society, with its various organizations, bodies, and actors, in any presidential, parliamentary, or local elections is an indication of the level of democracy and fairness of those elections and an essential guarantee of effective community participation in public affairs.

In democratic countries, hardly any election experience is devoid of broad civil society participation in all stages, given the pivotal roles that actors in the civil space play in monitoring the integrity and transparency of those elections, mobilizing, advocacy and community organization, and promoting public awareness of rights and duties in a way that helps local communities make free and informed decisions through which to achieve their individual and collective demands and interests.

Therefore, any future Syrian electoral law that lays the groundwork for a democratic transition in accordance with Security Council Resolution 2254 must clearly and explicitly guarantee and safeguard the right of civil society to exercise all of its electoral roles freely and independently, away from the domination of state institutions and security services. It is also necessary to protect these guarantees with a wide range of

constitutional and legal principles and texts based on international charters, treaties, and instruments, in a manner that preserves the right to freedom of expression, association, peaceful assembly and access to information and which, terminologically and conceptually, recognizes civil society as an essential element of participatory democracy as well as a pillar of political pluralism and popular participation. All of this requires the effective participation of the Syrian civil society, with its various organizations and bodies, in the development of new electoral laws and their regulations and executive directives. Civil society actors must also have sustainable, unimpeded, and effective access to negotiations and political and constitutional processes, and there must be increased local, regional, and international pressure to achieve this active participation in all stages and contexts of a UN-supported political solution.

## **First: The relationship of civil society to the democratic transition and elections**

This report adopts a definition of civil society as being: the organizational space extending between the family and the state, which includes independent and voluntary institutions established by members of society seeking to protect or expand their political, economic, social, and cultural interests or rights.<sup>[226]</sup> This report distinguishes between civil society organizations and political parties, on the grounds that the main objective of these organizations, even if they have a political slogan or adopt clear political demands, does not lie in direct competition for a share in political power as is the case with political parties. Rather, civil society operates as political and societal pressure that communicates interests and values and ensures their representation in decision-making processes.

Over the past four decades, the role of civil society in democratic transitions and democratization has become a major focus of a growing body of studies from various academic disciplines. Driven by the experiences of civil society in the democratic transformation in Eastern Europe after the Cold War, many of these studies focused on the close relationship between civil society and democracy, especially during stages of political transition. Later studies of local conflicts confirmed the importance of civil society in countries emerging from violent local conflicts, specifically with regard to its pivotal role, direct and indirect, in transitional elections during post-conflict stages.<sup>[227]</sup>

[226] Gordon White, *Civil society democratization and development (I): Clearing the analytical ground*. *Democratization*, 1994,1(2), 375–390.

[227] Benjamin Reilly, *Post-war elections: Uncertain turning points of transition*. In Anna K. Jarstad and Timothy Sisk, *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge University Press, 2008. pp. 157-181.

In general, the direct roles of civil society organizations in these elections are summarized in five main axes:

1. Carrying out public awareness campaigns, spreading the electoral culture, and highlighting the importance of political participation, candidacy, and voting.
2. Enhancing transparency and access to electoral information in a way that helps individuals and groups to make free and informed decisions about candidates and electoral programs that achieve their interests and aspirations.
3. Providing popular oversight over elections, starting with monitoring voter registers, candidates' campaigns, polling processes on election day, as well as vote sorting and counting and results, and deciding electoral appeals.
4. Launching mobilization and advocacy campaigns in favor of candidates, currents, political parties, or electoral programs that represent their interests or the interests of the groups and groups they represent.<sup>[228]</sup>
5. Direct engagement in the development of the electoral system and executive instructions related to elections, in a way that reflects and preserves the roles of direct popular oversight by civil society over the electoral process and protecting the space and independence of civil actors.<sup>[229]</sup>

As for the indirect roles of civil society in post-conflict elections, most revolve around:

1. Restoring popular trust between society and the state, as the potential roles of civil society organizations may support stability, reconstruction, and accountability and oversight over the performance of state institutions.<sup>[230]</sup>
2. Reducing societal rifts between conflicting groups, as civil society organizations can help consolidate peace-building and national reconciliations at the local level.<sup>[231]</sup>

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[228] Susan Rose-Ackerman., *From Elections to Democracy in Central Europe: Public Participation and the Role of Civil Society*, *East European Politics and Societies*, 2007. Volume 21, issue 1, pp. 31–47.

[229] Sharon F. Lean., *Democracy assistance to domestic election monitoring organizations: Conditions for success*. *Democratization* Volume14, issue 2, 2007. pp. 289–312

[230] Michael Lidauer, *Democratic Dawn? Civil Society and Elections in Myanmar 2010-2012*, *Journal of Current Southeast Asian Affairs*, volume 31, issue 2, 2012. p. 89

[231] Béatrice Pouligny, *Civil Society and Post-Conflict Peacebuilding: Ambiguities of International Programmes Aimed at Building 'New' Societies*, *Security Dialogue*, volume 36, issue 4, 2005.pp. 495–510.

