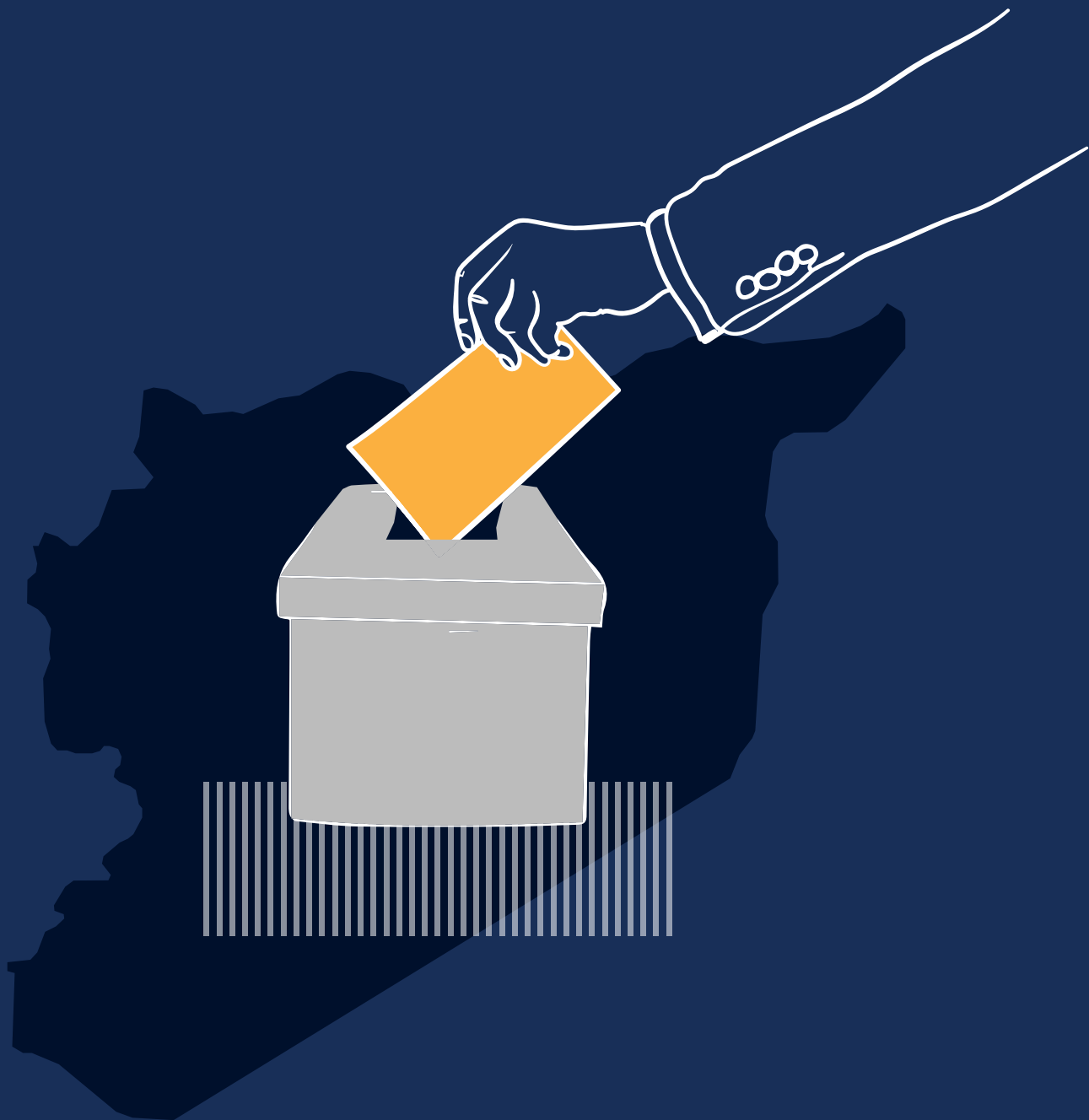




# Electoral Reform and Democratic Transition in Syria

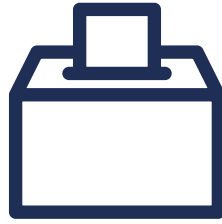


اليوم التالي  
لدعم الانتقال الديمقراطي في سوريا



THE DAY AFTER  
Supporting Democratic Transition In Syria

# Electoral Reform and Democratic Transition in Syria



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**

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## Executive Summary

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.

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 coun-

tries 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. Moreover, elections are not only an individual right, but they also impact state-building and sustainability, and are a means of transferring and rotating power by peaceful means, thus avoiding conflicts, monopolies over power, and entrenched dictatorships. The electoral process also contributes to deepening the citizen's sense of their commitment to the laws emerging from an elected political authority if they participate in elections and believe in the legitimacy of parliaments and governments.

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.

While electoral rights are of a universal nature and are required to be implemented in all countries alike, the authors of this report have taken the political, social, and cultural context of Syria into consideration. Syria contains not only a diverse ethnic and religious demographic composition but has also been witness to the proliferation of sectarian strife, discrimination, marginalization, societal fissures, and authoritarianism which has resulted in decades of absence of free and fair elections, as well as the conflict and war of the last decade that have taken on multiple manifestations.

Hence, it is necessary to move towards an electoral system that could contribute, as much as possible, to reducing religious, sectarian, ethnic, and tribal affiliation, and alignment, albeit one that does not overlook the necessity of representing all segments of the people in positions of power. For example, exclusion and narrow social affiliations can be mitigated through the proper division and delimitation of electoral districts in areas with homogeneous ethnic and religious communities in a manner that preserves their right to choose their representatives. However, it must take into account the need to move away from sectarianism, partisan polarization, and ideologies that



are in conflict with the state of citizenship. Furthermore, a choice of electoral system that is most appropriate and optimal for the Syrian context must also contribute to achieving the participation of people from multiple backgrounds on the same electoral lists. As such, electoral culture can progress towards a state in which candidates are selected according to their electoral programs, reputations, and competences, and not their social affiliations. This, in turn, aims to ensure the accuracy, validity, broadness and inclusion of all segments of the people, taking into account the good participation of women in the political process. The report's authors also did not neglect 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.

# Introduction

## I. General Context

The right to participate in free and fair elections is one of the most important political rights enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>[1]</sup> Elections are an essential and indispensable pillar of any democracy, as it is a vital means by which individuals can participate in the management of their country's public affairs and achieve the peaceful transfer of power, leading to the emergence of a political system of rule that expresses the will of citizens. Moreover, elections play an indispensable role in achieving political and social stability and building sustainable peace, thus averting conflicts and the emergence of monopolies over political power through autocratic regimes. Electoral systems also contribute to deepening the sense of citizenship and the rule of law,<sup>[2]</sup> and achieving peaceful competition over political rule through the ballot. This is even more pronounced in countries that have suffered political crises and armed conflicts, and those that have seen grave violations of human rights –as is the case in Syria. Such contexts require the building of a legitimate, democratic system of rule that emerges from popular will, where free and fair elections in a safe, neutral and stable environment will contribute to achieving sustainable stability and peace.

Alone, the ability to hold elections does not indicate that a system of government in a given country had transitioned away from authoritarianism, nor can it then be considered democratic by default. Free and fair democratic elections cannot be achieved without applying the principle of rule of law and adhering to international election integrity standards contained in international human rights instruments and affirmed by the practices in most countries and international organizations involved in elections around the world. These standards include guarantees related to the protection of the right to free expression, the right to form parties and associations, equality between candidates and voters in terms of the weight ascribed to their votes, as well as the prohibition of arbitrary detention and torture, the independence of the judiciary, and other human rights guarantees.

In Syria, and since the coup d'état of March 8, 1963, and the Baath Party's seizure of power in the country, restrictions on fundamental liberties have impeded any democratic practices, depriving the citizens of Syria from any participation in choosing their

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[1] For short, it will henceforth be referred to as the Covenant.

[2] The rule of law is defined as “a principle of governance in which all persons, institutions, and public and private entities, including the state itself, are accountable to laws that are publicly promulgated, applied equally to all, are governed by an independent judiciary, and consistent with international human rights norms and standards.” For more, see: Report of the United Nations Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616), 23 August 2004, available in English at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2004/616](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616) and the official Arabic translation at: <https://www.un.org/ruleoflaw/ar/what-is-the-rule-of-law>

representatives through free and fair elections. Furthermore, these restrictions were promulgated as a result of the imposition of a state of emergency during the Baath Party coup<sup>[3]</sup> and the consequent legislations that violate the most basic standards of democracy and human rights, and that effectively criminalized any form of political activity. It can therefore be said that, under Baath Party rule, Syria has not undergone any free or fair elections, whether presidential, parliamentary, or local, or even at the level of trade unions, student associations, or political parties.

This situation did not shift in any meaningful way after 2011, as legislative and constitutional reforms adopted in response to the popular movement's pressures were merely pro forma measures aimed at containing popular outrage. These measures failed to achieve any progress on the path towards political pluralism or guarantee rights and freedoms, including electoral rights. Security apparatuses persisted in their well-documented track record of brutality and violence against citizens, while political dissidents were tried before exceptional courts as per 'counter-terrorism' legislation.

Moreover, the constitution of 2012 made no material progress with regards to the achievement of a legal environment conducive to elections, including the exercise of electoral rights. On the contrary, the adoption of this new constitution coincided with the issuance of a legislative package dedicated to maintaining complete control by the executive, which included laws governing political parties, the media, and electoral processes and procedures.

In the face of this legislative and institutional context, which is devoted to the service of the Syrian regime, Syrians today lack any capacity to exercise their right to political participation or manage the conduct of their public affairs through elections. As such, no elections held within this environment could express the will of the Syrian people or achieve a peaceful political transition, stability, or sustainable peace in the country. Therefore, the success of any future elections in Syria will be primarily dependent on comprehensive legislative reform, not only to amend the constitution and laws that directly regulate elections, but all laws that impact the conduct of electoral processes such as those related to the formation of political parties and civil society organizations and their activity, as well as freedom of expression and media neutrality.

It is also necessary to reform the institutions that provide effective guarantees to the freedom and integrity of elections, such as the judiciary, security, and media, enabling these institutions to be independent, impartial, and able to protect the rights and liberties of citizens according to the principles and standards of the rule of law.

The process of electoral reform in Syria also requires ensuring full equality between citizens and the rights of marginalized social groups and communities. Moreover, it must not overlook the rights of women and displaced persons, both internally and externally, and the need to strengthen the role of Syrian civil society and the participation of

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[3] The state of emergency was imposed by Military Order No. 2 issued by the National Council for the Revolutionary Command (NCRC) on March 8, 1963.

political parties in the elections. It is also necessary to improve deteriorating economic conditions in Syria as well as the country's infrastructure which was severely damaged over the past decade. An effective election process also requires the provision of sufficient security and stability and ensuring favorable security conditions, and necessitates taking measures in the area of transitional justice that include the cessation of arbitrary arrest and detention, the release of political prisoners and detainees, disclosing the fate of forcibly disappeared persons, holding accountable those responsible for serious crimes and atrocities, as well the departure of foreign militias and military forces from Syria.

In the context of achieving a political settlement necessary to end the Syrian crisis, in December 2015, the United Nations Security Council unanimously adopted Resolution 2254 as the basis for a political solution that must be Syrian-led and facilitated by the United Nations. This resolution constitutes the legal framework for the current political negotiations seeking a political solution in Syria. Resolution 2254 explicitly supported holding "free and fair elections, pursuant to the new constitution, to be held within 18 months and administered under United Nations supervision, 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..."

In September 2019, within the framework of implementing Security Council Resolution 2254, the Secretary-General of the United Nations announced the formation of the 'Constitutional Committee.' The Committee included 50 representatives of the Syrian regime, 50 of the Syrian opposition, and 50 of Syrian civil society, with the objective of constitutional reform for Syria. After the Constitutional Committee finishes drafting a new constitution for the country, the next step is set to be holding a referendum on the new constitution, and then holding free and fair elections as stipulated in Resolution 2254.

Available tracks to reach a political settlement in Syria have faltered, and it remains impossible to hold free and fair elections without a comprehensive political solution that guarantees dismantling the Syrian regime and reinstating security and stability. However, questions persist in regard to what reforms are required in Syria in order to hold future elections that are free, fair, and inclusive of all Syrians including those residing within Syria and abroad. Electoral processes are complex and challenging, and to hold elections requires substantial financial resources, technical expertise, and political consensus among all concerned parties, and therefore they require extensive research and planning in advance. This is especially true in a country such as Syria which has suffered large-scale conflict and grave violations of human rights, and which has not had any real electoral experiences over the past five decades.

## II. 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.

## III. 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:

1. 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 provi-

sions, 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.

2. 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.

3. 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.

4. 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.

## **IV. Report Structure**

This report includes five main sections. The first section discusses the absence of the legal and institutional environment necessary for the rule of law and the state of citizenship in Syria, by reviewing Syrian legislation related to elections and analyzing it in light of international election integrity standards. This section examines the body of Syrian legislation that perpetuates autocracy and human rights violations and constitutes an obstacle to the conduct of free and fair elections in Syria.

The second section tackles the impact of the electoral system and the division of

electoral districts on the political future of Syria, including the prospect of fair and true representation of all segments of Syrian society and the building of resilient, democratic government institutions. For this purpose, the section provides an overview of various electoral systems, examines their strengths and weaknesses. It also addresses the issue of electoral district division and its forms, analyzing the current electoral system and electoral districts currently adopted in Syria, and the ways in which they contravene international standards for the validity and accuracy of representation. After defining the desired outcomes of the electoral system and the division of districts and taking into account the particularity of the Syrian context in terms of its religious and ethnic diversity on the one hand, and the absence of democratic practices and the unfolding conflict on the other, this section ventures to recommend a number of models of electoral systems that can be adopted in Syria during the transitional period.

The third section tackles the issue of election management, and the importance of forming an independent body to administer and supervise elections. It discusses the means of establishing such an electoral management body (EMB), ensuring its independence, selecting its members, and defining its tasks, and the challenges it could face in carrying out its duties. Moreover, this section addresses the role that the international community, represented by the United Nations, can play in managing and supervising future elections in Syria, especially via the implementation of the provisions of Security Council Resolution 2254. It cites some examples of the supervisory role played by the United Nations in other countries, as well as other potential roles through which the UN can support the electoral process in Syria.

The fourth section of this report addresses possible guarantees for election freedom and integrity, by focusing on three main areas: the judiciary, the security services, and the media. It tackles the various roles played by the judiciary as one of the most important guarantors of the freedom and integrity of elections, in addition to the legal obstacles that can hinder this role in the Syrian context and proposes necessary constitutional and legislative reforms. This section also addresses the role of the security services in providing electoral security in Syria, reviewing the challenges and the reforms required in this regard. Finally, the section addresses the importance of the media as another guarantee for free and fair elections, and the possible role of the media in future elections, as well the most prominent challenges and proposed solutions for organizing the media's role and actualizing it.

As for the fifth and final section of this report, it addresses the means of enhancing participation in future Syrian elections through four main themes, namely: strengthening the ability of political parties to participate in elections, the role of Syrian civil society, enabling non-residents of Syria to participate in the elections, and women's political participation. Similarly, to the previous sections, this section also examines the most pertinent challenges that will face these segments of Syrian society in future elections, offering suggestions and recommendations that are relevant to this context.

## 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**

Before discussing present conditions Syrian, consolidated since 2011 following the start of the Syrian uprising against the Assad regime, we return to the roots that marked the emergence and rule of the Syrian regime, and its pillars which undermine any prospect of democracy and rule of law –and thus an environment conducive to elections. Such an environment requires the restructuring of the Syrian state to overcome factors disruptive to democracy, which will be demonstrated in the first part below, by highlighting the most prominent Syrian legislation relevant in this context. The second part of this chapter examines the persistence of such legislation after the uprising of the Syrian people in 2011 and highlights additional complexities and challenges to having an environment conducive to elections which were generated by the recent years of conflict.

#### **First: The Roots of the Lack of Rule of Law and Citizenship Under the Syrian Regime**

The modern state is based on democracy and the rule of law. It is grounded in a political system emanating from the will of citizens who determine their system through free, fair, and periodic elections. Democratic countries are characterized by the presence of free press and independent media; freedom to form parties and associations; freedom of assembly and protest; separation of legislative, executive, and judicial powers; rotation of power; transparency and accountability; the absence of ideological governance; as well as the elimination of all forms of discrimination between citizens and the promotion of political participation for women and marginalized groups. Free and fair elections are an indispensable part of any democratic state system and are therefore inseparable from it and cannot in any case precede the democratic environment that constitutes a necessary and prerequisite condition for it. Elections that take place under autocratic regimes lack the minimum elements of justice, integrity, and competitiveness, as was the case with the present political system in Syria which in no way achieves rule of law or democracy.