3. Strengthening popular ownership of the prospective political solution in Syria, either by directly conveying the demands of various groups to the negotiation tracks or putting pressure on negotiators and political actors to include these demands. This was the case in the Tunisian experience, which saw direct involvement by a number of civil society organizations through the formation of the National Dialogue Quartet,<sup>[232]</sup> which played a key role in mediating between the government and a number of politically and ideologically discordant political groups during the country's political transition. This mediation, which led to an effective national dialogue, laid down the basic rules for democratic transition, in addition to agreeing on an electoral system under the supervision of an independent body that organizes and manages elections.<sup>[233]</sup>

The relationship between civil society and the state takes many forms. This depends on the nature of the political system, the spaces of public liberties, and the existence of legal mechanisms to control this relationship. In this sense, civil society organizations can interact with the state and its institutions while preserving their independence, which gives them popular trust and confidence that qualifies them to play a positive role in elections. However, civil society can be run by the ruling elite, and be transformed into a component in clientelist networks affiliated with state power,<sup>[234]</sup> in which case these organizations become tools of political repression or a factor of detriment to elections.

As for the relationship with local communities, the general assumption is that civil society organizations derive their political, social, and economic demands from the broader community they represent. However, this assumption ignores two main factors: First, society is usually politically and economically heterogeneous, giving rise to competing, contradictory, or in some cases undemocratic demands. The second is that societies emerging from violent local conflicts, especially those with ethnic, religious, or sectarian dimensions, are usually rife with severe political, ideological or identity polarization,<sup>[235]</sup> which necessarily reflects on civil society actors and their roles and agendas in transitional elections.

[232] The Tunisian Dialogue Quartet included four unions and civil bodies: the Tunisian General Labor Union; the Tunisian Confederation of Industry, Trade and Handicrafts; the Tunisian National Order of Lawyers; and the Tunisian Human Rights League.

[233] Kasper Ly Netterstrøm, *The Tunisian General Labor Union and the Advent of Democracy*. The Middle East Institute, volume 70, issue 3, 2016. pp. 383-398.

[234] Bettina Von Lieres and Laurence Piper, *Introduction: The Crucial Role of Mediators in Relations between States and Citizens*. In Bettina Von Lieres and Laurence Piper, *Mediated citizenship: The informal politics of speaking for citizens in the global south*, Palgrave Macmillan, London. 2014.(pp. 1-24).

[235] Frances Stewart, *Religion Versus Ethnicity as a Source of Mobilisation: Are There Differences?* MICROCON Research Working Paper 18, Brighton: MICROCON, 2009, p 4.

## Second: Civil Society within the Syrian Constitutional and Legal Framework

### Lack of freedom and independence of civil society

None of Syria's successive constitutions recognized the term "civil society" which carries specific social, political, and cultural implications. The 1973 Constitution only referenced "popular organizations and cooperative associations,"<sup>[236]</sup> and failed to recognize them as independent institutions, instead affiliating them directly with state institutions and restricting the scope of their activity. It also defined the first tasks of these so-called popular organizations as "building the socialist Arab society and defending the system,"<sup>[237]</sup> thus subordinating them to the Baath Party's state and a tributary to its partisan organization.

The Syrian Constitution of 2012 expanded some of the definitions and controls contained in the previous constitution, as it now recognizes "associations" along with "popular organizations and professional unions" and grants them the status of "independence" and defined them as "bodies that group citizens in order to develop society and attain the interests of its members. The State shall guarantee the independence of these bodies and the right to exercise public control." It also gave citizens the "freedom of forming associations and unions [...] based on a patriotic basis, for lawful purposes and by peaceful means which are guaranteed in accordance with the terms and conditions prescribed by law."

In fact, the 2012 constitution, much like its predecessor, made these constitutional articles contingent to legislations most of which have not undergone any fundamental change since the Baath Party takeover. This is especially the case of the Law on Associations and Private Societies - Law No. (93) of 1958, which is still in force without any fundamental amendments since the establishment of the Syrian-Egyptian union.

This Law on Associations and Private Societies prohibits the establishment of any association with political substance or demands, as it stipulates that "every association [...] whose purpose is to undermine the integrity of the Republic or the republican form of government is void and has no effect."<sup>[238]</sup> It also prohibited political opponents of the Baath regime, especially those who have been stripped of their political rights, from establishing or affiliating with any association.<sup>[239]</sup> This law also gave the Ministry of Social Affairs and Labor the full right to dissolve any association "definitively without any means of appeal or review" if it engages in "political activity that harms the integrity of the state."<sup>[240]</sup> Neither this law, nor any other Syrian legislation, managed set a clear

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[236] Syrian Constitution of 1973, *ibid.*, Article 9.

[237] *Ibid.*, Article 49.

[238] Law on Associations and Private Societies No. (93) of 1958, Article 2.

[239] *Ibid.*, Article 3.

[240] *Ibid.*, Article 36.

definition of the nature and determinants of political activities that might harm the integrity of the state, and it gave the security services and the judicial institution the freedom to interpret these activities as they deem fit, in accordance with securitized laws that limit any organized political or civil action such as the Counter-terrorism Law<sup>[241]</sup> as well as articles related to undermining the prestige of the state and weakening national sentiment stipulated in the Penal Code.<sup>[242]</sup>

Accordingly, this law prohibits and criminalizes any political participation of civil society in the public space, and renders this participation a monopoly favoring institutions and bodies established and managed by the ruling authority. This prevents local communities from forming independent civil bodies that express their political aspirations and demands, instead of closing the door to any kind of political negotiation between the state and society.

Moreover, despite the 2012 constitution stipulating in Article 45 the “freedom of forming associations and unions,” it again restricted this “freedom” to the legal texts and implementing regulations in force. The implementing regulations of the previous law of associations give broad, almost absolute, powers to the Ministry of Social Affairs and Labor<sup>[243]</sup> as the competent administrative authority, in direct control of the formation, work, and structure of any association in Syria, in addition to its direct intervention in the sourcing of support and financing by these associations.

This law also gave the Ministry of Social Affairs and Labor the right to dissolve any association “if the ministry deems there is no need for the association’s services” without the right to appeal or review these decisions.<sup>[244]</sup> This intentionally nullifies the right of these associations to publicly resort to an impartial, independent, and fair judiciary to arbitrate disputes that may arise between public association and the Ministry of Social Affairs and Labor, contradicting the constitutional principle of the separation of powers and undermining the rules of fairness and justice that any judicial system must observe.

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[241] Law No. 19 for 2012.

[242] The Syrian Penal Code also continues to stipulate penalties for those who exercise the right to freedom of expression and assembly. Article 285 stipulates the punishment of “anyone who, in Syria during wartime or when it is expected to break out, makes a declaration aimed at weakening national sentiment or inciting ethnic or sectarian strife.” As for Article 288, it punishes “anyone who, without the government’s permission, engages in a political or social association of an international character in Syria, or in an organization of this kind.” The Syrian government uses the texts of these articles to suppress dissent and violate the basic rights and freedoms of citizens.

[243] Stipulated by Presidential Decree No. 1330 of 1958.

[244] *Ibid.*, Article 36.

### **Third: The experience of Syrian civil society with the elections**

Since the 1970s, and until the outbreak of the Syrian uprising in March 2011, the Baath state in Syria has seen no active or sustainable presence of an independent civil society that is unaffiliated with the state and its bureaucratic, security, and military apparatuses. The Syrian regime occupied all available public space and suppressed all attempts to create state of collective and independent organizational work. All of this coincided with five decades of total absence of any democratic elections, whether presidential, legislative, or local, and the systematic destruction of electoral culture in at the level of politics and society.

The uprising began calling for the overthrow of the Syrian regime and saw the subsequent emergence of several armed rebel factions and the departure of large swathes of Syrian territory from the regime's control. At the time, a large number of civil and political activists managed to create a new space for organized civil action that is independent of the domination of the security services, especially in the areas from which official state institutions. This withdrawal created a political vacuum, prompting many local actors to establish local governance bodies as an alternative to state institutions, in order to manage service and humanitarian affairs in areas outside the control of the Syrian regime.

These local governance bodies relied on different organizational and legal rules and procedures, each according to the political and military forces controlling the areas in which it operates. In the regions of northeastern Syria, the Autonomous Administration, affiliated with the Syrian Democratic Forces (SDF), adopted a decentralized governance model based on the canton system and its sub-divisions of city and district councils. While in other areas outside the control of the Syrian regime, such as those in north-western Syria for example, a group of local councils was established that adopted a legal structure derived from the Syrian Local Administration Law no. 107 of 2011, after the Syrian Interim Government<sup>[245]</sup> amended a number of its articles and clauses, including In line with the political and governance context in the areas in which it operates.

Over time, the experience of Syrian civil society organizations in opposition-controlled areas developed further, which resulted in the relative development of their tools related to mobilization, advocacy, institutional culture, funding capacities, as well as their influence within their communities. This resulted in a demand for local elections for a number of these bodies, a development that, for many, was the first experience of direct involvement of Syrian civil society organizations, and local communities in general, in local elections outside the framework of the Baath party state. This engagement with elections by civil society had an impact on both the dynamics of local elections, and on popular electoral culture at large.

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[245] The Syrian Interim Government (SIG) is the governmental and executive apparatus established by the National Coalition for Syrian Revolutionary and Opposition Forces in March 2013.

The following is a summary of the most important determinants of this experience in most of the areas outside the control of the Syrian regime:

- The process of electing local government bodies, for which civil society organizations mobilized and advocated, led to increased acceptance of the legitimacy of these bodies at the local level. This is specifically relevant with regard to service and humanitarian fields such as health, education, and the restoration of water and electricity networks. This led in many cases to raising the institutional and financial capacities of a number of these local bodies and helped to create a state of political and societal balance with the de facto authorities such as religious, clan, or political organizations, and armed factions.
- Increasing public awareness about the notion of good governance. Many electoral mobilization and advocacy campaigns carried out by civil society organizations were accompanied by training workshops and discussion sessions that focused on consolidating the concepts of accountability, transparency, and community controls over the work of local government bodies.
- The high rate of women's representation in a number of executive offices of elected local government bodies. Many civil society organizations have supported the candidacy of a number of women, either directly by supporting and organizing electoral campaigns for female candidates, or by putting pressure on local governance structures to expand the margin of women's participation in decision-making mechanisms.