## 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.

In democratic countries, the ruling authority is one that emanates from the ballot box and is then mandated to organize the affairs of government in accordance with the laws in effect. Therefore, such an authority remains but one of the pillars of the state and does not in any case have control over state institutions nor devote them to serving its interests. However, the present Syrian regime has assumed power illegally before consolidating control over the state and its institutions, and did not adhere, over decades of its rule, to the principles of rotation or transfer of power. This regime, represented by the Arab Socialist Baath Party, came to power through the coup of March 8, 1963,<sup>[4]</sup> later known as the “March 8 Revolution” which instantiated its aims in all state institutions, including the educational system, becoming one of the pillars of rule in Syria. As for the fundamental pillars of the Syrian regime, they are the dominance of the executive branch particularly represented by the presidency and the security services; the penetration of the Arab Socialist Baath Party and its ideology into all avenues of Syrian life; the consolidation and promotion of sectarian division; and the employment of religion in politics. These pillars are the very elements that undermined the existence of democracy, the rule of law, and citizenship.<sup>[5]</sup>

Finally, 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

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[4] Hafez al-Assad was involved in this coup as a member of the Military Committee of the Baath Party’s Syrian Regional Branch.

[5] The state of citizenship is consolidated through the equitable treatment of all citizens in terms of rights and responsibilities before the law and the courts. This requires the impartiality of the state in regards to all religions and ethnicities, and rooting out all forms of discrimination both in legislation and practice.

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>[6]</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.” Article 286 also provides for similar penalties for anyone who disseminates news that they know to be false or exaggerated and which could “weaken the spirit of the Nation.” As for Article 306 of this law, it criminalizes anyone who establishes an association with the intent of changing the nature of the state’s economy or society, or the fundamental conditions of society,

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

thus disrupting any civil society activity unless it serves the interests of the ruling regime.<sup>[7]</sup>

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>[8]</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>[9]</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>[10]</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>[11]</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

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[7] 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.

[8] 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.

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

[10] 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>.

[11] Interview with a security expert.

duties such as Legislative Decree No. 14 of January 15, 1969.<sup>[12]</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>[13]</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. This further undermined the state of citizenship and promoted religious, sectarian, and ethnic divisions whose ramifications will be among the major obstacles to democratic change and to holding national elections that are not based on sectarian or ethnic representation. It may even lead to a political consensus that reproduces the experiences of some neighboring countries that have explicitly adopted sectarian representation quotas in their constitutional and legal structures.<sup>[14]</sup> These divisions are due to many factors, including the mechanisms and policies of the Syrian regime and legislation in effect which discriminates between citizens, on the one hand, and imposes on them religious and sectarian affiliation, on the other. For example, Syrian personal status legislation varies according to the religious affiliation of each citizen, thus leading to the application of different laws to citizens of the same state and reinforcing discrimination between Muslims and others on the one hand, and between men and women on the

[12] 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.

[13] "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.

[14] In Lebanon, for instance, there are various religious and sectarian parties: Christian, Shiite, Sunni, etc. that gravely undermine national cohesion, instead promoting subnational affiliations that obstruct democratic, political, and even economic development. The Lebanese constitutional structure attests to the legalization of the Lebanese sectarian system. According to Article 95 of the current Lebanese Constitution, as per the 1990 amendments, positions must be distributed among religious sects. The Taif Agreement came to reinforce this sectarian division, but it stipulated the need to gradually abolish sectarianism, an aim not achieved until today.

other.<sup>[15]</sup> The sectarian nature of the Syrian regime, and its use of minorities to retain power, remain on clear display despite their exacerbation of tensions between Syria's various religious communities in recent decades.

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>[16]</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. On November 11, 1986, al-Hasakah Governorate issued a decision bearing the number 1012/S/25, according to which the use of the Kurdish language in the workplace was prohibited. This was followed a few years later by another decision by Muhammad Mustafa Mero,<sup>[17]</sup> the governor of al-Hasakah at the time, affirming the earlier decision and adding the prohibition of non-Arabic songs in weddings and holiday celebrations.

These national, religious, and ethnic fissures in Syria were also promoted by the public education system in Syria which overlooks education on human rights and the rule of law and contains in its curricula terms that incite extremism. For decades, the Syrian public education system has been used as a tool to promote Arabist thought devoted to the ideology of the Arab Socialist Baath Party, in clear violation of the rights of non-Baathists and the cultural heritage of non-Arab minorities some of whom have lost their sense of belonging to the country and opted for secessional aspirations. The Syrian regime has adopted different religious education curricula according to each citizen's religious affiliation, neglecting education on the religions or identities of other groups which could contribute to religious and ethnic coexistence. Furthermore, this system inculcated students with the ideological contents of Arab nationalism and the ideals of the ruling party and the person of the President of the Republic.

#### 4. Legislative policies reflecting the 1973 Constitution

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>[18]</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 same article which then adds that Syria is a member of the Union of Arab Republics

[15] For more, see: Nael Georges, *Governing Diversity in the Personal Status Domain in the Arab Mashreq States*, Arab Reform Initiative, Paris, June 2013, page 8, available [here](#).

[16] 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](#)" - [Syrians for Truth and Justice \(stj-sy.org\)](#) accessed on 15 May 2021.

[17] This is decision No. 1865/S/25 on 13 March 1989.

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

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.”

Beyond lacking explicit constitutional recognition of the cultural identity and linguistic rights of non-Arabs in Syria, the articles of the 1973 Constitution consider all Syrians to be Arabs, which is evident from several texts including Article 134 which states that, “Sentences are issued in the name of the Arab people of Syria.”<sup>[19]</sup> The bias of the 1973 Constitution was not confined to national and ethnic minorities, and extended to include religious communities as evident from Article 3 which requires the religion of the head of state to be Islam.

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>[20]</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>[21]</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

[19] According to Article 21 of this constitution, “The educational and cultural system aims at creating a socialist nationalist Arab generation which is scientifically minded and attached to its history and land, proud of its heritage, and filled with the spirit of struggle to achieve its nation's objectives of unity, freedom, and socialism (...).” Article 23 considers that “The nationalist socialist education is the basis for building the unified socialist Arab society. It seeks to strengthen moral values, to achieve the higher ideals of the Arab nation (...).” As for Article 7 related to the constitutional oath, it commits to “work and struggle for the realization of the Arab nation's aims of unity, freedom, and socialism.” This obligation extends to the armed forces and other defense agencies that, according to Article 11, “are responsible for the defense of the homeland's territory and for the protection of the revolution's objectives of unity, freedom, and socialism.”

[20] 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.

[21] 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.

which would be responsible for his trial –only in cases of high treason.<sup>[22]</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>[23]</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.

## **Second: An Arsenal of Legislation Unfavorable to Elections Persists After 2011**

In Syria, developments since 2011 demonstrate that there remains a long way to go before the emergence of a democratic atmosphere required to hold legitimate, free, and fair elections. Elections cannot succeed within the current political and legislative context, which is further complicated by internal conflict, foreign interventions, and the accompanying crimes against humanity and war crimes that have affected countless Syrians over the past decade.<sup>[24]</sup>

### **1. 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>[25]</sup> However, this legislative gap limiting the power of the security services was quickly compensated for through

[22] 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."

[23] 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.

[24] Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, forty-sixth session AHRC/46/55, 11 March 2021, p. 26.

[25] This was on April 21, 2011.



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>[26]</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>[27]</sup> In Article 35, the decree states that, “National Progressive Front [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>[28]</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>[29]</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.

[26] 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>

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

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

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

## 2. 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>[30]</sup> The referendum was described by some opposition figures and officials from other countries as "farcical."<sup>[31]</sup> This is similar to the presidential elections that took place in 2014, held only in areas controlled by the Syrian regime and which, according to Syrian government sources, resulted in a 88.7% victory for Bashar al-Assad.<sup>[32]</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." The new constitution also neglects to mention that the nature of the state is secular or civil, and even retains the religiously biased Article 3 mentioned above. However, it added to it a paragraph stating that the personal status of religious sects is protected and observed, without making available an institution of civil marriage.<sup>[33]</sup> Furthermore, the new constitution also failed to recognize as official languages other than Arabic,<sup>[34]</sup> and continues to consider all Syrians as Arabs,<sup>[35]</sup> continuing to deny non-Arab Syrian communities their existence.

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[30] 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.

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

[32] France 24, "Bashar al-Assad Wins Presidential Elections with 88.7% of the Vote," June 4, 2014, link: <https://www.france24.com/en/20140604-syria-assad-wins-presidential-poll-landslide>, accessed on 15 May 2021.

[33] Nael Georges, *Governing Diversity in Personal Status*, *ibid.*, p. 6.

[34] See Article 4 of this Constitution.

[35] As stated in the preamble to this constitution, many Arab nationalist terms such as "Arab civilization": "the Syrian Arab"; and "the heart of the Arab nation."

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 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>[36]</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>[37]</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>[38]</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>[39]</sup> while poverty rates in Syria reached unprecedented levels.<sup>[40]</sup>

The last decade has also resulted in millions of Syrians becoming refugees whose safe and dignified return must be ensured. What must also be guaranteed is their exercise of electoral rights, by granting citizenship and identity papers to those deprived of them, registering them on electoral lists, and amending legislation that restricts their rights to vote and run for office.<sup>[41]</sup> Beyond the absence of rule of law and citizenship, and the persistence of a legislative structure devoted to the authoritarian regime, the fragile

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

[37] 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.

[38] See Article 11 of this constitution.

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

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

[41] For more, Syrian Association for Citizens Dignity (SACD), "Safe Environment Before Everything Else: Why elections in Syria are illegitimate without political solution," January 2021, link: <https://syacd.org/safe-environment-before-everything-else-why-elections-in-syria-are-illegitimate-without-political-solution>, accessed 15 May 2021.

security situation and de facto partition of Syria into several zones of control –of the regime, opposition factions, and the Syrian Democratic Forces, all render impossible the emergence of an environment conducive to elections. In addition to canceling or amending the above-mentioned laws and adopting new legislation that upholds the rule of law and citizenship, it is also necessary to achieve the concomitant democratic transition and implement the main elements of transitional justice such as truth finding and restitution for victims or their families. It is also necessary to ensure a minimal level of accountability for the perpetrators of serious crimes,<sup>[42]</sup> in order to achieve national reconciliation and achieve justice and sustainable peace. Only then can free and fair elections begin to take place in Syria.<sup>[43]</sup>

## Chapter 2: International Law and Elections in Syria

Some international organizations have made pioneering contributions in the field of legal modernization and reform, and the trend towards democracy, especially through the adoption of international human rights instruments and mechanisms to monitor their implementation, and the provision of assistance and support in this field. However, in many countries including Syria, the state of human rights remains very poor for numerous reasons such as the absence of the necessary political will to implement human rights instruments aimed at achieving democratic change and building a state of law and citizenship. This part of the report discusses the most prominent international instruments and standards related to elections, especially those adopted within the United Nations framework to which Syria is a party. We will then move on to exploring Syria's position on these instruments and standards, and specifically its participation in drafting and ratifying them.

### First: International Conventions and Standards Related to Elections

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.

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[42] What is intended here are crimes against humanity and war crimes.

[43] For more on the preconditions for successful elections, see: Frank McLoughlin, Laying the Foundations for Future Elections in Syria, International IDEA Discussion Paper No. 1/2018, 2018, pp. 11-12, link: <https://bit.ly/3CkvbZr>.

## 1. 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>[44]</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>[45]</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>[46]</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.”

The Committee on Civil and Political Rights (CCPR), serves as a monitor for the ICCPR and, in its General Comment No. 25, devotes an extensive interpretation of the text of the aforementioned Article 25.<sup>[47]</sup> This General Comment, entitled “The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service,” includes a number of fundamental rights stemming from Article 25, including the right of peoples to choose their constitution and their form of government. In this General Comment, the CCPR gives an expansive interpretation of the “conduct of public affairs” which involves the exercise of political power including legislative, executive, and

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

[45] 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.

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

[47] In its 57th session in 1996.

administrative powers. The concept also covers various aspects of public administration, as well as “the formulation and implementation of policy at international, national, regional and local levels.” In several paragraphs of this General Comment, the CCPR stresses the prohibition of discrimination between citizens in their enjoyment of the rights set forth in Article 25. According to Paragraph 2 of the General Comment, this includes discrimination “on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The CCPR did not neglect to prohibit abuse of power by elected representatives who “do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions.”

Furthermore, in Paragraph 11 of the General Comment, the CCPR calls for the legal prohibition of any “abusive interference with registration or voting as well as intimidation or coercion of voters.” The Committee stresses that citizens may not be deprived of their rights protected under Article 25, either as voters or as candidates for election, unless there are reasonable and objective conditions.<sup>[48]</sup> Paragraph 20 of this General Comment adds that an independent electoral authority should be established to supervise elections and ensure their impartiality and conduct in accordance with the laws in force, and consistent with the provisions of the ICCPR.<sup>[49]</sup> Other UN bodies have expressed concern for electoral rights, including the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which prepared and adopted the draft general principles on freedom and non-discrimination in the issue of political rights.<sup>[50]</sup> In this document, consisting of a preamble and 15 articles, the Sub-Commission provided important interpretations and definitions of many electoral rights, some of which will be referenced below.

Other such international agreements included electoral rights, such as the International Convention on the Elimination of All Forms of Racial Discrimination<sup>[51]</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, eco-

[48] See Paragraphs 4, 14, 15, 16 and 23. For example, mental disability and age of eligibility are considered reasonable grounds for restricting the right to vote or run for office.

[49] For more on its contents, see: CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), Committee on Civil and Political Rights, Fifty-seventh Session (1996), link: <https://www.refworld.org/docid/453883fc22.html>, accessed on 13 July 2021.

[50] During its 14th session in 1962.

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

conomic 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>[52]</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.” Paragraph (b) of this article also adds that women have the right to “participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.”

Similarly to the instruments cited above, in 2006, the Convention on the Rights of Persons with Disabilities (CRPD) came to affirm equality in its preamble,<sup>[53]</sup> general principles (Article 3), and in many of its articles.<sup>[54]</sup> Article 5 of the CRPD is entitled “Equality and non-discrimination,” and its second paragraph states that “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.” Paragraph 3 requires States Parties to “take all appropriate steps to ensure that reasonable accommodation is provided,” which certainly includes facilitating the exercise of the right to vote and to stand for elections.<sup>[55]</sup> This was also confirmed by Article 29, which elaborated in detail the rights of persons with disabilities to participate in political and public life on an equal basis with others. It stipulated ensuring the right and opportunity for disabled persons to vote and be elected, and that “voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.”

Similarly, the United Nations General Assembly paid attention to democracy and the rights related to elections. This is primarily evident through its sixtieth session in which it emphasized “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization.”<sup>[56]</sup> The resolution called upon the United Nations to continue providing technical advice, support, and all forms of assistance to states and governments, and their electoral institutions, at their request.<sup>[57]</sup> The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, gave particular importance to providing assistance to governments to conduct free and

[52] 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.

[53] This was in accordance with UNGA Resolution A/RES/61/106, adopted by the General Assembly on 13 December, and entered into force on 3 May 2008.

[54] See articles 1, 2, 4, 5, 6, 7, 9, 10, 12, 13, 23, 24, 25, 29 and 30.

[55] The last paragraph of Article 5 considers that, “Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”

[56] Also see: United Nations General Assembly Resolution 58/180 of December 22, 2003.

[57] Also see: UN General Assembly Draft Resolution, Third Committee, Sixtieth Session, A/C.3/60/L.43, 5 November 2005.

fair elections, also at their request.<sup>[58]</sup> Finally, we must recall the additional legal obligation to Syria by virtue of UN Security Council Resolution No. 2254, which stipulated holding free and fair elections, pursuant to a new constitution and “to the satisfaction of the governance and to the highest international standards of transparency and accountability, with all Syrians, including members of the diaspora...”.

## 2. Elections at the regional level

There are many regional charters that address issues of political participation, elections, and other rights that enhance them. The European Convention on Human Rights,<sup>[59]</sup> adopted by the Council of Europe,<sup>[60]</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>[61]</sup> on September 15, 1997 before being reviewed and a new version adopted on May 23, 2004.<sup>[62]</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>[63]</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 associations; and the right to peaceful assembly.

At the level of the Organization of Islamic Cooperation (OIC),<sup>[64]</sup> formerly known as the Organization of the Islamic Conference, a set of human rights instruments were adopted that, much like the Arab Charter,<sup>[65]</sup> fluctuate in their preambles and contents between attachment to the principles of Islam, on the one hand, and adherence to

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[58] Also see Section C: “Cooperation, development and strengthening of human rights,” Vienna Declaration and Programme of Action, *ibid*.

[59] 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)

[60] 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.

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

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

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

[64] One of the world’s largest and most significant Islamic inter-governmental organizations with 57 member states, that include Syria.

[65] The preamble to the Arab Charter states that the agreement to this charter came “to fulfill the eternal principles of the true Islamic religion and other monotheistic religions of brotherhood, equality, and tolerance among human beings.” It also “confirms the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, and the provisions of the two international United Nations Covenants, on civil rights, and on political, economic, social and cultural rights”, however while “taking into account the Cairo Declaration on Human Rights in Islam.”



United Nations documents on the other. The Dhaka Declaration on Human Rights in Islam in 1983, and the Cairo Declaration on Human Rights in Islam in 1990, are among the most significant OIC documents related to human rights.<sup>[66]</sup> Both declarations state the rejection of forms of discrimination, including based on gender or religious belief,<sup>[67]</sup> with an emphasis on adherence to the provisions of Islamic law and “submission to God.”<sup>[68]</sup> The contents of these two declarations remain very inadequate with regard to electoral rights and related rights as contained in the above-mentioned international instruments. For example, the Cairo Declaration makes no explicit mention of elections.<sup>[69]</sup>

### 3. International standards for democratic elections

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>[70]</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.

As for secrecy of the vote, it is applied, according to Article 6 of the aforementioned draft of the Sub-Commission on the Promotion and and Protection of Human Rights, as “every voter shall be able to vote in such a manner as not to involve disclosure of how he has voted or intends to vote.” The draft added that, “No voter shall be compelled to state, in any legal proceeding or otherwise, how he voted, or intends to vote, and no one shall attempt to obtain from any voter, directly or otherwise, information as

[66] The Dhaka Declaration was adopted In December, during the Fourth Conference of Foreign Ministers of the Organization of Islamic Cooperation in Dhaka (Bangladesh). The Cairo Declaration was adopted on August 2, 1990, by the foreign ministers of the Organization of Islamic Cooperation, during the Nineteenth Islamic Conference held in Cairo. See Organization of Islamic Cooperation Resolution No. 49/19-b.

[67] See Paragraph 7 of the Dhaka Declaration, and Article 1 of the Cairo Declaration, *ibid*.

[68] See Paragraph 7 of the Dhaka Declaration, *ibid*.

[69] However, Article 23 referred to the right to participate in the conduct of public affairs.

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

to how he has voted or intends to vote.” Although international instruments address the issue of the periodicity of elections, they did not refer to specific time intervals between elections. The principle of periodic elections is related to ensuring that “the will of the people at all times as the basis of the governing authority.”<sup>[71]</sup> The Arab Electoral Dictionary states that the implementation of the principle of periodic elections requires that they be held at reasonable intervals, and that this periodicity allows, “for the achievement of the principle of peaceful transfer of power, as it provides the electorate the possibility of holding the elected bodies accountable by renewing or lifting confidence from candidates in light of their fulfillment of the contents of their electoral programs, and their commitment to the promises made in their electoral campaigns, as well as the extent of the reality of their programs and their ability to achieve them.”<sup>[72]</sup>

With regard to equal and universal suffrage, this means that all citizens have the right to vote in all elections that take place in their country, and that every citizen has a vote that carries the same weight as the other votes. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in Article 5 of its above-mentioned draft, considered that equality in universal suffrage is achieved when electoral districts are “established on an equitable basis such as would make the results most accurately and completely reflect the will of all the voters” when voting is conducted on the basis of electoral districts.<sup>[73]</sup> Finally, it is necessary to provide the possibility of accountability during the elections, by enabling citizens who are exposed to violations of their rights to file complaints in accordance with the law.<sup>[74]</sup>

## **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

[71] Draft General Principles on Freedom and Non-discrimination in the Matter of Political Rights, Article 7, *ibid.*

[72] Arab Electoral Dictionary, *ibid.*, p. 183.

[73] For more on international commitments to elections, see: International IDEA, *International Obligations for Elections: Guidelines for Legal Frameworks*, Editor Domenico Tuccinardi, 2014, 346 p.

[74] See Article 2, Paragraph 3 of the International Covenant on Civil and Political Rights. Also see: Section Four, Chapter One of this report.

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 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>[75]</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>[76]</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>[77]</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. Reservation also came to Article 2 which states that “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” In order to achieve this, the article imposes commitments on States Parties including the incorporation of the principle of equality on the basis of sex or gender in all their legislations; the prohibition of all discrimination against women; and the imposition of legal and effective protection of their rights.

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

[76] Ibid.

[77] 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.

Additionally, the last paragraph of the article states “repeal all national penal provisions which constitute discrimination against women.”

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. This is especially relevant in light of the lack of independence of the Syrian judiciary and the absence of effective local mechanisms to voice grievances against violations of basic rights by state agencies. 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 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>[78]</sup> It is reported that, with regard to the principle of sovereignty, Syria had proposed, during the drafting of the CEDAW provisions, the addition of the phrase to eliminate the “interference in the internal affairs of States” after the phrase “aggression, foreign occupation and domination” in the introduction, and this proposal has been accepted as is evident from the current text of the CEDAW.<sup>[79]</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, as well as combating the oppression of the security services and exceptional courts. Although Syria signed the International Convention on the Rights of Persons with Disabilities in 2007 and ratified it in 2009; its implementation on the ground remains fragile, and the importance of this agreement increases in the Syrian case, which led the recent years of war to a sharp rise in the proportion of this category of people who are entitled, among other things, to good representation and political participation.

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

[79] Poin, *Compte rendu* 75, *ibid.*, p. 7.

## 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>[80]</sup> states that, "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."<sup>[81]</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>[82]</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>[83]</sup> 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>[84]</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>[85]</sup>

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

[81] 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."

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

[83] Article two, Paragraph 1, c.

[84] 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."

[85] 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.

### 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>[86]</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.

As a measure of adherence to international conventions, the legislative structures of states party to these conventions can also be reviewed to determine the extent to which their provisions are incorporated into domestic law, or the extent to which there is conflict of contradiction between the two. In the case of Syria, there is conformity between many provisions of the current constitution, and some domestic laws, with the contents of international human rights instruments.<sup>[87]</sup> Meanwhile, many other rights such as equality before the judiciary (Article 14 of the ICCPR) and guarantees related to the principle of separation of powers, good governance, and rotation of power, are absent. Furthermore, as indicated above in the section on the legal environment conducive to elections, Syria continues to adopt and implement an arsenal of legislation that violates international human rights instruments including those relevant to elections. The inconsistency of each of the electoral laws, and successive constitutions, with international standards and instruments will be explored further below, as a section will be devoted to this issue due to its close relevance to the topic at hand.

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[86] 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.

[87] For example, the 2012 Syrian Constitution stipulates the principle of political pluralism and the exercise of power democratically through the ballot box (Article 8), and the equality of citizens in assuming the "functions of public service" (Article 26).

## 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>[88]</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>[89]</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.,

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

[89] 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.

prohibiting abuse of power by the winners of elections and preventing the enactment of laws that are inconsistent with democracy and human rights.<sup>[90]</sup>

### 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>[91]</sup> reinforces sectarianism, and undermines the citizenship of non-Muslims and impacts their integration.

It is also necessary to exclude Bashar al-Assad from the Presidency of the Republic in any elections undergone during the transitional period, and to avoid in the future what he and his father have done by eliminating the transfer of power in Syria. This may be achieved through the inclusion of a constitutional text to specify a maximum of two terms for the presidency, or a stipulation that a candidate may not hold this office for more than 14 years. It is stated in the Syrian Constitution of 1950 that, "The term of the Presidency of the Republic is five full years starting from the election of the president. It may not be renewed until five full years after the end of his presidency."<sup>[92]</sup> Conversely, the 2012 constitution did not impose sufficient restrictions on the term of office of the President of the Republic, or its renewal. According to Article 83, the President of the Republic is elected for a period of seven Gregorian years, renewable for another seven years. This enables the same president to remain in office for 14 years, at least. Perhaps even more striking, Article 87 adds in its second paragraph that, "If the term of the President of the Republic finished and no new president was elected, the Exist-

[90] 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.

[91] 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.

[92] This is contained in Article 72. Such provisions must also be non-amendable, especially considering the multiple amendments to the Syrian constitutions made to serve the ruling regime of the time. In 1948, the Syrian constitution was amended in order to enable President Shukri al-Quwatli to run for a new term, as the previous constitution included a provision similar to Article 72. In a similar case, the age of the presidential candidate eligibility was lowered to apply to Bashar al-Assad in 2000, as explained above.



ing President of the Republic continues to assume his duties until the new president is elected.”

One issue that raises controversy in the Syrian community, is the issue of Article Three, which prohibits non-Muslims from running for the presidency — because it violates the principle of non-discrimination<sup>[93]</sup>, reinforces sectarianism, 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>[94]</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>[95]</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>[96]</sup> is excessive compared to many democratic countries.<sup>[97]</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

[93] As stipulated in accordance with the international standards referred to above and in several articles of the Syrian Constitution of 2012, such as Articles 19 and 33.

[94] 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/3mlJIHz>.

[95] 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.

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

[97] 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>[98]</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, as well as the issue of Kurdish people deprived of Syrian citizenship.

All problems and disputes related to the nomination and election of the President of the Republic, and the renewal of his term, may be overcome by adopting a semi-presidential or parliamentary system of government,<sup>[99]</sup> restricting as much as possible the powers of the President of the Republic, who may enjoy an honorary title in the hoped-for Syrian state. In the case of Syria, it is better to adopt such a system in order to move away from the presidential system of government with broad executive powers, which may contribute to perpetuating the autocratic rule based on cults of personality and the sanctity of the head of state. In such a case, the method of assigning power to the president will certainly have to change, as direct popular voting may be substituted by appointment or election by another body, such as a legitimately elected parliament.<sup>[100]</sup>

## 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>[101]</sup> However, during electoral campaigns, including presidential elections, these campaigns are unregulated as a large number of candidate posters and other media are displayed.

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

[99] For more on the difference between forms of government, see: Markus Böckenförde, Nora Hedling, and Winluck Wahiu, *A Practical Guide to Constitution Building*, Chapter 4: The Design of the Executive Branch, International IDEA, 2011, p. 1 et seq.

[100] For more, see the provisions governing elections in the constitutions of Syria, *ibid.*

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

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>[102]</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." 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>[103]</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>[104]</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>[105]</sup> and neglected to make such guarantees for the youth, people with disabilities, and Syrians displaced outside the country. This last category must be given special constitutional guarantees for the safe

[102] 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.

[103] 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.

[104] 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.

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

and dignified return of displaced persons, as well as their access to their constitutional rights to vote and run for office.

As for religious minorities, especially Christians, the situation is different from the Egyptian context. The political participation of Syrian Christians can be enhanced through mechanisms other than quotas, which may result in an increase in sectarian isolation and religious division, such is the current legal reality in both Lebanon and Iraq.<sup>[106]</sup> Among such mechanisms, the proportional representation system can be opted for in order to allow for the representation of all segments of Syrian society, and another measure can be the division of electoral districts to provide for inclusivity and fairness of elections. In this context, Article 88 of the Syrian Constitution of 1920 stated that, “Each province shall be considered as one electoral district for minorities and shall have a quorum of thirty thousand, and the fraction considered below the quorum is fifteen thousand.”

With regard to Kurds and other ethnic minorities, the new constitution should include guarantees for their linguistic and cultural rights and promote governmental decentralization which can contribute to good management of diversity. Nevertheless, when conceiving of constitutional approaches to the issues affecting minorities, care must be applied that any solutions should contribute to effective representation and integration, rather than strengthening narrow subnational affiliations at the expense of national affiliation. Some constitutions have explicitly provided for measures to avoid this. Article 121 of the Constitution of the People's Republic of Bangladesh prohibits the preparation of electoral lists, or rolls, that classify electors according to religion, race, caste, or sex. In the Syrian context, it is necessary to prohibit, in mixed electoral lists, references to the religions or ethnicities of candidates. However, parties should be forced to include women's representation in their lists, and to achieve representation for the youth and people with disabilities as much as possible.

As for local elections, they are directly related to the issue of decentralization which has a direct impact on the prospect of democratization in Syria, as well as managing ethnic and religious diversity. The 2012 constitution was very brief and restrictive on this matter, unlike the 1920 constitution and the 1950 constitution,<sup>[107]</sup> as well as the constitutions of other Arab countries such as Tunisia. Article 131 of the 2012 Constitution of Syria stipulates that the organization of local administration units is based on the application of the principle of decentralization of authorities and responsibilities, leaving the law to dictate “the way their heads are appointed or elected, their authori-

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[106] For more, see Nael Georges, “Readings in the Legitimization of Lebanese and Syrian Sectarianism” (Arabic), Harmoon Center for Contemporary Studies, December 14, 2020, link: <https://bit.ly/2ZnD0Dq>, accessed on 15 May 2021.

[107] The Constitution of 1950 contained six articles related to the administrative division of Syria, the powers of the heads of administrative units, the heads of departments and provincial councils, the mechanisms for election and nomination, and other points related to decentralization. However, the Constitution of 1920 was more detailed in this regard. For more on decentralization in these two constitutions, see: Munir al-Faqir, “Constitutional and Legal Approaches to Decentralization in Syria: Existing Opportunities” (Arabic), Noon Post, May 6, 2017, link: <https://www.noonpost.com/content/17862>, accessed on 12 June 2021.

ties and the authorities of heads of sectors.” The second paragraph of this article adds that, “Local administration units shall have councils elected in a general, secret, direct and equal manner.”<sup>[108]</sup> However, the local administration laws in Syria have voided decentralization of its substance and enabled the central executive authority to interfere in local elections and tasks of local governance.

Last but not least, 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>[109]</sup> It may also be important to include, in a future constitution, mechanisms for adjudicating electoral disputes, the electoral system to be followed,<sup>[110]</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>[111]</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 parliamentary elections, leaving this to the general Election Law which contravenes international standards, as will be shown in the next section.

## **Second: Syrian Election Laws**

Legislation builds upon constitutionally stipulated rights and elaborates them, and it may not, in any case, conflict with the Constitution. In such a context, the Constitutional Court intervenes to exclude draft laws, or even laws in force, that are inconsistent with the provisions of the Constitution. However, the Syrian Constitution itself contains provisions that violate electoral rights, including discrimination between citizens as explained above. These constitutional provisions influenced election laws

[108] Also see: Article 130 of the Constitution of 2012, which deferred to legislation the task of setting the limits and competencies of administrative units, as well as their financial and administrative autonomy. Article 12 of this constitution stipulates that, “Democratically elected councils at the national or local level shall be institutions through which citizens exercise their role in sovereignty, state-building and leading society.”

[109] 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.”

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

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

that reproduced, or even exacerbated, the violations contained in these constitutions.<sup>[112]</sup> All election laws issued by the Syrian regime contravene international human rights standards, as the most prominent feature of these laws appears to be granting the executive authority, represented in particular by the Ministry of Interior and provincial governors, broad powers that undermine any possibility of holding free and credible elections. This introduces the need for the adoption of new electoral laws in congruence with international standards.

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

The current Law on General Elections of 2014<sup>[113]</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>[114]</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>[115]</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>[116]</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>[117]</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.

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[112] 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.

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

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

[115] 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.

[116] 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.

[117] 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>[118]</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>[119]</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>[120]</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>[121]</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>[122]</sup> According to Article 87, the membership of a member of the People's Assembly can be revoked according to the decision of the Supreme Constitutional Court after they violate any of the conditions for nomination, or the provisions of the internal bylaw of the People's Assembly which states in Article 244 that the Assembly can revoke the membership of one of its members in the event that they “insult the state, its president,

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[118] Article 72 of these regulations.

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

[120] Paragraph 2.

[121] 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.

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

or its flag.”<sup>[123]</sup> Article 51 of the implementing regulations of the Election Law requires that local and foreign media obtain the government’s approval prior to their election coverage.

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>[124]</sup> Composed exclusively of judges, this committee is under the control of the executive authority, as its seven members are appointed by a presidential decree after being nominated by the Supreme Judicial Council,<sup>[125]</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. As for the articles of the current electoral law related to appeals, violations, and electoral crimes, they will be addressed in the section of this report on the judiciary.

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>[126]</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>[127]</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. In 2018, the Assistant Regional Secretary of the Baath Party issued a decision to extend the regime's control over the majority of seats.<sup>[128]</sup> This confirms that decentralization is not proper under authoritarian regimes, and that conditions for successful decentralization, such as the democratization of the system of government, must first be achieved.

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[123] Issued on July 30, 2017. Available on the Syrian People’s Assembly website: <http://www.parliament.gov.sy/SD08/msf/%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85%20%D8%A7%D9%84%D8%AF%D8%A7%D8%AE%D9%84%D9%8A%202017.pdf?fbclid=IwAR1N3bje-UX8qjZX8EMGpHUqWFsHBwVC9FrOAE1sl-w2a5qDpDDPlq0zGqhk>

[124] See Article 10.

[125] See Article 8.

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

[127] See Article 40 of this law.

[128] This decision bears the number 10. For more, see: Enab Baladi’s Investigation Team, “‘Decentralization’ from Baath Party’s Viewpoint,” Enab Baladi, September 5, 2018, link: <https://english.enabbaladi.net/archives/2018/09/decentralization-from-baath-partys-viewpoint/>



## 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>[129]</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 its formation of an EMB independent of the executive, that is capable of carrying out its tasks with total independence, impartiality, and transparency.<sup>[130]</sup> This will be discussed in more detail in the section on election management, due to its decisive role in the conduct of free and fair elections.

A newly enacted election law should also include provisions that provide the opportunity for civil society,<sup>[131]</sup> and possibly international observers, to monitor elections, as well as implement the principle of transparency to increase confidence in election outcomes. Such measures can include the designation of polling stations ahead of election dates, publishing electoral lists, and presenting the number of voters and the election results accurately, in detail, and in the presence of delegates or representatives of candidates and parties.<sup>[132]</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>[133]</sup> The election management body can be entrusted with such responsibilities, especially if it is constituted and its functions are controlled in accordance with international stan-

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

[130] 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.

[131] See Article 20 of the Lebanese Law on Parliamentary Elections No. 44 of June 17, 2017, available here: <https://aceproject.org/ero-en/regions/mideast/LB/lebanon-law-no.44-parliamentary-elections-2017/view>.

[132] Ibid., Article 90.

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

dards. 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>[134]</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>[135]</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>[136]</sup>

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

[135] 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.”