However, despite its symbolic, political, and social value, this electoral experience remained confined to narrow geographic areas, becoming the exception rather than the general rule for the formation of local governance bodies. It faced many difficulties and challenges, the most important of which are:

- Weak community participation in these elections, as a result of the complete absence of electoral culture among local communities in Syria. Additionally, there was an overwhelming sense of futility about these elections in the long run, especially with the absence of any prospect for a comprehensive political solution that defines the relationship between these local governance structures and state institutions in post-conflict Syria.



- The inadequacy of the electoral systems adopted to elect these bodies and their reliance on exclusionary and discriminatory criteria such as “revolutionary weight,”<sup>[246]</sup> the university education requirement, and making candidacy and voting contingent to being a resident in the district. This led to the exclusion of large segments of Syrians, such as women, young age groups, refugees and the internally displaced. Additionally, it led to the inability of civil society organizations to change these systems in a way that increases inclusion or adaptability to the constantly changing political and social contexts as a result of conflict dynamics.
- The lack of security and service stability in the areas under the control of the Syrian opposition, either due to the continuous and violent military actions of the Syrian regime forces, or as a result of armed conflicts between the de facto forces controlling these areas.
- Increased dominance by de facto authorities such as military factions, foreign forces, and religious and clan leaders, over the governmental situation, political community mobilization, and organized civil action.

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[246] Several local councils relied on the terms and criteria for running for their executive offices on the principle of “revolutionary weight” which limits the right to candidacy to those who participated in the demonstrations against the Syrian regime early in the opposition movement, specifically between March 2011 and late 2012.

## Report recommendations

The report extracts recommendations for each section of its five research themes, in order to contribute to the adoption of an effective and democratic electoral system, and a free and fair electoral practice that guarantees wide participation in the Syrian elections, as a necessary condition for the success of the democratic transition process.

### Recommendations of part I on the legal framework governing the Syrian elections

#### 1. At the Constitutional Level

- Include guarantees of the civil nature of the state and its treatment of all citizens in full equality in rights and duties before the law and courts, criminalizing all forms of discrimination between citizens and guaranteeing public and individual rights and liberties.
- List, in detail, the rights of citizens are associated with elections, as well as matters related to the integrity of the electoral process and its conduct in a free and fair manner. These issues include transparency, election monitoring, secrecy of the vote, media neutrality, and party pluralism.
- Guarantee the linguistic, cultural, and religious rights of all Syrian groups, and promote governmental decentralization in a manner conducive to good management of religious and ethnic diversity, taking measures to support the political participation of all marginalized groups including women, people with special needs, and Syrians who have been arbitrarily deprived of their nationality.
- Adopt a semi-presidential or parliamentary system of government and, in all cases, limit the powers of the President of the Republic and prevent their renewal of candidacy after holding the presidency for two consecutive terms, such that no candidate can hold this position for more than 14 years.
- Embed into the constitution the complete separation of powers and the principle of rotation of power and provide guarantees for the existence of a parliamentary opposition, the proper functioning of civil society organizations, and the independence of the judiciary.
- Constitutionally provide for the establishment of an independent elections' authority with adequate guarantees of its independence and the proper conduct of its tasks.
- In electoral lists, prohibit the inclusion of references to the religion or ethnicity of candidates, and ban the founding of parties with a religious, ethnic, sectarian, or regional basis.
- Prevent the formation of exceptional courts and provide for the inadmissibility of trying civilians before military courts and tribunals. Also, restrict the application of the state of emergency, and any other exceptional measures or legislation, to ensure that

such mechanisms are used at the proper time and proportionally during cases of emergency, as well as their compatibility with the requirements of the rule of law and with international human rights conventions and standards.

- Include guarantees for the proper functioning of the security services, and ensure that they are held accountable, such that they are subordinated to civilian oversight and do not interfere in political life.

- Ensure full cooperation with international mechanisms related to respect for human rights, including joining all international human rights conventions and lifting reservations about them as well as recognizing, constitutionally, the supremacy of these conventions over domestic legislation in case of conflict or contradiction.

## 2. At the legislative level

- Review all Syrian laws to eradicate all forms of discrimination and guarantee the rights and freedoms of citizens, as well as the consistency of laws with all constitutional guarantees delineated above.

- Issue legislation that guarantees and promotes the rights and freedoms of citizens, especially laws on media and political parties, in a manner that contributes to ensuring free and fair elections.

- Issue a new electoral law based primarily on international human rights covenants, that includes at least the following:

- Restricting executive interference in the electoral process, including its current role of assigning the number of seats for each electoral district and issuing implementing regulations, replacing them with regulations and instructions issued by an independent election administration authority.

- Enabling civil society organizations, the media, and international agencies to monitor the electoral process, and achieving transparency in order to increase trust in elections. This includes determining polling stations before elections commence, publishing electoral lists, and releasing voter turnouts and detailed election results.

- Enhancing women's participation in elections and facilitating the voting and candidacy of persons with disabilities, linguistic minorities, displaced persons, refugees, and those residing abroad.