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

## Recommendations

### 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.

## 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

The choice of electoral system adopted in a country, and the method of dividing its electoral districts, are directly associated with the quality of elections there, and it helps determine the shape of the political system that elections produce. An electoral system can affect the extent to which popular representation is achieved in legislation, the presence of an effective parliamentary opposition; the strength and stability (or lack thereof) of a government, consensus or schism between political parties, the eagerness or reluctance of citizens to vote in elections, and the promotion of political participation by women and marginalized groups –or their exclusion. The choice of electoral system is even more important in countries emerging from conflict scenarios, as will be the case in Syria during its transitional period. It may also contribute to reducing societal tensions, and promote national reconciliation through measures including encouraging political parties and social movements with a narrow factional view towards more openness and integration into a comprehensive national structure, expanding their constituencies, and stepping away from exclusionary propositions and rhetoric.<sup>[137]</sup>

The hoped-for electoral system in Syria may produce political consensus in a period of turmoil determined by the outcomes of ethnic and sectarian conflict. In the long term, however, the main goal to be considered is building strong and stable governance institutions that guarantee fair representation for Syrian groups, from which can emerge a democratic system of governance and an end to national schisms. 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>[138]</sup>

[137] For more, see: Arab Electoral Dictionary, *ibid.*, p. 280.

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

The system of elections can affect many aspects of a political system, foremost is the proportionality of the number of seats each party receives to its actual political support, as well as the issue of party pluralism and the representation of women and minorities.<sup>[139]</sup> Beyond these major impacts on political life, the type of electoral system also affects other behaviors, as some electoral systems encourage, or even necessitate, the establishment of political parties, while others revolve around candidates as individuals. Thus, the landscape of party politics that emerges, especially in terms of the number and size of parties in legislative bodies, is greatly influenced by the electoral system. The same applies to internal party cohesion, as some electoral systems open the door to conflict between representatives within one party in the same parliament, while other electoral systems prompt more party cohesion and prevent internal disputes from transferring into the legislative cycle.

The impact of electoral systems extends to electoral campaigns and methods of conducting them, and the behavior of political elites, thus contributing to shaping the general political scene in a country. Depending on the form they take, electoral systems may push parties to build electoral alliances or abstain from them, and they may push them towards openness and adoption of general issues, or the adoption of narrow interests informed by racial, ethnic, or sectarian considerations.<sup>[140]</sup>

Based on the above, it is equally important to focus on the context and background that informs the choice of electoral system. It is worth emphasizing that choosing an electoral system is, ultimately, a political act par excellence, and therefore there is no single technically correct choice because the elements that inform the choice of electoral system are more complex than the components of the electoral system itself. Political interests, especially short-term ones, are almost a mainstay in the process of choosing an electoral system, and such interests are also the only element considered in some countries, often at the expense of long-term repercussions of the electoral system in question, on the interests of the political system as a whole.<sup>[141]</sup>

The electoral system is thus of great impact on politics and is also impacted by it. A system of elections maybe changed as the political system or the system of government does, with a change of ruling regime, or under the influence of political pressures. However, most researchers in the field of electoral law consider the shape of the electoral system to be the determining factor on the shape of political/party system. However, there are many examples indicating that, on the contrary, the political system imposes itself on the shape of the electoral system and adapts it to suit its circumstances

[139] Lawrence LeDuc, Richard G. Niemi and Pippa Norris, *Comparing Democracies: Elections and Voting in the 21st Century*, 2010.

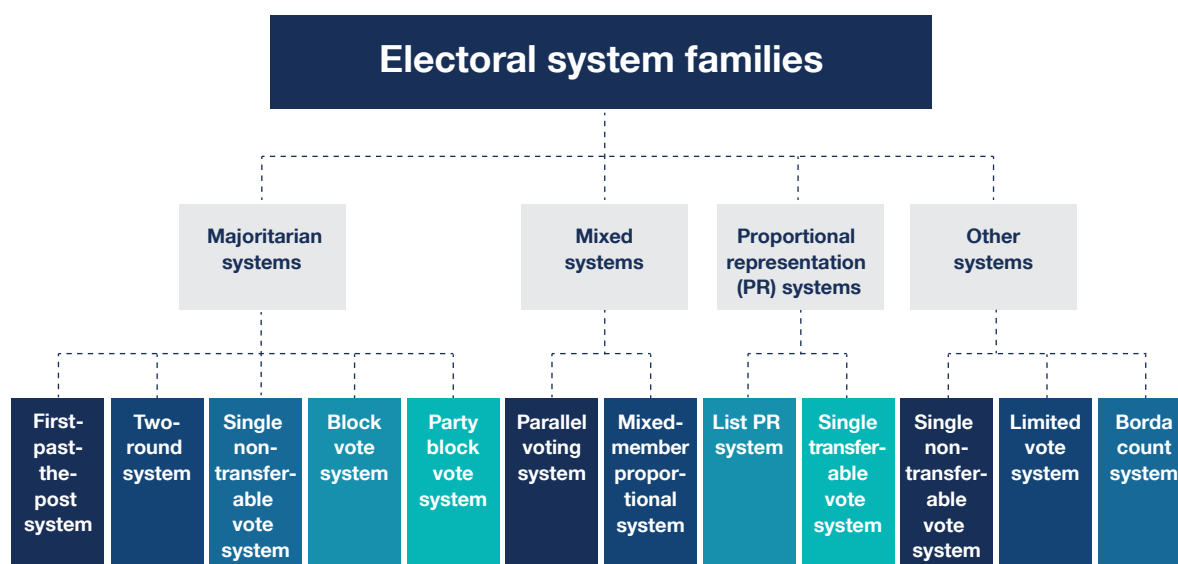
[140] Andrew Reynolds, Ben Reilly and Andrew Ellis, *Electoral System Design: The New International IDEA Handbook*, International Institute for Democracy and Electoral Assistance, 2014, p. 24.

[141] *Ibid.*, p. 20.

and needs. In this regard, the nature of the distribution of political forces in emerging democracies may determine itself the shape of the electoral system.

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.

**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>[142]</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.

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



## 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.

This system is “candidate-centered voting. The voter is presented with the names of the nominated candidates and votes by choosing one, and only one of them. The winning candidate is simply the person who wins most votes...”<sup>[143]</sup>

**Table 1: Simulation of first-past-the-post (FPTP) electoral process:**<sup>[144]</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. In the table above, for example, Bassam wins representation of 450 votes, but 550 votes are dispersed without any representation.

[143] Andrew Reynolds et al., *Electoral System Design*, *ibid.*, p. 35.

[144] 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.

## 1.2. 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. 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>[145]</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%
Total	1000	100%

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

[145] 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/3lY2xL1>, accessed on 19 August 2021.

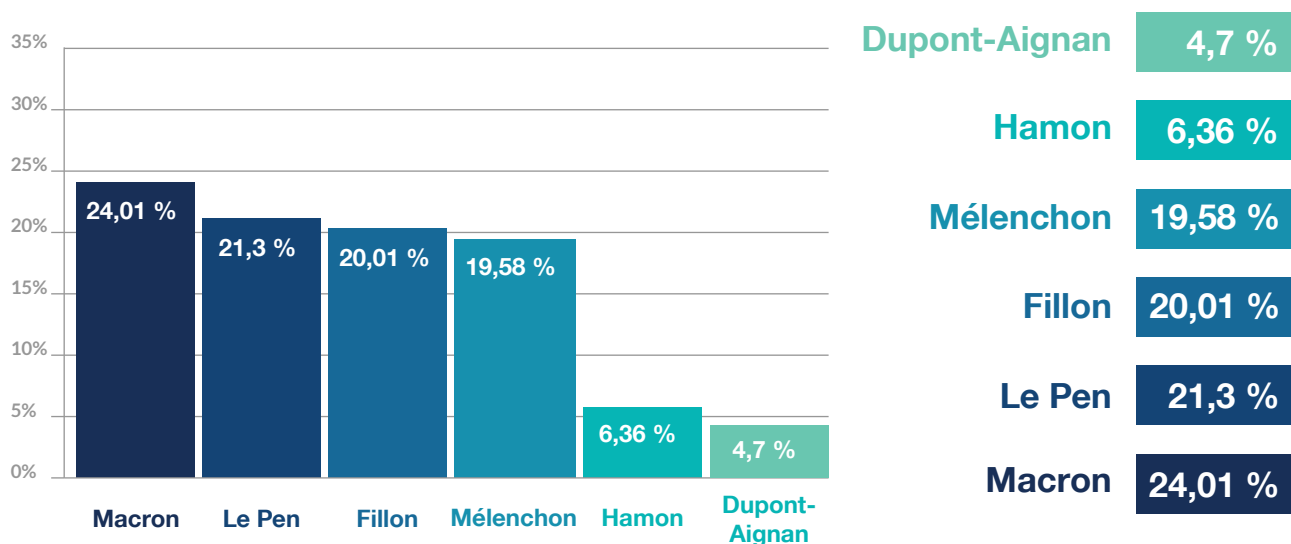
## 2/2 Second round results

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

Faten wins, according to the score listed in this table, despite not receiving the highest number of votes in the first election round.

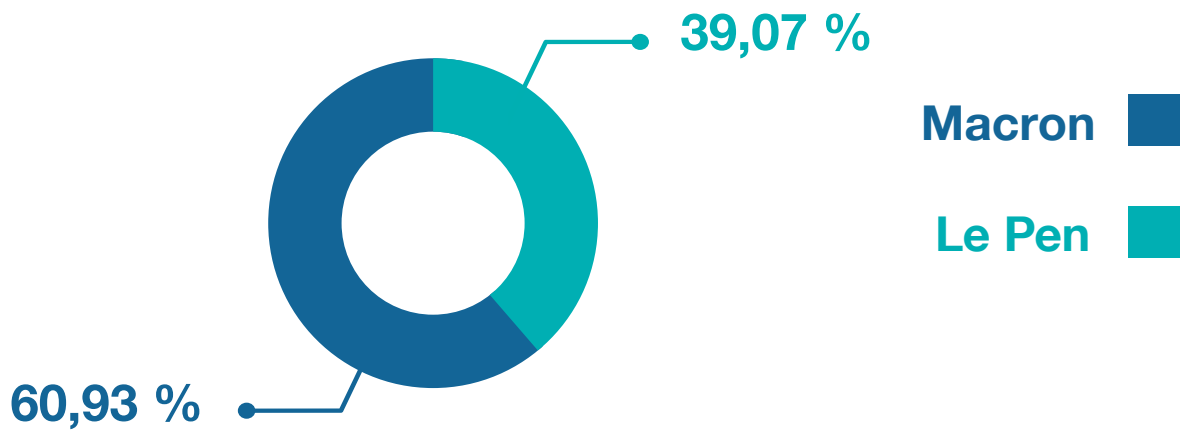
This shift in the percentage of votes may be due to several factors, including the accumulation or endorsements or votes by other candidates, such as Faten asking her supporters to vote in the second round, or the adoption of protest-voting where all candidates/parties/voters may gather to support a candidate for fear from the arrival of another candidate. This has recurred more than once, in the French presidential elections of 2017 for example as the vote was not in support of candidate Emmanuel Macron as much as it was a vote against his rival candidate, Marine Le Pen.

**Graph 1: French presidential elections, first round results**<sup>[146]</sup>



[146] French presidential election: first round results in charts and maps, The Guardian, 23 April 2017.

**Graph 2: French presidential elections, second round results**



As previously, we note that the victory of the candidates did not depend on the bloc to which the candidate belongs, but rather on the number of votes obtained by each candidate, regardless of the bloc or list to which he/she belongs. A measure of votes (450 votes), followed by the second candidate for the black list with 350 votes, and from the third for the red list with 300 votes, and so on until the seats allocated to the electoral district are filled. In the event of a tie, another round can be held among the tied candidates to determine who gets the parliamentary seat.

### **1.3 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)

#### 1.4 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%	
Total	1000	100%	

## 1.5 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>[147]</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>[148]</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.

This system differs from the favored candidate system as well in the way the votes are counted. Although the candidate who obtains the absolute majority of votes (50 percent plus one) wins directly, as happens in the first-party system and the two-round system, in the event that none of the candidates win that majority of votes — the candidate with the lowest number of votes is eliminated. From the first preferences of the vote counting process, those cards are counted based on the second preference — the number (2). Each paper is counted in favor of the candidate with the highest preference. This process is repeated until one of the candidates win the required majority of the votes and thus wins the election. Therefore, the alternative voting system is considered one of the majority-voting systems

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[147] [Electoral Knowledge Network](#)

[148] 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

According to the foregoing, after the distribution of votes, none of the candidates obtained an absolute majority (half + 1). Therefore, the candidate with the least preferential votes in the ballot papers that placed Faten as the first option is again excluded, and in the event that 900 votes are awarded, an alternative vote will be obtained (Second preference), and 1000 votes are awarded for Bassam and 100 votes are awarded for Husam. Therefore, the distribution of preferential votes becomes 5100 preferential votes for the candidate Wajd, and 4700 votes for the candidate Bassam, while Husam's alternative votes are not counted because of his exclusion in the first round, and accordingly the candidate Wajd wins the seat.

## 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>[149]</sup> as well as the fact that it poses hindrances to the representation of women, youth, and other marginalized groups in need of spe-

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

cial 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.

## **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>[150]</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>[151]</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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[150] For more, see Riad Shayya, *ibid.*

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



■ **Closed list:** This is when an electoral list is pre-determined by the party or coalition running for elections, such that the voter cannot make any modifications or rearrangements of the names listed and may only choose between electoral lists. In such a case, the vote takes place for parties/coalitions and their programs rather than for individual candidates on electoral lists, and seats are thus distributed according to the order in which candidates are pre-arranged on the list, a choice which is made by the party rather than the voter.

**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>

This simulation is based on simple proportionality and does not take into account or relate to the “electoral threshold” rule, and is not related to any of the multiple electoral outcomes. Rather, it is based on the basic and simplified principle of proportionality, which depends in the distribution of seats on:  $\text{Electoral quotient} = \text{number of votes} / \text{number of seats}$ .

■ **Ranked-choice Closed List:** In contrast to the previous pattern, the voter in this case has the ability to renumber the names listed according to their preference. Thus, competition is not limited to the different electoral lists, but is also between the same candidates in the same list. The law may specify a specific number of preferential votes that the voter has the right to choose on the ballot paper, such as one preferential vote, as is the case in Lebanon. However, the preferential vote system is considered complex, and it is preferable to have two or more votes to ensure its effectiveness and implementation of its objective, which is to provide an opportunity for voters to rearrange the list according to their preferences.

**Table No. 7: Illustrative Model of the Electoral Process According to the Ranked-choice Closed List System:**

Votes are counted just as in the closed list, but the voter has the right to arrange the candidates in the list according to the names he gives priority in the nomination, and suppose that the future list from Table (6), which won 5 seats, contained 7 candidates as follows:

Name of candidates	
Joud	1
Nour	2
Salam	3
Wajd	4
Waad	5
Majd	6
Sabah	7

In this case, the first five names (Joud, Nour, Salam, Wajd, Waad) win the seats, but in the case of the ranked-choice list the voter can rearrange the names or number them from 1 to 7 and the list with the highest number of votes includes the winning top five candidates in order of parliament seats.

For example

Number of votes	Lists of candidates' ranking
5	1- Joud 2-Nour 3-Salam 4- Wajd 5- Waad 6- Majd 7- Sabah
25	1- Sabah 2-Joud 3-Waad 4-Wajd 5-Majd 6-Salam 7-Nour
20	1- Nour 2-Majd 3-Waad 4-Wajd 5-Sabah 6-Salam 7-Joud
<b>50</b>	<b>Total</b>

The seats are divided among Sabah, Joud, Waad, Wajd, and Majd.

Open List: The preferential voting system may be applied, and it allows the voter to cross out other candidates or add them from other lists, so the voter creates his own list, and this certainly increases the complexity of the voting process and sorting the results.

**Table No. 8: Illustrative Model of the Electoral Process According to the Open List System:**

Suppose that a constituency is entitled to five seats in Parliament and two lists of 7 candidates each compete for it:

Equality List	Freedom List
1- Farah	1- Wajd
2- Nawar	2- Sabah
3- Baraa	3- Salam
4- Ismat	4- Majd
5- Shukur	5- Nour
6- Nihad	6- Waad
7- Wed	7- Joud

According to the ballot, voters have the right to choose the order of their lists by nominating 5 female candidates or candidates from the two lists. And that is by striking out names from the list and adding names from the other list.

Name of List	Number of votes	Percentage/Rate	Number of seats
Freedom List	6000	60%	3
Equality List	4000	40%	2
<b>Total</b>	<b>10000</b>	<b>100%</b>	<b>5</b>

The Freedom List candidate gets three seats, and the seats with the highest preferential votes in the list get in order, while the Equality List candidate gets two seats and the ones with the highest preferential votes in the list get in order, respectively.

Name of Candidate	No. of Preferential Votes	Name of list
1. Wajd	3500	Freedom list
2. Nawar	3000	Equality list
3. Farah	1500	Equality list
4. Shukur	1200	Equality list
5. Joud	400	Freedom list
6. Salam	250	Freedom list
7. Wed	150	Equality list
<b>Total</b>	<b>10000</b>	

In this simulation, the seats are won by Wajd and Joud and Salam from the Freedom List and Nawar and Farah from the Equality List, while Shukur does not get a seat even though she got more preferential votes than Joud and Salam, because her list got only two seats, and she got her votes from crossing out candidates from the Freedom List and putting their name in place of the crossed out names, and despite their many votes, this did not help them, because regardless of the number of names crossed out from the list, the voter originally chose the list.

### **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.

In this system, the voter has the right to arrange the candidates on the ballot paper in a differential way, i.e. the first candidate, then the second and third, and so on. This process is optional for the candidate, as he/she has the right to choose one or two candidates or all candidates and arrange them according to preference.

After all the valid votes are counted, the electoral quota for each candidate is calculated and called “Seat’s share”<sup>[152]</sup>, which is calculated according to the following rule: “(Number of valid votes / (number of seats + 1)) + 1”, and the result is a sufficient quota. For each candidate to win the seat, as is the case in the electoral quotient method – the votes in excess of the electoral quota are redistributed again to the rest of the candidates, according to the second priority of those votes, after the number of surplus votes is divided by the number of total votes in a way that guarantees more fairness in the distribution, for example, if the candidate has obtained 2,000 votes and the electoral quota is 1,000 votes, and the 1,000 surplus votes are redistributed or this is done after extracting the partial percentage by dividing it by all the votes obtained by the candidate. The first candidate, for example, won out of 2000 votes, 1500 votes were won for another candidate who came in second preference, 750 new votes were recalculated for him/her, given that the partial percentage was half a vote. If those votes are sufficient to reach his/her electoral quota, he/she gets the second seat and the surplus of his/her votes is redistributed, and if he/she does not reach the quota, the candidate who received the least number of votes is excluded, and votes are distributed to the rest of the candidates according to the second preference of voters, and so on until the seats are filled, and if one or more seats remain vacant, and the rest of the candidates do not reach the electoral quota, then the candidate with the most votes wins after the distributions despite not reaching the electoral quota, and so on.

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.

### **Table No. 9: Illustrative example of a transferable vote system:**

Suppose that an electoral district has five seats in Parliament and ten female candidates are nominated for it, and the candidate has the right to arrange the list according to the preferential vote, and the number of valid ballot papers is 6000 papers, and therefore the seat share is a simple arithmetic operation within the following equation:

Seat share = (number of valid votes / (number of seats + 1)) + 1) In our simulation here, the seat share is as follows:

$(6000 / (5 + 1)) + 1 = 1001$  and assuming that the results came according to Table No. 12

[152] See the Electoral Knowledge Network, Paragraph of the Single Transferable Vote System, date of visit 06.27.2022 at the link:

<https://aceproject.org/ace-ar/topics/es/627644646640638645/646640638645-62764462a64064562b64a640644/646638640627645-62764463564064862a/646638640627645-62764463564064862a>

Name of candidate	No. of preferential votes
1. Joud	2001
2. Nour	1001
3. Waad	975
4. Baraa	700
5. Nihad	600
6. Wajd	325
7. Salam	200
8. Wiam	98
9. Farah	50
10. Majd	40
11. Nawar	30
12. Wed	30
<b>Total</b>	<b>6000</b>

According to the table, Joud may get the seat share, which is 1001, and the surplus votes are transferred to the next candidate, and those votes are 1000, and for the sake of voting fairness, the surplus votes are distributed according to partial percentages of one vote in proportion to the surplus of the candidates, and in the above case, Joud wins automatically to get the specified quota (1001) votes and increases nearly 1000 votes, and to extract the percentage, their surplus votes are calculated according to the number of votes they obtained as follows:

$1000/2000$ , (the vote was left out of the total votes (2001) in order to simplify the calculation in the simulation) and thus the ratio is  $1/2$  and each surplus vote is calculated with a value of half a vote.

Nour also wins automatically to get the specified share of votes, and the votes are transferred to the third candidate, and the vote is counted as half a vote, and therefore the extra 1000 votes are counted as 500 votes.

The 500 votes are distributed among the rest of the candidates' ballots. For example, Waad gets 200 votes (1175) according to the second preferential vote for Joud's voters, while Baraa gets 150 votes (850 votes) according to the second preference also for Joud's voters, and so on. Votes are distributed to each candidate according to the second preference. Salam receives 25 (225 votes), Farah receives 50 (100 votes), Majd receives 10 (50 votes), Wed receives 25 (55 votes) and Nihad receives 40 (640).

The recalculation and distribution is done again, and Waad gets the third seat, and the surplus votes (174 votes) are distributed again according to the second preference, and Baraa gets 100 votes (950), Nihad gets 50 votes (690) and Majd gets 20 votes (70) and Nawar gets 4 votes (34).

It seems that the transferable votes from the winners were not enough to compensate for the shortfall, so the candidate with the fewest votes (Nawar: 34 votes) is eliminated and his votes are distributed according to the second preference, and Nihad gets 25 (665) and Majd gets 9 (59). Also, Wed gets 55 and Bara'a gets 51 votes according to the second preference of the voters, Wed gets 1001, and thus gets the fourth seat, and Wajd gets 4 (329). Majd gets 59 votes and the votes are distributed according to the second preference, 50 votes for Nihad (715) and 9 votes for Farah (109), and Wiam with 98 votes is eliminated,. The votes are distributed according to the second preference of voters. Fifty votes for Nihad (765) and 44 for Farah (144), and then Farah is eliminated, and votes are distributed according to the second preference, 100 votes for Nihad (865) and 44 for Salam (269), after which Salam is eliminated, and Nihad gets 200 votes according to the second preference (1065). Then the votes are distributed between Nihad (815) and 69 to Wajd (398), so Nihad wins the last seat, and Joud, Nour, Waad, Baraa and Nihad win the rest of the seats.

## 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.

Therefore, proportional systems differ in terms of the mathematical equations adopted for calculating the distribution of seats. This process is carried out in two ways:

The first method is the electoral threshold, also called the threshold of representation, which is "the minimum percentage of valid votes required to enter the group of lists competing for seats in the elected body in the electoral district."<sup>[153]</sup> The threshold is determined by a legal text that is officially announced in the electoral laws that specify a percentage. In other words, whoever fails to achieve this threshold is excluded from the equation, and therefore their votes are dispersed and are not translated to seats –as if they had never been cast. The lower the electoral threshold, the more it allows for the representation of small parties and groups in Parliament, and raising the threshold allows stronger and larger parties to seize more seats. The electoral threshold differs from one country to another and can even vary in the same country from one electoral law to another. In Turkey, for example, it is at 10%, while in New Zealand it is 5%. The internationally recognized standard threshold is 5%.

**Table No. 10: An Illustration of the Electoral Threshold:**

Suppose we have a parliament consisting of 200 seats for which 6 closed lists compete within the proportional system and the results are as follows:

Name of list	No. of votes	Percentage/rate	No. of seats
Freedom	4000	40%	80
Equality	2000	20%	40
Citizenship	2000	20%	40
Justice	900	9%	18
Democracy	800	8%	16
National	300	3%	6
<b>Total</b>	<b>10000</b>	<b>100%</b>	<b>200</b>

[153] Arab Electoral Dictionary, *ibid.*, p. 283.



In the event that the electoral threshold of = 10% is applied, this means that all of the lists of Democracy, National and Justice will be out of competition, and seats are distributed according to the percentages of other lists, so that the Freedom List will have 100 seats and 50 seats for each of the Equality and Citizenship candidates.

The second method is the electoral quotient. It is based on a statistical principle which is a quotient determined by the electoral system (called the effective or natural threshold). In simple terms, the electoral quotient is the basis for translating votes into seats: Electoral quotient = the number of voters (valid votes) / the number of seats. Valid votes being non-nulled votes. Several countries have considered blank ballots to be valid votes as an expression of the voter choice.

### **Table No. 11: An Illustration of the Vote Counting Process Based on the Electoral Quotient:**

Suppose that there is an electoral district in which 70,000 female and male citizens are entitled to vote, competing for five seats, and 53,000 female citizens and residents participated in the elections, and then the number of valid, non-cancelled ballot papers was 50,000. The electoral quotient is calculated through the following process:

Electoral quotient = number of valid ballots / number of seats = 50,000 / 5 = 10,000 votes.

Assuming that there are 5 lists competing for those seats, the results are as follows:

List	No. of votes	No. of electoral quotients
Freedom	21000	2
Citizenship	17000	1
Equality	4000	0
Democracy	6000	0
National	2000	0
Total	50000	

According to the results, the Equality, Democracy and National lists were not able to reach the electoral quotient, so their votes were canceled, and at the same time the Freedom list obtained two electoral quotients, and thus two seats, and the seat of Citizenship obtained an electoral quotient, which is represented by a seat. The seats are distributed according to the order of the seat, and according to the system whether it is the closed list system, or the preferential vote system or none of them. As for the remaining seats, there are several ways that the report will address in the subsequent sections<sup>[154]</sup>.

## **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 list (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.

Globally, the majority of proportional representation systems in force adopt closed lists, meaning that the order of the candidates on the list is predetermined by each party or coalition. As such, voters cannot express any choice or preference between candidates, or modify their order, which is the system currently in force in Algeria.

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.

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[154] See later the mechanisms for the distribution the remaining seats

## 2.4 Mechanisms for distributing remaining seats

Under the proportional representation system, each of the competing electoral lists receives a percentage of seats equal to its share of the votes at the district level. This process takes place according to the following stages:

- First stage: Dividing the vote (after deducting votes for lists that did not achieve the threshold) by the number of seats allocated to the electoral district, in order to arrive at the electoral quotient.
- Second stage: Dividing the total number of votes for each list that met the threshold by the electoral quotient, and the result is the number of seats.
- After these two processes are completed, and due to number fractions, there will often be remaining undistributed seats, and remaining votes that did not reach the value of the electoral quotient. Therefore, a set of mechanisms is adopted to distribute these remaining seats, namely:
  - Largest remainder method: According to this formula, and after distributing seats to the lists that achieved the electoral quotient (according to the number of times it is calculated), the remaining votes for each list are arranged, and the remaining seats are distributed based on the remaining votes from top to bottom.

**Table No. 12: An Illustrative Model for Calculating the Remaining Votes According to the Strongest Remainder:**

If we adopt the previous simulation in the electoral quotient in Table No. 14, we can calculate the remaining votes according to Table 15, and according to the electoral quotient in the previous simulation, 10,000 votes of the Freedom List won two electoral quotas, and therefore two seats out of five, and the citizenship list won one, that is, one seat, and the remaining two seats are calculated according to the following:

List	No. of votes	Electoral quotient	Remaining votes	Seats according to the highest remainders
Freedom	21000	2	1000	0
Citizenship	17000	1	7000	1
Equality	4000	0	4000	1
Democracy	6000	0	6000	1
National	2000	0	2000	0
Total	50000			

Based on the aforementioned table, the Citizenship List gets an additional seat in exchange for the highest remainder (7000 votes), and then the Democracy List to achieve the second-highest remaining (6000 votes), and the order of the seats becomes: two seats for the Freedom List, two seats for the Citizenship list, and one seat for the Democracy list.

■ Highest-averages method: The initial distribution process takes place as before, and the distribution of remaining seats is done by adding a fictitious seat to each list and dividing the number of votes obtained by these lists by the number of seats they deserve, plus the virtual remaining seat. This process produces a simple quotient, and the list that receives the highest average proportion secures the extra seat. The process is then repeated until all the remaining seats are distributed.

**Table No. 13: An Illustrative Model for Calculating the Votes According to the Highest Average Proportion:**

List	No. of votes	Electoral quotient	Highest Average Proportion
Freedom	21000	2	$21000 / (2+1) = 7000$
Citizenship	17000	1	$17000 / (1+1) = 8500$
Equality	4000	0	$4000 / (0+1) = 4000$
Democracy	6000	0	$6000 / (0+1) = 6000$
National	2000	0	$2000 / (0+1) = 2000$
<b>Total</b>	<b>50000</b>		

If we return to the previous example in Table 12, the calculation of the highest average proportion will be as follows

Accordingly, the remaining two seats go to the Citizenship and Freedom lists, respectively, due to their availability on the strongest average rate, and the distribution of seats becomes 3 for the Freedom List and 2 for the Citizenship List.

■ D'Hondt Formula: This method was invented by Belgian Victor D'Hondt in 1885, and it is a mathematical formula by which seats are distributed across lists, and this method is known as the greatest divisors method.

In the D'Hondt Formula, the number of votes for each list is divided by the numbers: 1, 2, 3, 4, 5...(n), where (n) represents the number of representatives that must be elected for each district. Then, the common ratio is extracted which is the divisor by which if we divide the number of votes obtained by each party, we directly arrive at the number resulting from the previous division in descending order, from highest to lowest until we reach the number (n) which represents the number of seats that must be filled. If the numbers obtained from the process of division are then arranged in descending order from largest to smallest, the number that solves in rank (n) is the common ratio.

**Table No. 14: An illustration of the vote counting process according to the D'Hondt Formula:**

Suppose an electoral district in which four lists are competing for three seats, in which 93,000 male and female citizens are entitled to vote, 72,000 male and female voters participated, and the valid votes were 70,000 ballot papers. According to the D'Hondt Formula, the total votes of each list is divided sequentially by the numbers 1, 2, 3, 4 to match the number of contested seats according to Table 17.

List/Its Votes	Total/1	Total/2	Total/3
Freedom/ 42000	42000	21000	14000
Equality/ 24000	24000	12000	8000
Democracy/3000	3000	1500	1000
Citizenship/1000	1000	500	333.33
<b>Total/ 70000</b>			

Then the resulting quotients are arranged from highest to lowest until reaching the third quotient, which is 42000, 24000, 21000, and 21000 is the common denominator by which the number of votes for each list is divided to produce the number of seats that the list gets:

Freedom List:  $42000/21000 = 2$  seats

Equality List:  $24,000/21,000 = 1$  seat

Democracy List:  $3000/21000 = 0$  seats

Citizenship List:  $1000/21000 = 0$  seats

■ **Saint-Laguë Method:** A modified version of the D'Hondt Formula that enables it to more closely achieve justice in the distribution of seats. Invented in 1910, this modified method relies on the same rules as the D'Hondt formula, the only difference being that the process of dividing votes is done by odd numbers: one, three, five, seven... until reaching the number of seats in the district. In iterations of this method applied today, division is done by 1, 3, 5, 7 and so on. From there, the process continues in the same manner as the earlier method.

**Table No. 15: Illustrative example of the process of counting votes according to the Saint-Laguë Method**

We will adopt the example in the previous simulation (D'Hondt Formula), and will consider the electoral threshold to be 2%, and take into account the results in Table 14:

List	No. of votes	Percentage/Rate
Freedom	42000	60%
Equality	24000	34,3%
Democracy	3000	4,3%
Citizenship	1000	1,4%
<b>Total</b>	<b>70000</b>	<b>100%</b>

According to the electoral threshold, the Citizenship List is eliminated for not exceeding the electoral threshold (2%)

Then the division is performed on the odd numbers 1, 3, 5 in succession in proportion to the number of seats contested among the lists:

List/No. of its votes	Total/1	Total/3	Total/5
Freedom/42000	42000	14000	8400
Equality/24000	24000	8000	4800
Democracy/3000	3000	1000	600

When arranging the 3 highest quotients, 42000, 24000, 14000 — the Freedom List will get two seats and the Equality List will get one seat.

### 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>[155]</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 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.

In this regard, a report by the Syrian Expert House stated that this outcome remains more favorable than exclusion, because it leads to “the transfer of differences within the constitutional institutions rather than taking place in the street. Moreover, this contentious atmosphere within the Constituent Assembly, for example, will be a starting point

[155] 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>

for developing political life and a formal space for the exchange of different political views.”<sup>[156]</sup> In turn, Iraqi writer Hamid al-Kafa’i defends the proportional representation system, stating that it is “the most democratic, as it renders parliament a mosaic representing all segments of society and their political and social orientations, and pushes politicians to adopt a comprehensive national discourse as opposed to regional, ethnic, sectarian, or classist discourse.”<sup>[157]</sup> He adds that, “One of the disadvantages [of PR] is that it produces coalition governments in highly diverse societies, governments that may be weak due to political rivalries that usually prevail between participant parties. However, weak governments remain more favorable than autocratic regimes.”<sup>[158]</sup>

The proportional representation system also contributes to promoting alliances between parties, as one may find the names of candidates from more than one party on the same electoral list. This also affects the electoral programs of candidates, prompting them to serve the interests of a broader range of citizens. These regulations also facilitate the imposition of a quota for women and other marginalized groups. For example, the current Tunisian proportional representation system requires political parties to include female candidates in their electoral lists, which has enhanced women's political participation.<sup>[159]</sup>

### **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

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[156] “Democratic Transformation Plan in Syria” (Arabic), Syrian Expert House and Syrian Center for Policy and Strategic Research, Washington DC, August 2013, pp. 64-65.

[157] Hamid al-Kafa’i, “Which Electoral System Achieves Democracy?” (Arabic), Sky News Arabia, 18 November 2019, link: <https://bit.ly/3kKfpFs>, accessed on 15 June 2021.

[158] Ibid.

[159] For more, see: Afifa Mannai, “Women’s Political Participation in Tunisia” (Arabic), Arab Reform Initiative, Policy Alternatives, August 23, 2018, p. 3 et seq., link: <https://bit.ly/3uiBEVQ>, accessed on 16 June 2021.