- Achieving voter equality among the electorate, and proportionality between the number of representatives and the populations of electoral districts in order to achieve fair representation of various governorates and regions. It is also possible to increase the representation for some areas that have suffered from marginalization over the past decades.

- Ensuring the engagement of IDPs and refugees, including their inclusion in the electoral lists, and their ability to participate and run as candidates.

## **Recommendations of part II on Ensuring Accurate and Fair Representation Through the Electoral System and District Division**

### **1. As relates to electoral districts**

- Observing international standards during any electoral redistricting in Syria, especially the principle of one person one vote, and equality between the votes of all voters. This will require changing the number of seats reserved for each district in proportion to the number of voters residing there.
- Taking into account religious and ethnic diversity during the process of district delimitation, in a manner conducive to good representation and that averts weakening and dispersal of the voices of different religious and ethnic groups.
- Reducing the size of the electoral districts in a way that contributes to strengthening the direct relationship between the voters and their representatives, and their ability to hold elected representatives accountable and avoid snap elections in the event of negligence or malfeasance.
- Involving the independent electoral commission in the district delimitation process, in cooperation with an impartial body with high technical and political expertise created specifically for this purpose, with the participation of the census bureau and based on the voter register.

### **2. As relates to the electoral system**

- Designing the electoral system in a manner that contributes to limiting sectarian and ethnic electoral behavior, achieving national reconciliation, and ensuring accurate and credible representation.
- Abolishing the quota for workers and farmers and ensuring the application of a quota for the participation of women, people with disabilities, and other marginalized groups.
- Adopting a proportional representation system in a manner conducive to enhancing women's political participation and ensuring religious, ethnic, and regional diversity.
- Abstaining from preferential voting systems in order to simplify the electoral process, as it has a negative impact on the good representation of women and minorities, and the possibility of purchasing votes.
- Reducing the electoral threshold, in order to allow all segments of society to be represented through small parties, thus reducing the dominance of a homogeneous political current in power.
- Adopting the largest remainder method according to the Hare quota when calculating the results, as it contributes to broad representation through the possibility of granting seats to small parties.

## **Recommendations of part III on Election Management and International Election Support in Syria**

There is no doubt that the transitional phase in Syria makes it necessary to research and re-examine the constitution and the laws in force and in the many existing and operating institutions and bodies, especially in aligning these bodies with a wide range of international charters, covenants, and instruments.

### **1. In the formation of an independent EMB**

- The formation of an independent and impartial EMB, operating in accordance with the laws in force and not conflicting with the provisions of the International Covenant on Civil and Political Rights, in order to supervise and manage the elections.
- Observing the gender criterion when selecting the members of the EMB, in order to increase the confidence of all segments of the people in the credibility of supervising the elections and their representation in them.
- Involving the largest possible number of stakeholders in the process of selecting members of the EMB, especially civil society organizations and various unions, and, when necessary, the executive, legislative and judicial authorities, and in consultation with the parties competing in the elections.
- Imposing objective conditions on candidates for membership in the EMB, including good reputation, practical experience, and scientific competence.
- Providing all forms of support, including financial, technical, and political, to the authority, and giving it the authority to request technical assistance from international, regional and national organizations in order to properly achieve its objectives.
- Expanding the powers and functions of the EMB during the transitional period, especially in light of the lack of confidence in state institutions, which will lack established democracy, capabilities, and the confidence of citizens.
- Ensuring the immunity of the members of the EMB without neglecting the possibility of holding them accountable through legal means for any transgressions or violations, in addition to the need for the commission to follow the highest standards of transparency, which contributes to gaining the confidence of citizens, candidates and even international parties.

## 2. In the forms of international assistance in managing and supervising the Syrian elections

■ The UN should work to sponsor the existence of a pre-election agreement in the form of a political solution and mechanisms of transition in the post-conflict phase, including details of electoral mechanisms and the role of the UN, as well as the presence of international peacekeeping forces in the aftermath of armed conflict to ensure the integrity of the electoral process and the sustainability of the results of the democratic transition process.

■ The UN role should not be limited to elections only but should extend to ensuring political stability as well.

■ The Office of the High Commissioner for Human Rights, in cooperation with the international community, must provide an appropriate and safe environment for the elections.

■ The weakness of democratic practice in Syria for many decades requires the UN and the international community to redouble efforts that go beyond mere supervision, such as providing awareness-raising programs and democratic and civic education. This may include an examination the experiences of previous countries and the different electoral systems.

■ During election observation, there must be an honorary agreement between the UN and international, regional, and local organizations specialized in monitoring elections inside and outside Syria.

■ The Office of the High Commissioner for Human Rights should provide training and advice on human rights monitoring in the context of elections, support and campaign for violence-free elections, monitor and report on human rights violations during electoral processes and participate in advocating for human rights compatible electoral laws and institutions

■ The United Nations, in cooperation with international bodies and the governments of countries with Syrian refugees, should work to ensure the participation of refugees in elections, either by their voluntary and safe return to their places of origin, or by developing an integrated program to vote in their current places of residence

■ The UN must work to find a legal mechanism to ensure that Syrians obtain their Syrian civil documents so that they can participate in the elections.

■ The UN must provide logistical support, starting with data collection and census of the population, electoral districts with the help of the latest technology, through voter registration processes, the provision of electoral materials and appropriate counting and sorting centers, and the announcement of results.

■ Ensure that the UN is involved in updating Syrian civil records to register all refugees and displaced persons and their families and to provide them with identification documents to ensure the right to run for office, vote, and design the electoral system.

■ The UN must work with governments of countries that host refugee communities to establish central electoral centers in the host country, under the supervision of the United Nations, through which the voter exercises the right to vote, with the possibility of establishing sub-electoral centers in regions or cities that have a large Syrian community presence.

## **Recommendations of Part IV on Guarantees of Election Integrity in Syria**

### **1. In the legal context**

Abolishing the Ministry of Information and establishing a National Media Committee, to be:

■ With a legal personality independent of any government entity, in a way that does not place it under the influence of its political orientations and agendas.

Managed by a board of directors consisting of the owners of media organizations, elected by them and by representatives of media professionals such as journalists, writers, intellectuals, and others

■ Responsible for managing and organizing all aspects of media work, ensuring that any media outlet in Syria can operate without requiring a license, but abiding by the law, specifically with regard to maintaining civil peace and not falling into the pitfall of discriminatory speech that incites hatred and violence.

■ Guarantees the independence and impartiality of official and public media, so that it is treated as an executive administration and not as a part of a political party. Official media can be funded directly by citizens without state mediation, with the National Media Committee having the power to control funds and expenses.<sup>[247]</sup>

■ Repealing media laws, legislation, and executive instructions in force in Syria, and draft new legal texts, co-drafted –along with the legislature– advisory committees of stakeholders such as journalists, political parties, owners of media organizations and other persons influencing or influenced by the media. These legal texts shall be based on:

■ Ensuring the right to freedom of opinion, expression, and access to information.

■ Supporting pluralism in the media and preventing the monopoly of media, whether by the state or other actors.

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[247] In Federal Germany, for example, a huge media network is funded by citizens directly, to ensure access to information without any interference of the government agency.

- Banning all hateful, racist, or discriminatory speech, and prohibiting defamation of people and offence to their private lives.
- Ensuring the right of media professionals to obtain and transmit information by means they deem appropriate without harassing them. Public authorities must not conceal any information from citizens unless it poses a serious threat to the security of citizens or their lives. No media professional shall be punished with imprisonment based on an article or an opinion published and shall not be fined except in special cases. A special information court can be established to resolve cases urgently and to which all media-related cases are referred.

## 2. As relates to the electoral process

■ **Media ownership:** The ownership of media organizations has a major role to play in influencing elections through political advertisements for candidates or through the ability to control the information that must reach citizens, and therefore must be neutralized from influencing elections by developing a set of actions that the media must follow to ensure equality and equal opportunities for all competitors in elections. For example, paid political advertising can be banned as in the Tunisian law<sup>[248]</sup>. Paid broadcasting or publication can be regulated by allocating spaces in print media and broadcast hours in the visual and audio mediums for electoral advertising, and then dividing them between parties under an appropriate mechanism<sup>[249]</sup>. All media organizations must commit to diversity and pluralism in hosting candidates, prepare political debates given their educational value to the public, and reserve the right of response for candidates if their programs or characters are addressed in one of the programs or pages of that media outlet.

■ **Access through governmental outlets:** Government media should ensure equal opportunities for all candidates, give them equal time to explain their programs, not take sides with any candidate, strengthen the visibility and ability of women candidates to present their programs and ideas, and host women experts in election analysis, party programs and political participation.

■ **The electoral committee's relationship with the media:** The organizing electoral committee plays an important role in educating citizens in terms of the method of election, identifying polling stations and encouraging political participation, and must be in contact with the media to facilitate the transmission of information to citizens, and the body can form its own independent media committee, or coordinate with the national media body in order to carry out the tasks assigned to the media. The committee should also facilitate media access to polling stations, attend votes counting, oversee performance and monitor violations.

[248] Tunisian Elections Law, *ibid.*, Article 57.

[249] In Canada, for example, in 1979-1980, times were divided between parties based on the number of votes each party received in previous elections. (Media and elections, Electoral Knowledge Network (ACE) *ibid.* This is difficult to do in Syria, given that these elections will be the first democratic elections.



■ **Neutralizing state institutions, tools, and places of worship:** It is totally forbidden for a party or candidate to exploit state ownership for their electoral advertisement, and they are not allowed by any means to advertise in government institutions or places of worship. Public officials are not allowed to take advantage of their positions in order to raise their chances or those of their candidates in elections.

■ **Refraining from publishing information that impacts the vote:** Such as publishing results of polls, surveys, and preliminary voting results while it is still ongoing that may affect citizens' electoral behavior<sup>[250]</sup>. Election candidates are public and legal personalities, and the media can thus monitor content published on their social media accounts and assess the quality of their rhetoric. Such content can be subject to the same legal articles that prevent hate speech, incitement to violence, and discrimination.