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>[160]</sup>

**Table No. 16: Illustrative Example of the Election Process in the Mixed Member Proportional (MMP) System:**

Suppose democratic elections take place in Syria in which 10,012,000 voters participated, and more than 4,500 male and female candidates and eight parties competed for 560 seats in parliament, and under the mixed proportional system, where 280 (50%) of the seats are elected within the single-majority system with a parliamentary seat for each district in Syria, and the second vote is granted to the political parties participating in the elections at the whole of Syria level for each electoral district<sup>[161]</sup>. Accordingly, each voter has two votes, one vote in which he/she elects a representative, and another vote is allocated to the party he wants to represent him/her in parliament. The electoral paper ballot is similar to the following :

Jenderes District	
First Vote	Second Vote
Rojeen	The Freedom Party
Shervan	The Citizenship Party
Jian	The Democratic Party
Azad	The National Party
	The Popular Party
	The People’s Party
	The Conservative Party
	The Fraternal Party

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

[161] It should be noted that this model is only to be used as an example, as although administrative division is one of the methods used to divide electoral districts, the large disparity in the number of population between one area in Syria, which often exceeds four times between one area and another, requires more accurate methods in Division of constituencies.

■ In this case, the voters in Jenderes choose a representative from among the four male and female candidates for the electoral district by placing a mark next to his/her name, and in their second vote, they also choose a party to represent them at the level of Syria as one province.

■ If there are 10,000 male and female voters in the district of Jenderes who voted, the results at the first vote level are as follows:

Jenderes District	
Name of Candidate	No. of votes (First vote)
Rojeen	4000
Azad	3000
Jian	1500
Shervan	1500
<b>Total</b>	<b>10000</b>

Accordingly, Rojeen wins the seat of Jenderes based on her victory with the relative majority, while the second vote of Jenderes is calculated on the basis of voting for the party at the level of Syria as a single electoral count, where the votes are counted in the district and the results are sent to the center to be counted with all votes at the level of Syria is part of the closed list proportional election system, according to the following table:

Syria One District / Number of votes obtained by parties according to the second vote of the electorate		
Name of Party	No. of votes	Percentage
Freedom Party	3500000	35%
National Party	2500000	25%
Popular Party	2000000	20%
People's Party	1000000	10%
Conservative Party	700000	7%
Citizenship Party	150000	1.5%
Fraternal Party	100000	1%
Democratic Party	50000	0.5%
<b>Total</b>	<b>10000000</b>	<b>100%</b>

- If the electoral threshold is 5%, for the Citizenship, Fraternal and Democratic parties, they will not be able to enter Parliament, while Parliament seats are distributed to the parties that exceed the threshold.
- The number of parliamentarians in this system usually changes in proportion to granting the parties equitable representation based on the votes they got from the second vote to maintain the distribution of voting power in parliament in proportion to the percentage of the vote obtained by each party.

Rojeen who won the Jenderes seat may be independent, or she may belong to one of the competing parties, and let's say she belongs to the People's Party. She obtained 10% of the total votes (the second vote) for the electorate, i.e. approximately 56 seats, and accordingly the number of seats for the People's Party will be increased by 36 seats, and the deputies are selected according to the list submitted by the People's Party to the Election Commission. Number 1 for the first seat, Number 2 for the second seat, and so on until number 36.

Also in this system, the voter can vote in the first vote for a candidate belonging to one party, and in the second vote for another party, such as if a voter in Jenderes voted candidacy voted for Rojeen from the People’s Party because she is her friend, but her second vote goes to the Freedom Party because the voter agrees with the party’s values more than the People’s Party. This situation may create a disparity in the number of direct seats and the number of votes obtained by the party. For example, 60 candidates for the People's Party may be elected in small electoral districts, while the party got 10% of the second vote, and therefore is entitled to 56 seats, what happens to the remaining four winners? For the sake of correct representation, the four enter Parliament because they are elected directly by the voters, but in order to preserve the fair representation of the parties, each party also obtains an increase in the number of seats to ensure that the number of deputies is proportional to the percentage of votes obtained by each party, as the example given in the following table:

Name of Party	No. of seats based on the first vote	Percentage of votes based on second vote	No. of seats entitled to in Parliament	No. of additional seat	No. of additional seats to ensure equitable representation	Total
People’s Party	60	10%	56	4	0	60
Popular Party	112	20%	112	0	8	120

We note from the table that 8 seats have been added to the Popular Party to match the number of additional seats in the People's Party, and this happens with each party, so the number of seats in Parliament is not fixed in this system, but varies from one voting round to another affected by the number of seats that the party obtains through direct individual election in small constituencies, and the percentage of votes obtained at the level of the large constituency.

## 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.

**Table No. 17: Illustrative Example of the Election Process in Parallel Systems:**

If we take the previous illustrative model and re-election on the basis of a parallel system, the parliament seats are divided into two groups, the first for the 280 seats of small districts (sub-districts), and the second for the seats of the major constituency for parties, which are 280 other seats. Each voter has the right to two votes, a direct vote for individual seats, and the candidate wins the relative majority. The voter, through their second vote, chooses the party that aligns with their party’s values, but in this case the first votes are counted independently of the second votes, and the results of any group of votes do not affect the other, as in the following table:

Jenderes District	
First Vote	Second Vote
Rojeen	The Freedom Party
Shervan	The Citizenship Party
Jian	The Democratic Party
Azad	The National Party
	The Popular Party
	The People’s Party
	The Conservative Party
	The Fraternal Party

The results are as follows:

Jenderes District	
Name of Candidate	No. of votes (First vote)
Rojeen	4000
Azad	3000
Jian	1500
Shervan	1500
<b>Total</b>	<b>10000</b>

Accordingly, Rojeen from the People's Party wins the seat, and suppose that the votes at the level of Syria are as follows:

<b>Syria One District / Number of votes obtained by parties according to the second vote of the electorate</b>		
<b>Name of Party</b>	<b>No. of votes</b>	<b>Percentage</b>
Freedom Party	3500000	35%
National Party	2500000	25%
Popular Party	2000000	20%
People's Party	1000000	10%
Conservative Party	700000	7%
Citizenship Party	150000	1.5%
Fraternal Party	100000	1%
Democratic Party	50000	0.5%
<b>Total</b>	<b>10000000</b>	<b>100%</b>

In this model, no electoral threshold will be set, and therefore all parties enter Parliament according to the percentage of votes. It starts differing from the Mixed Member Proportional System when calculating the seats in the following table:

Name of Party	Number of winners for individual seats (minor constituencies)	Percentage of parties by second vote	Number of seats for proportional election (grand constituencies)	Final number of seats for each party in Parliament
Freedom Party	70	35%	98	168
National Party	50	25%	70	120
Popular Party	50	20%	56	106
People's Party	60	10%	28	88
Conservative Party	10	7%	20	30
Citizenship Party	5	1.5%	4	9
Fraternal Party	7	1%	3	10
Democratic Party	1	0.5%	1	2
Independent	27	0	0	27
<b>Total</b>	<b>280</b>	<b>100%</b>	<b>280</b>	<b>560</b>

In this case, the first votes of voters from small constituencies (districts) were counted independently, and competition took place among them within the single-majority system with a relative majority for 280 seats, while the parties competed within the proportional election system, and with the closed list for the other 280 seats, and the results of the votes did not affect voters of the first round based on the results of their second votes and vice versa. The number of seats for the parties has been calculated and the highest fraction is redressed. For example, the Conservative Party gets 19.6 of the seats, and it is rounded to 20 seats, while the Citizenship Party's share is 4.2 of the seats, and was rounded to 4 seats.

## **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.

### **1. Higher (or Lower) Rates of Participation**

Experiences in several countries indicate that the electoral system has a direct impact on increasing or decreasing the rate of participation in elections. If the proportional system is adopted, this leads to higher rates of participation because it contributes to reducing the percentage of lost votes, and because it encourages voters of parties and small groups to participate.

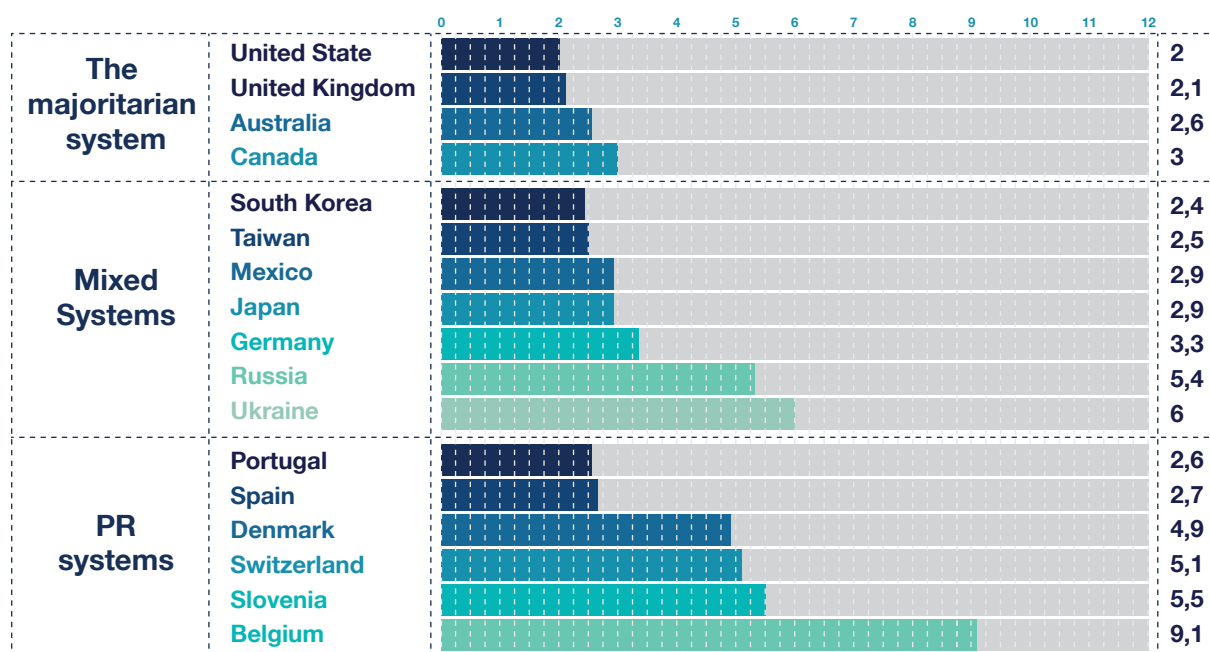


## 2. Regulation (or lack thereof) of party politics

■ There is a fundamental relationship between electoral systems and party politics, and mutual influence between the two. The majoritarian system contributes to strengthening large parties and weakening smaller parties. In several countries, such as the United Kingdom, the United States, and the majority of the Commonwealth countries, the two-party system is entrenched. While the majoritarian system disperses votes among multiple parties, especially in the absence of inadequacy of the electoral threshold (Tunisia, Italy previously), in the majoritarian system, the voter finds themselves confronted with two choices, as they realize that they are in an unstable two-party system (the presence of other small parties relatively), and that if they do not vote for either of the two largest parties, their vote would be lost.

■ Conversely, most countries that adopt a majoritarian system of elections witness political stability in the formation of governments.

**Graph No. 3: The difference in the number of parties according to the type of electoral system adopted**<sup>[162]</sup>



[162] Pippa Norris, Electoral Engineering: Voting Rules and Political Behavior, Cambridge, Massachusetts, 2003. p. 94. <http://www.olemiss.edu/courses/pol628/norris04.pdf>, accessed on 26 May 2021.

### 3. Representation of Minorities

The representation of minorities is a major concern, and the focus of the legislator's attention. The greater the desire for real representation, the more an electoral system is sought that allows minorities to access parliament. There is no doubt that the majoritarian system weakens the representation of minorities, while the proportional system motivates minorities to establish parties or impose themselves in larger national parties. In the case of Syria, we find a concentration of certain religious and national minorities in certain geographic areas. Consequently, the adoption of the majoritarian system in small districts leads to the consolidation of local leaders that derive their electoral leverage from sectarian and regional factors instead of encouraging people from these areas to ally themselves within secular democratic national parties. Some states may create forms of positive discrimination and affirmative action (quota system) to ensure genuine representation for minorities.

### 4. Representation of Marginalized Groups (Women and Youths)

In many countries, there is a strong concern with marginalized groups among political actors, with the aim of finding ways to ensure their effective participation, particularly women and youth, through various mechanisms, most notably the quota, or specifying special seats (in Iraq, 25% of parliamentary seats are reserved for women). In Tunisia, after the revolution of 2011, the law stipulated parity in arranging electoral lists (man, woman, man, woman...) or what is known as the 'zebra method.' It was also stipulated that a candidate under the age of 35 should be present in each list, and in the municipal elections, it was stipulated that the list must include a candidate with special needs.

Despite the direct and indirect impact of electoral systems on political life, these systems are not adopted in a simplified form. Rather, experts have created multiple tools, including the division and delimitation of electoral districts, the electoral quotient, and the electoral threshold, that affect the results on the one hand, and the mechanisms for calculating the distribution of seats on the other.

## 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>[163]</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>[164]</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

Article 25 of the International Covenant on Civil and Political Rights does not explicitly mention electoral district division, and neither does the General Comment on this article. However, in relation to this issue, the General Comment states the following: “The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The delimitation of electoral districts, and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.” It can be concluded from this paragraph that the electoral rights of citizens, especially the principle of voter equality, must be taken into account while drawing electoral districts,

[163] 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.

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

such that each voter has one vote with the same value as the vote of every other citizen. It must also be ensured that the delimitation process does not affect the rights of groups residing in a particular geographical area in the country. Therefore, it is inconsistent with international standards to divide the geographical areas in which certain religious or ethnic groups are present into multiple electoral districts in a manner that leads to the dilution of their vote.<sup>[165]</sup> It is also inconsistent with international standards to have large disparity in population size from one district to another, if a disproportionate number of seats is assigned to the number of electors for each district.

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>[166]</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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[165] Also referred to as “communities with a common interest.”

[166] 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.

In Lebanon, the delineation of districts is the biggest concern in terms of reconsidering electoral laws, as they are the constant variable in all approved laws.

By examining past experiences, it is difficult to determine which criterion is best to approach the delimitation process. According to electoral expert Osama Kamel, the criteria for dividing electoral districts are in mutual conflict: “For example, equality in population between different districts is incompatible with the representation of communities with common interests such as ethnic, linguistic, or religious minorities, and each country must opt for the criterion that suits its political and social environment, and its democratic development, provided that it finds methods that help implement other standards.”<sup>[167]</sup>

However, many experts emphasize two main criteria, namely “geographical contiguity and integration.” It is often undesirable to have electoral districts that are not geographically connected, due to the bitter experiences of some countries including the United States in which the Governor of Massachusetts, Elbridge Gerry, created constituencies with no connection to each other and with strange shapes, one of which resembling the Salamander, later known as the Gerrymander by combining his name and that of the animal.<sup>[168]</sup>

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[167] Osama Kamel, “Delimitation of Electoral Districts Between International Standards and the Consequences of Egypt’s 2015 Electoral District Law” (Arabic), Egyptian Initiative for Personal Rights (EIPR), Cairo, First Edition, April 2015, p. 6.

[168] The Boston Gazette chose the name “Gerrymander” to describe this unfair districting process that sought to concentrate party majority in specific districts and waste votes to other parties by rendering them minorities after the delimitation of districts. See: Brian Duignan, Gerrymandering. Encyclopedia Britannica, 11 October 2019, link: <https://www.britannica.com/topic/gerrymandering>, accessed 26 May 2021.

**Figure 2: The districting adopted by the governor of Massachusetts Elbridge Gerry**



It is clear that the process of delimitation of electoral districts has great impact on election results, as districting, along with several other factors, may determine election outcomes. Therefore, countries have paid great attention and strived to reduce the possibility of gerrymandering and significant change to the delimitation of districts and attempted to keep this process away from political parties and forces. They achieved this through various mechanisms including giving this task to special agencies such as the independent EMB.

## **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>[169]</sup>

[169] 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.

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>[170]</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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[170] 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

The Syrian electoral system conflicts with international standards for elections, especially in terms of accuracy and validity of representation. This applies both to the majoritarian system adopted, on the one hand, and the current division of electoral districts and distribution of seats, on the other.

### 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>[171]</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>[172]</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>[173]</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 67 seats were distributed to so-called "independents" all of whom were affiliated with the National Unity List.<sup>[174]</sup>

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

[172] Ibid.

[173] Held on 19 July 2020.

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

The ballot paper is always divided into two parts, the first of which contains the names of candidates from the workers and farmers category, while the second contains the names of the candidates for the remaining sectors of the population. This reflects the workers and farmers quota as enshrined in Article 60 of the Syrian Constitution and in Article 22 of the General Elections Law which stipulates that the proportion of representatives for the first category must be at least 50% of the total number of People's Assembly seats. Some believe that, through this quota, the regime aims to control the electoral process and elect its candidates,<sup>[175]</sup> and it also limits competition and confuses candidates in choosing the category through which to apply. It also violates the right to equality between candidates, especially since there is no international standard that allows setting a quota for such a category which is not considered marginalized in Syria. On the other hand, this quota leads to the exclusion, and lack of fair representation, of other segments of the population including women and people with special needs, and it neglects of Syrians abroad who are not entitled to vote in any other than presidential elections.