■ **Training on monitoring:** The international community can play a role in supporting workshops and training curricula for journalists on election monitoring and reporting in an accurate, impartial, and responsible manner. Journalists can receive training on neutral speech in elections, particularly those working in government media.

■ **Creating a code of conduct for media professionals during elections:** It can include a range of behaviors that media professionals must adhere to while covering, such as credibility, impartiality, and not using inflammatory language, etc., ensuring that elections are handled freely, fairly, and transparently.

## **Recommendations of Part V on Promoting Participation in Elections in Syria**

### **1. At the constitutional level**

Any process of constitutional reform in Syria must confirm, as clearly, explicitly, and in detail as possible, a broad set of constitutional principles and texts related to:

- Ensuring and protecting the rights of individuals and groups to organized collective action in its political, economic, social, and cultural sense.
- Recognizing civil society, in terminology and substance, as an essential part of the public space and one of the mechanisms of participatory democracy based on expanding the margins of political participation for groups and individuals.<sup>[251]</sup>
- Ensuring the independence of civil society from the domination of state institutions and security services. A new Syrian constitution must emphasize that the formation of civil society associations and organizations does not require prior authorization to practice their activities, but rather a notice to be registered in a legal record

[250] Tunisian law bans publishing opinions and surveys throughout the election campaign. (Tunisian election law 2014, Chapter 70).

[251] See: Tunisian Constitution of 2014, *ibid.*, Article 139 which associates the concept of “civil society” to “participatory democracy.”

for the sole purpose of disclosure. A text must also be included that prohibits the government from dissolving any association or civil society organization or limiting its activities except by a final court ruling.

- Protecting the oversight roles of civil society over the work of public authorities and institutions, with the consequent guarantee of the right of access and information, considering it a fundamental right enshrined in the constitution. Additionally, a future constitution must stipulate the principles of good governance such as transparency, accountability, community participation in decision-making mechanisms, and considering it one of the pillars of the state.

However, these constitutional principles will remain restricted and ineffective unless they are accompanied by broader and comprehensive constitutional guarantees that create a political and organizational climate that preserves the space for civil and political action. Among these basic principles are:

- Redefining Syrian national identity in an inclusive, non-discriminatory, exclusionary, or ideological way, one based on equal citizenship for all Syrians across different national, ethnic, religious, sectarian, regional, tribal, and political affiliations.
- Respecting and safeguarding freedom of opinion and belief, and the right to freedom of expression, assembly, and peaceful demonstration.
- Respecting political and party pluralism, and the principle of the peaceful transfer of power, and upholding it as one of the fundamental values on which the state is based.
- Restricting the powers of the President of the Republic and limiting executive overreach with the remaining branches of government, by ensuring the independence of the legislative and the judiciary, and exclusivity of their mandate to exercise their powers and tasks.

## 2. At the legislative level

For decades, the Syrian regime relied on restricting all constitutional principles and voiding them of their substance and limited the effectiveness of constitutional provisions by making them contingent to laws, legislations, executive instructions, and regulations. This grants absolute power to the executive –and the security services affiliated with it, in the interpretation and application of these laws, in many cases in contradiction with the constitutional text itself. As such, constitutional reform will remain a necessary, albeit insufficient, condition to reform. Another necessary condition is comprehensive legislative reform that guarantees constitutional rights and abolishes all legislations that limit the space for civil, political, community, and human rights activity. Necessary measures include:

■ Abolishing the Law on Associations and Private Societies No. 93 of 1958 and all its amendments and executive instructions, and drafting a new basic law regulating the work of non-governmental and non-profit associations and institutions in Syria, provided that this law takes into account the following points:

- Establishing an independent national body consisting of cultural, legal, human rights, and economic figures with workers in the civil space. This body would be responsible for drafting and developing the law organizing associations and its executive instructions through a series of consultative meetings with the widest possible segment of Syrian civil society organizations, in order to transfer their experiences, knowledge, and lessons learned from its work and activity, and create an optimal model for the Syrian context.
- Ensuring the total independence of civil society associations and bodies and the prevention of interference by the state and its various institutions in the structure, institutional culture, or activities of these organizations.
- Recognizing the political, economic, social, cultural, and human rights roles of civil society associations and bodies, and considering them an essential part of participatory democracy and collective community organization.
- Allow international non-governmental organizations and foundations to establish offices inside Syria.
- Reducing the restrictions imposed on the mechanisms of funding and material support, both internal and external, including increasing the ability of civil society organizations to collect donations directly from society and to submit bids for funding from international institutions and agencies.
- It is not permissible for any association or institution to be dissolved except by its own decision or according to a final court ruling, after ensuring that the association or institution benefits from the right to appeal before an independent judicial authority in the light of a public and fair trial.
- Adhering to international charters and instruments regarding the right to freedom of expression, association, and peaceful assembly, and in particular: the UN General Assembly resolution on the right and responsibility of individuals, groups, and bodies of society to promote and protect human rights and fundamental freedoms.<sup>[252]</sup> Additionally, there is a need to consult the report of the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association,<sup>[253]</sup> and the report of the Human Rights Committee on the right to participate in public affairs.<sup>[254]</sup>

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[252] UNGA resolution no. 144/53 issued in 1998.