**Figure 3: Ballot paper for Syrian People’s Assembly elections**<sup>[176]</sup>



[175] See: “Election Provisions in the Constitutions of Syria,” *ibid.* Also see: Syrian Expert House, *ibid.*, pp. 64-65. This quota may be incompatible with Paragraph 4 of Article 8 of the Syrian Constitution which stipulates that no political activity may be conducted, and no political parties or groups formed, on a professional basis. The same article prohibits political activities, parties, or groups on the basis of religion, sect, tribe, region, or subnational affiliation, or on discrimination on the basis of sex, origin, ethnicity, or race. We agree with these provisions and believe such an article must be reintroduced into a future constitution of Syria, granted that they are bolstered with democratic judicial institutions and are not interpreted to serve the ruling regime.

[176] Source: Daraa al-Hadath, People’s Assembly elections of 2020.

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>[177]</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>[178]</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>[179]</sup> It is noteworthy that the number of seats in each governorate was not assigned in proportion to its population,<sup>[180]</sup> as this determination was instead left to the President of the Republic,<sup>[181]</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.

It is noted here that the difference in population size between the city of Aleppo and its countryside is 603,800, while the difference in parliamentary seats favors rural Aleppo with 12 seats. This is unsensible and does not seem to be subject to any fact-based explanation.

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

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

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

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

[181] 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 18: 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.

Many researchers have criticized the present electoral district delimitation in Syria, especially the large size of districts and its impact on the fairness of the elections. The Syrian Expert House does not believe “that adopting single-member districts according to the majoritarian voting system is a realistic option, because districting under such a system will enhance the influence of large parties and will be a subject of controversy. Also, current districting (fourteen electoral districts according to the number of Syrian governorates) will have to be overcome, not only because this division is a relic of Baath Party rule, but more importantly because the governorate constitutes a very large district, too large for any rapport to be created between local communities and their representatives in parliament.”<sup>[182]</sup> In turn, Syrian writer Lama Kannout asserts that “large constituencies require substantial financial resources for electoral campaigning, and in the Syrian case, oligarchs and the war wealthy in general, and the ruling Baath Party, will benefit from this, while the ability of women candidates to compete will be undermined.”<sup>[183]</sup>

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.”

[182] Syrian Expert House, *op. cit.*, p. 72.

[183] Lama Kannout, “A Feminist Political Reading of the Law on General Elections in Syria - Law No. 5 of 2014” (Arabic), Harmoon Center for Contemporary Studies, October 16, 2020, <https://bit.ly/3o81qeq>, accessed on 23 August 2021.

### 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.

Depending on the electoral system to be adopted, delimitation may be less consequential. With regard to presidential elections, if the system of government still requires the election of a president, Syria would be a single electoral district as is the case in Syria today<sup>[184]</sup> and also in most countries of the world.

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>[185]</sup> The minimum number of representatives for each governorate may be 15, and the maximum 30, depending on the population of each. It may also be important, and realistic, to increase this representation for some governorates that have suffered from marginalization during the past decades, such as the areas of the Jazira Region of Syria.

[184] Article 18 of the Syrian Law on General Elections No. 5 of 2014 states that, “The territory of the Syrian Arab Republic shall be considered as one electoral district for the purposes of: a. Election of the President of the Republic. b. Referenda.”

[185] 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: IDRAK 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>

It should also be noted that the division of electoral districts, or the number of seats allocated to each of them must be reconsidered from time to time according to different demographic conditions. Although there is no specific international standard for this process, many countries set about 10 years for reconsidering electoral districts. Therefore, the process of districting in Syria can be simplified as much as possible during the transitional period, which could contribute to averting its complications, provided that it is reconsidered as soon as the situation stabilizes, and conditions permit.

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>[186]</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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[186] 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>[187]</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.

Although there are international standards that must be upheld in any electoral system, the choice of system varies according to the situation of each country, its demographic structure, its system of government, and its political and social context.

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. It is thus crucial to adopt an electoral system that allows for the existence of a strong and

[187] 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.

viable opposition capable of presenting a government alternative.<sup>[188]</sup>

Some argue that, through the electoral system, voters should be able to determine their form of government and hold it accountable, providing the opportunity to withhold support from the ruling party in the event of government mismanagement. This also includes the ability of voters to monitor the fulfillment of candidates' electoral promises in the event of winning the elections, and thus excluding those candidates in the event they fail to fulfill their campaign promises or to perform their duties efficiently and professionally.<sup>[189]</sup>

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

The list below covers several goals that may be difficult to achieve and reconcile. For example, through the choice of electoral system, it is possible to seek to enhance the electoral chances of independent candidates while encouraging the launch of strong political parties. It may be more important to formulate a system that provides voters with a broad choice of candidates and parties. 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.

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[188] For more, see: Andrew Reynolds, *Electoral System Design*, *ibid.*, p. 9.

[189] *Ibid.*, p. 8.



- 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.

#### 3.1. First model: A majoritarian system with single-member districts equal to the number of members of the People's Assembly.

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>[190]</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>[191]</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.
- 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.

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

[191] 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.

**Table 19: 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>

### 3.2 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>[192]</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 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.

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

- 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

**Table 20: 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

$$\text{Electoral quotient: } 180,000/9 = 20,000$$

**Table 21: 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

**Table 22: 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:  $91,000/9 = 10,111$

**Table 23: 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
Total		8			9

### 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>[193]</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>[194]</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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[193] An interview with Walid Fakhreddine, a Lebanese elections expert, 11 May 2021.

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



## Recommendations

### 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.

## Part III

# Election Management and International Election Support in Syria



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

Respect for international standards requires the formation of an independent and impartial electoral management body (EMB) in order to supervise and manage elections. The existence, good composition, and independence of the EMB are critical to the conduct of credible, free, and fair elections, especially in countries that lack established democratic institutions.

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 in 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.

In the context of the foregoing, the first chapter of this section will deal with some topics relevant to the National Election Management Body in Syria. While the second chapter will highlight the role of the United Nations in the process of forming an EMB during the transitional period, as well as the various forms of support that can be provided in this area.

## 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>[195]</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.

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

## 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, as is the case of Jordan, which was amended to include a special provision for that.<sup>[196]</sup> The experience of the first EMB in the world was in Costa Rica, based on the new constitution of 1949, specifically Articles 99-104. Its powers and tasks were detailed in its Basic Law No. 3504 and in the Elections Law No. 1536.

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.

The extent of details differs from one country to another. In Germany, the constitution gives the electoral administration the power to demarcate electoral districts or define general criteria thereof. In Madagascar, the constitution addresses the right to vote, or the qualifications required for registration in the voter register. The Constitution of Cameroon specifies the dates or the maximum interval for elections, while the Constitution of India clearly stipulates the term of office of the EMB.

## 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.

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[196] The Hashemite Kingdom of Jordan, Constitution of 1952, amended in 2016, Article 67, paragraph 2 "An independent body shall be established by law to administer parliamentary, municipal and any general elections in accordance with the provisions of the law, and the Council of Ministers may assign the independent body to manage and supervise any other elections at the request of the legally authorized body. holding those elections."

### 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>[197]</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.

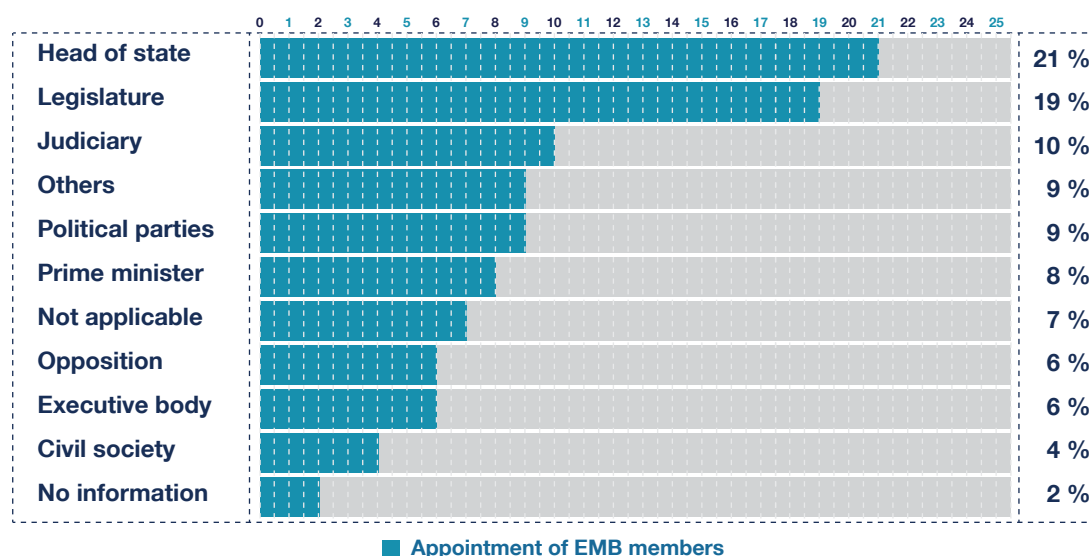
#### **Second: Membership, Selection of Members of EMB and Their Independence**

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>[198]</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 representatives within the EMB, or the latter may consist only of experts in elections, democracy, and human rights.

[197] 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.

[198] 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).

**Graph 4: competent authority to appoint members to some EMBs around the world**



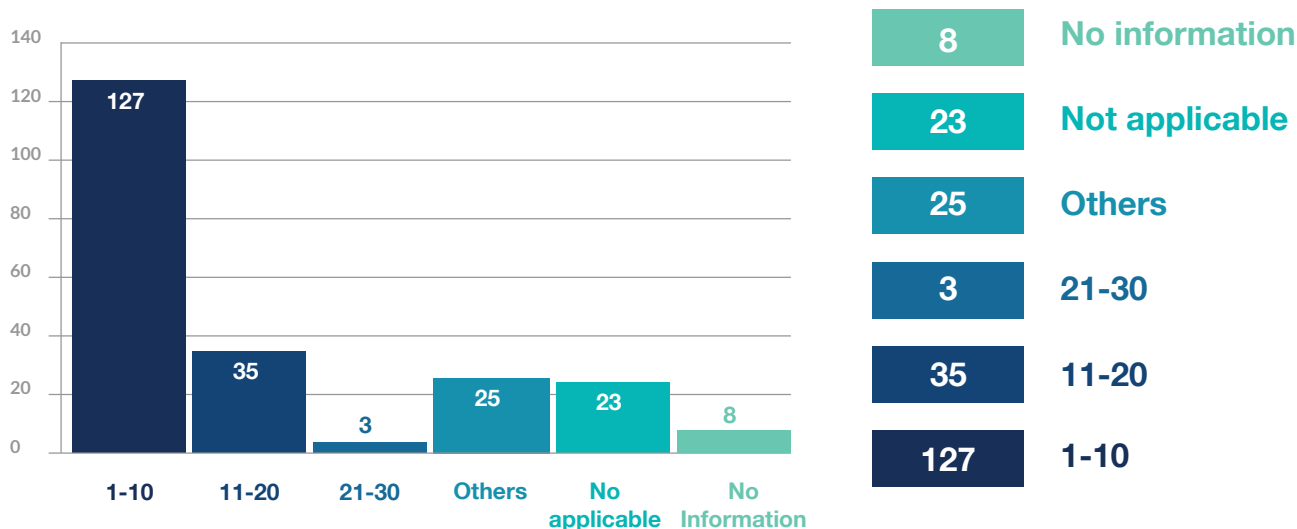
We have to distinguish in the appointment process between members and the head of the EMB, as the role of each grows the more supporting mechanisms and the method of appointment are transparent and independent.

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>[199]</sup>.

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



**Graph 5: Number of EMB members around the world<sup>[200]</sup>**



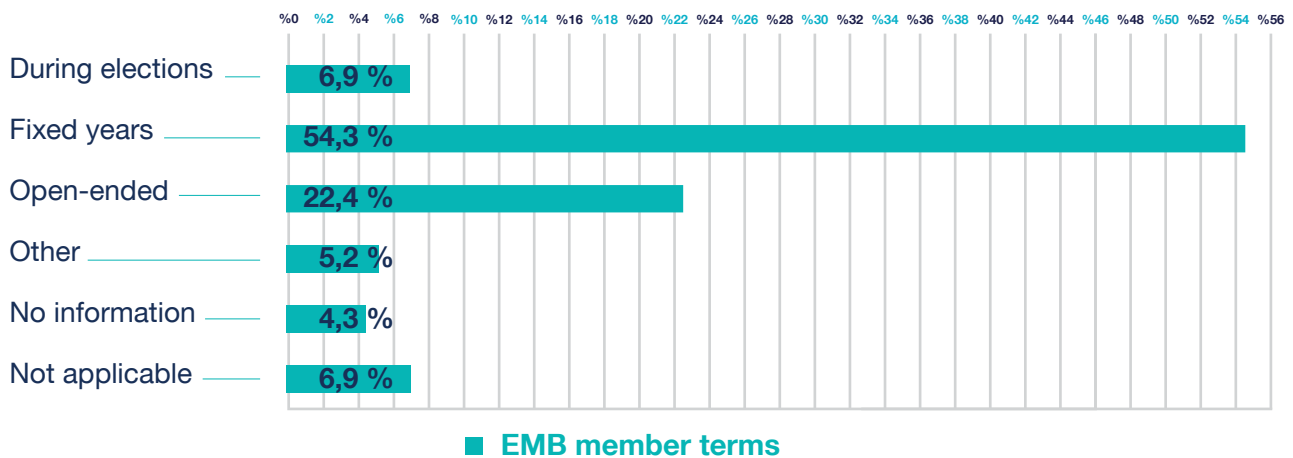
**States according to number of EMB members**

The fewer the EMB members, the better. What should be mentioned here is that the largest work is concentrated in the Executive Office, managed by a full-time executive director.

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.

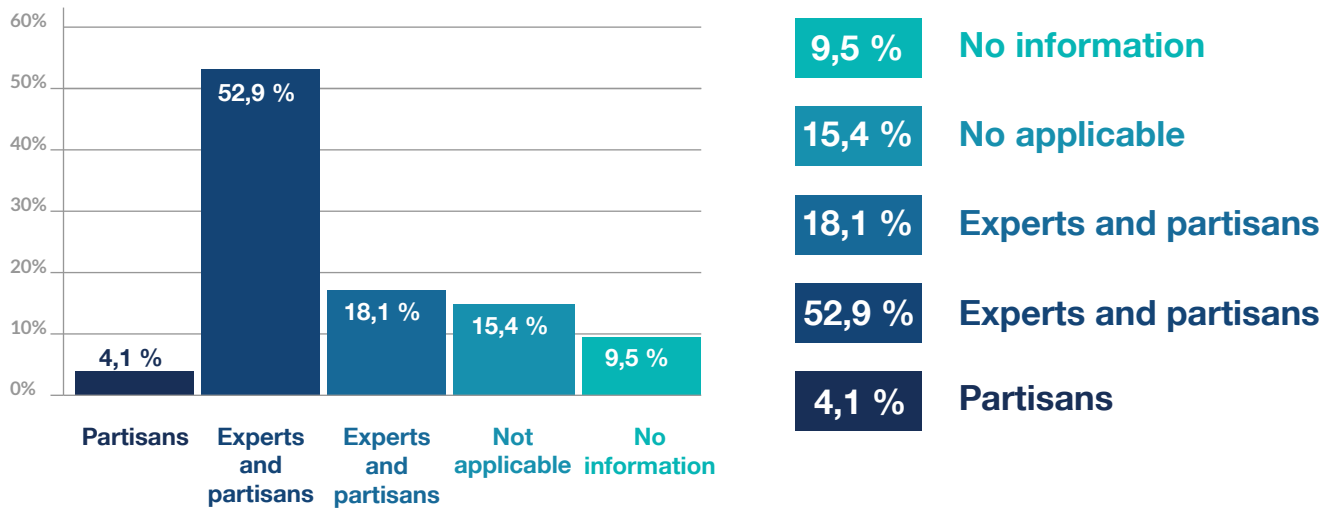
[200] Electoral Administration Systems Design, Three Electoral Management Models, Electoral Knowledge Network (ACE), available at: [Who Organizes Elections? — \(aceproject.org\)](http://www.aceproject.org), last accessed April 12, 2021.

**Graph 6: The time period of EMB membership around the world**<sup>[201]</sup>



As for the background of EMB members, they can be explained as follows.

**Graph 7: Backgrounds of EMB members around the world**<sup>[202]</sup>



Here lies sensitivity, trust, and past experiences, specifically in countries with a history of authoritarian / totalitarian / dictatorial rule. Wherever there is distrust in the institutions of former regime (ministries, apparatuses, departments), political parties tend to participate in EMBs, while in other countries different mechanisms are followed, as shown in the above graph.

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

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

What leads to the existence of independent EMBs is historical objective obstacles to the work of Ministry of the Interior or the committees and departments charged with managing the elections, including their previous support for the ruling party, their lack of respect for the basic principles of impartiality in the management of the electoral process, and their lack of respect for a number of main principles such as independence, impartiality, integrity, transparency, professionalism and efficiency.

Indeed, the government's management of the electoral process has become the exception after it was the rule for decades, especially with elections becoming the only and best mechanism for gaining power through the ballot box. The presence of an apparatus that runs the electoral process from A to Z is now the rule. The more this apparatus enjoys complete independence and enjoys a respected legal personality that is completely impartial vis-à-vis all political parties and forces, government, media, civil and local NGOs, the more likely society will achieve real democracy representative of voter choices and aspirations.