[253] Report A/HRC/20/27 issued in 2012.

[254] General Comment no. 25 issued by the Human Rights Committee, no. CCPR/C/21/REV.1/Add.7, issued in 1996.

■ Abolishing the Law on General Elections No. 5 of 2014, and all its amendments and executive instructions, and drafting a new electoral law that meets the following conditions:

- Direct participation by independent Syrian civil organizations and bodies in the development and formulation of this law, its determinants, and its executive instructions, in a manner that guarantees inclusiveness and transparency and establishes the principle of oversight and accountability.
- Preserving and protecting the roles of community oversight for civil society organizations and bodies at all stages of the electoral process, including monitoring voter records, candidate lists, electoral campaigns, the voting and election process, the performance of electoral centers and competent judicial bodies, the stage of electoral appeals and the announcement of results. This shall be in accordance with an honor code drawn up by an independent body that represents the widest possible segment of workers in the civic space.
- The presence of at least two representatives of independent civil society organizations in the official body or body responsible for managing the elections.

■ Abolishing the law of the Central Authority for Control and Inspection, No. 24 of 1981, and all its amendments and executive instructions, and the formulation of a new law for the control and supervision of all state institutions and its public authorities in a manner that ensures the expansion of civil society oversight over all state institutions, in order to achieve accountability and community accountability, and promoting the principles of good governance.

■ Issuing a special law that guarantees and preserves the right to access information, in a way that gives civil society organizations and bodies, and members of society in general, the legal right to obtain all information related to the work of state institutions. This enhances the principles of transparency, popular control, and community accountability; helps detect and combat administrative and financial corruption; and allows for the expansion of popular participation in decision-making processes at the local and national levels.

### 3. In the context of the political track

Activating the role of Syrian civil society in any future election – free and fair in accordance with Security Council Resolution No. 2254, must be accompanied by the active presence and real participation of the widest possible segment of civil actors and independent civil organizations and bodies in all negotiating tracks and contexts, both regarding the political solution and the constitution. This is especially pertinent since the negotiation of any transitional electoral system should not remain confined to the political and military forces constrained by regional and international consensus and interests, and who may not necessarily seek to achieve a democratic transition in the post-conflict phase. Therefore, the presence of a bloc of civil society representatives that constitutes one-third of the members of the Syrian Constitutional Committee, is a

basic entry point from which to communicate the demands of the broader civil society with regard to constitutional and legal reform. However, this access will remain of symbolic value, and with limited impact, unless it is accompanied by a set of basic steps, including:

- That the Syrian Constitutional Committee works to link constitutional reform to a process of comprehensive reform of the country's legal system. This includes consensus on the future electoral system, its features, regulations, and implementing regulations, and rejecting any attempt to impose an electoral system that seeks to consolidate the influence of de facto forces or perpetuate political and ideological polarization.

- That the civil society bloc in the Syrian Constitutional Committee seeks to expand its participatory roles. This can be achieved through a series of consultative meetings and community dialogues with the widest possible segment of civil organizations and bodies operating inside and outside Syria. This process may lead to building consensus, when possible, on the principles and features of a future electoral system in Syria, and the different roles of civil society in any future Syrian elections.

#### 4. At the local and international levels

- Raising the institutional capacities of Syrian civil society organizations with regard to their participation in all stages of the electoral process, through:

- Holding dialogue workshops aimed at transferring expertise and knowledge between local and non-Syrian civil institutions that have played different roles in regions or countries that have witnessed transitional elections, such as Tunisia, Bosnia, Indonesia, Ghana, or Chile. This is pertinent since the local perspective on the experiences of these organizations and institutions may give a more accurate and realistic impression of the lessons learned for their experience and participation, compared to the experiences of international or regional organizations.

- The involvement of Syrian civil society organizations, particularly those established outside Syria, in monitoring the electoral processes in the countries in which they operate, and transferring this knowledge and experience gained to the widest possible range of civil actors inside Syria.

- Conducting a series of training workshops with experts and human rights defenders, both Syrian and non-Syrian, regarding electoral systems, their judicial and legal forms and determinants, and their political and social consequences.

■ Working with the widest possible range of civil actors to develop a vision for the electoral system that is most appropriate from their perspective. This can achieve the highest levels of representation, transparency, integrity and accountability, and ensure the participation of all Syrians inside and outside Syria and would protect the role of civil society in community oversight in at all stages of the electoral process. It is also necessary to convey this vision, or all possible visions, to the parties involved in the political process such as the civil society bloc within the Constitutional Committee and the team of the UN Special Envoy to Syria.

■ Putting pressure on international donors to provide financial, technical, and logistical support to Syrian civil society organizations to establish long-term programs centered around:

- Raising societal awareness about political participation and electoral culture.
- Training on advocacy campaigns and community mobilization in a way that applies pressure towards representing the demands and interests of the widest possible segment of society, specifically women and marginalized groups such as internally displaced persons and people with physical disabilities.
- Training on the different roles of civil society at all stages of the electoral process, specifically those related to direct community oversight over electoral centers, candidacy campaigns, and documentation of electoral violations.

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