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

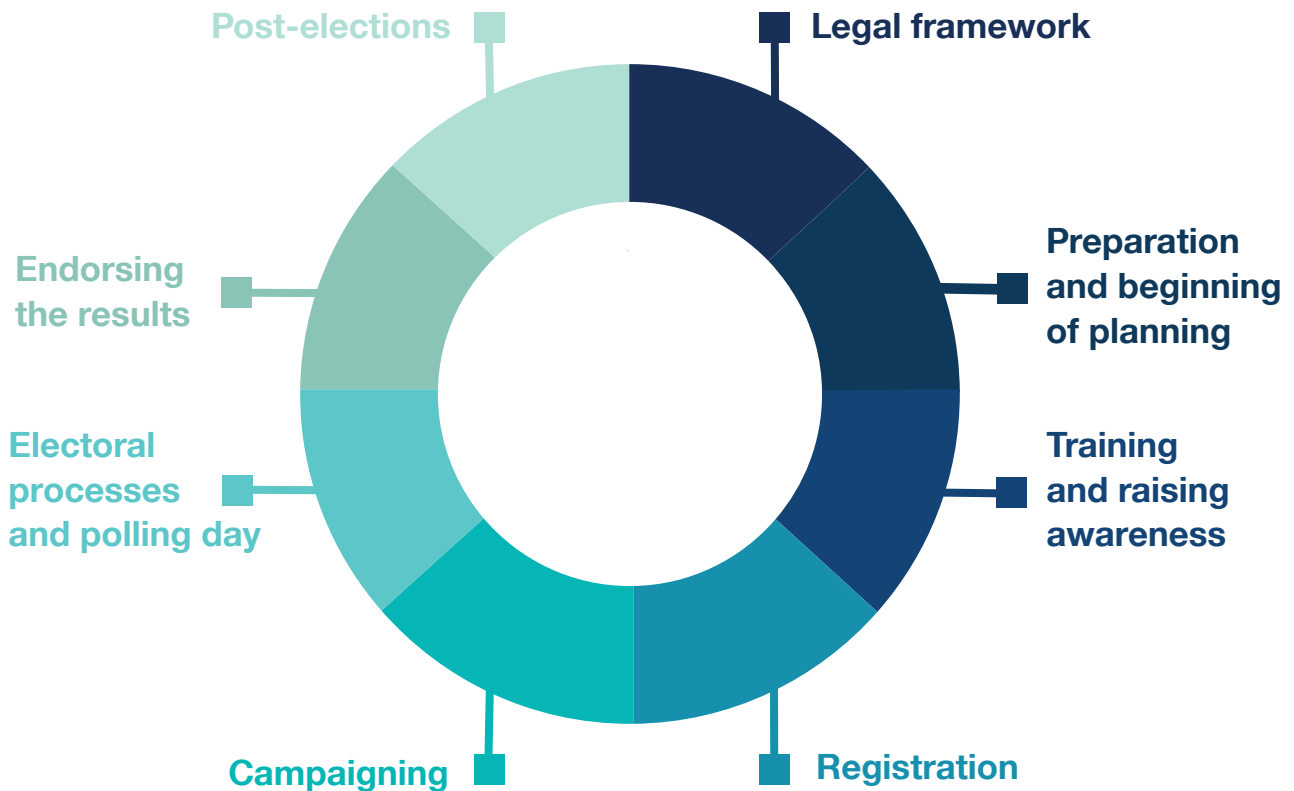
As we follow an electoral cycle, it becomes clear how much work is being done by those in charge of the electoral process. At first glance, it seems that the electoral process is limited to the polling day and the preparations that precede it, but reality is very different. The amount of work needed 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>[203]</sup>

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[203] Bridge Presentation.

**Graph 8: The Electoral Cycle**



This amount of work is accompanied by mistrust of the institutions of the former regime, which through many bitter experiences, and the independent administration constitutes the foundation for reform and electoral change, which is intended to build the course of an electoral process based on the actual competition of multiple actual parties. 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>[204]</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 the various parties, candidates, and the media,<sup>[205]</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>[206]</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.

[204] 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.

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

[206] 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.

#### 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.

#### 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.

#### 6. Other Tasks

The EMB should also be involved in other tasks such as electoral district delimitation, organizing election monitoring by various actors, and granting them necessary licenses. Certainly, the timing of the EMB formation plays a key role in expanding or, conversely, limiting the tasks entrusted to it. It is better to form the EMB at least one year prior to holding any actual elections, in order to allow those in charge of it the opportunity to receive the necessary training and prepare to carry out the tasks delineated above.

Finally, transparency is one of the main issues that will enable the EMB to gain the trust of citizens, and even international parties. Transparency measures require taking into account, among other things, the dissemination of extensive information about its decisions, budget and staff, as well as the electoral register and the results of each election within the shortest possible time frame, etc.<sup>[207]</sup> Public confidence also increases if the EMB establishes an internal complaints mechanism through which grievances may be submitted against any violation or abuse that may come from any of its staff or contractors. In all cases, citizens must have the ability to challenge the EMB's decisions and hold it accountable before the judiciary.

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[207] For more, see: Frank McLachlin, *ibid.* p 23-24.

## 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>[208]</sup> into 3 main forms:<sup>[209]</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 (Senegal), 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>[210]</sup>

[208] 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.

[209] 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.

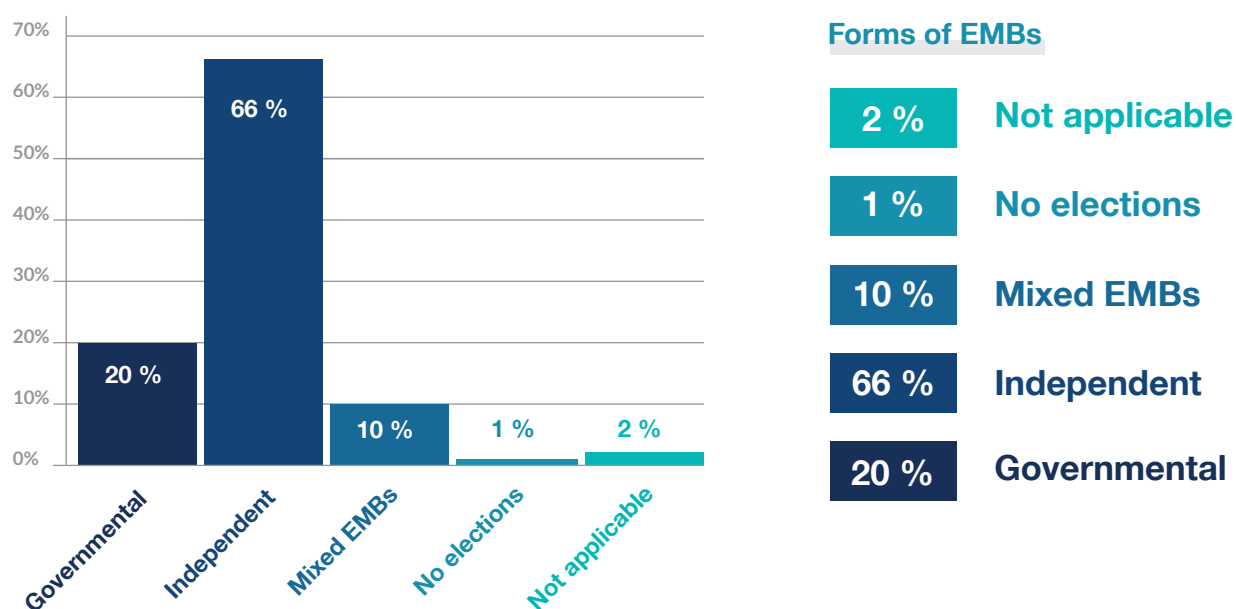
[210] Pamela Qortbawi and Mario Abu Zaid, *ibid.*, p. 20. For more on the types and forms of electoral administration in the Arab countries, see Ali el-Sawy, *Democracy of Elections: Administration or Will? Elections and Democracy in the Arab World*, p. 52 and beyond.

This type of EMB is likely a transition between two stages, and often ends with the establishment of an independent body.

**Table 24: Countries and the forms of EMBs**<sup>[211]</sup>

Mixed EMBs	Governmental EMBs	Independent EMBs
Japan	Belgium	Australia
Netherlands	Germany	Palestinian Territories
Slovakia	Kuwait	Tunisia
Monaco	Lebanon	Libya

**Graph 9: Comparing EMBs around the world**<sup>[212]</sup>



[211] Source: Forms of Electoral Management, International IDEA.

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



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 this regard, researcher Ali al-Sawy says that comparative experiences reveal that, “Independent electoral bodies serve democratic stability better than elections run by the executive authority, and they also constitute a major factor in the acceptance of election results by all contestants, promoting voter confidence, as well as enhancing the legitimacy of election winners.”<sup>[213]</sup> 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>[214]</sup>

Finally, it should be noted that a temporary EMB is expected to be formed in Syria<sup>[215]</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>[216]</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>[217]</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>[218]</sup> The United Nations was also involved in the electoral process in Namibia in order to contribute to achieving a political settlement in the late

[213] Ali al-Sawy, *ibid.*, pp. 65-66.

[214] 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.

[215] 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.

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

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

[218] 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)

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>[219]</sup> The role of the international community in managing future electoral processes in Syria will be detailed below.

## 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>[220]</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.

In rare cases, the task of the UNEAD is not limited to providing technical support, but in circumstances of armed conflicts, a radical change in the political system or the emergence of new states, the UN is entirely responsible for the organization and implementation of elections in Member States: “This happened in Cambodia (1992-1993) and East Timor (2001-2002). In other cases, UN experts may join the national electoral administration, in which case the responsibility is shared between the UN and Member States. That was the case in Afghanistan in 2004-2005 and in Iraq in 2005. These cases remain as exceptions and are applied to cases of preparing for certain transitions. As a rule, the UN takes a supporting role, helping the national EMB.”<sup>[221]</sup>

This assistance comes in large part due to the lack of trust in the institutions of the former regime and bitter experiences of electoral fraud. But to what extent will this assistance apply in Syria during the transitional period. Here a question is raised about the nature of the UN’s supervisory role and its practical implications at various stages of the electoral process. Paragraph (4) of the resolution, which set a period of six months for its implementation, clarified the foundations of the political transition pro-

[219] 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.

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

[221] Elections, Political Affairs and Peacebuilding, United Nations, *ibid.*

cess based on both the Geneva Communiqué and the 2015 Vienna Communiqué on Syria.<sup>[222]</sup> Such elections should be held under UN supervision, and with adherence to the highest international standards of transparency and accountability. They must also be free and fair elections in which all Syrians, including those displaced, have the right to participate. This is provided that such elections are implemented within a maximum period of 18 months.

It is worth noting that previous experiences of UN involvement have been diverse and varied according to the context in each country, as the United Nations recognizes that there is no ready-made template for democracy that can be applied to all contexts.<sup>[223]</sup> Moreover, the effectiveness of the UN role has also varied across experiences, as well as in the challenges faced at the local level which affected the forms of intervention and mandate carried out by the UN mission in each country. Notably, this general pattern will not be effective unless it is adapted to the Syrian context.

## **First: The Legal Framework Regulating the Role of the United Nations in the Electoral Process**

Elections play an important role in resolving conflicts and ensuring a peaceful and democratic transfer of power, which prompted the United Nations to establish the Electoral Assistance Division (UNEAD) in 1991. This Division makes efforts to enhance and coordinate electoral assistance capacities within the United Nations framework that provides electoral assistance as part of its scope of work that relates to the political affairs of member states, international peacebuilding, and preserving human rights. Through this Division, the United Nations works to provide electoral services and assistance necessary for the success of elections in a given country. The provision of assistance is conducted either at the special request of the Member State concerned, or at the request of the Security Council or the General Assembly.<sup>[224]</sup>

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

[222] 'Statement of the International Syria Support Group, Vienna, November 14, 2015' (German Federal Foreign Office, 2015) <https://www.auswaertiges-amt.de/en/newsroom/news/151114-abschlussstatement-des-syrien-aussenministertreffens-wien/276418>, accessed on May 19, 2021.

[223] UN General Assembly, 'Enhancing the Effectiveness of the Principle of Periodic and Genuine Election' (1991) A/RES/46/137 (preamble), link: <https://undocs.org/en/A/RES/46/137>

[224] Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization, Report of the Secretary-General, General Assembly, A/72/260, 1 August 2017, para 2.

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.

## 1. The Charter of the United Nations and the International Bill of Human Rights

The Charter of the United Nations indicates that one of its main purposes is to develop friendly relations among nations in a manner that preserves the right of peoples to self-determination.<sup>[225]</sup> While there is ongoing debate about whether self-determination is an external right, such as deciding to emerge from under colonial rule, or an internal one that includes the right to elect the state leaders.<sup>[226]</sup> For Mechelle Evans and Darilyn T. Olidge, the declaration of “friendly relations” within the UN Charter indicates that self-determination is a participatory right, both internal and external, and that the internal exercise of this right means that every person or group living in a sovereign state has the full right to political participation without discrimination based on race or creed.<sup>[227]</sup> In this regard, the Universal Declaration of Human Rights states that everyone has the right to take part in the conduct of the public affairs of their country, exercised either directly or through representatives of their choice through periodic, fair, and secret elections via universal suffrage and on an equal footing among the electorate in terms of guaranteeing the freedom to vote. This is also confirmed by the International Covenant on Civil and Political Rights.<sup>[228]</sup>

## 2. United Nations General Assembly

General Assembly resolution 137/46 of 1991 is considered the cornerstone in organizing the role of the United Nations in support of the principle of free and fair periodic elections. In essence, this resolution is based on the principle of respect for state sovereignty, the will of peoples as enshrined in the Charter of the United Nations, as well as the right of every individual to participate in the conduct of public affairs in their country without discrimination, in accordance with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>[229]</sup> Through this resolution, the General Assembly endorsed the Secretary-General’s view of the need to appoint a senior official to be a focal point and coordinator to support the UN’s electoral assistance operations, and also requested the establishment of a small team to

[225] Charter of the United Nations 1945 Art 1(2) states: "Development of friendly relations among nations on the basis of respect for the principle which requires equal rights among peoples and for each of them to have self-determination, as well as taking other appropriate measures to strengthen public peace."

[226] Nhan T Vu, 'The Holding of Free and Fair Elections in Cambodia: The Achievement of the United Nations' Impossible Mission' (1995) 16 Michigan Journal of International Law 1178, 1190.

[227] Mechelle Evans and Darilyn T Olidge, 'What Can the Past Teach the Future: Lessons from Internationally Supervised Self-Determination Elections 1920-1990' (1992) 24 NYU J Int'l L & Pol 1711, 1717.

[228] Universal Declaration of Human Rights 1948 (UNGA Res 217 A) Art 21; International Covenant on Civil and Political Rights 1966 (UNTS vol 999, p 171) Art 25.

[229] UN General Assembly (n 4) (preamble).

support this official in carrying out their tasks.<sup>[230]</sup>

In the overall framework, the coordinator of support for the Electoral Assistance Division (UNEAD) of the UN Department of Political and Peacebuilding Affairs (DPPA) oversees support for electoral processes in member states, either at the request of the member state itself or pursuant to a Security Council or General Assembly resolution. The planned support is then based on an assessment by the United Nations of the needs and capabilities of the state in order to ensure that the best form of support would be provided.<sup>[231]</sup> Accordingly, this UN official, or focal point, would be responsible for setting policies related to electoral assistance, deciding on the parameters and variables of the assistance to be provided, and maintaining a list of experts who can be drawn upon throughout the electoral support process.<sup>[232]</sup>

It is also worth noting that the UN General Assembly stresses the importance of electoral assistance being “objective, impartial, impartial and independent, with respect for national sovereignty.”<sup>[233]</sup> To this end, the UNEAD receives support from other United Nations agencies, as the United Nations Development Program is the body entrusted with implementing electoral support, whether through the establishment of electoral institutions or building legal and regulatory frameworks in contexts where there are no special United Nations missions. In the event of a special mission such as a peacekeeping or post-conflict context, these missions undertake the task of providing electoral assistance, including providing security and protection for the entire electoral process. In addition to the support provided by the Office of the United Nations High Commissioner for Human Rights (OCHR), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Organization for Migration, in order to promote freedom of expression and media, and to ensure the democratic participation of all segments of society, especially vulnerable groups, people with disabilities, migrants, and asylum seekers.<sup>[234]</sup>

### 3. UN bodies providing electoral assistance

The UN Department of Political and Peacebuilding Affairs (DPPA), through Electoral Assistance Division (UNEAD), serves as the main coordinator among all United Nations agencies and bodies involved in the provision of electoral assistance. This role is especially important due to the fact that electoral assistance provided by the United Nations involves the sharing of experiences among its various bodies.

[230] Ibid 9–11.

[231] General Assembly (n 5) para 2.

[232] Ibid, para 5.

[233] Ibid, para 2.

[234] Ibid, para 6–12.

The United Nations relies on uniting efforts and adopting a system of work based on the specialized knowledge and complementary capabilities of many United Nations bodies. In addition to the DPPA, this multi-agency system includes a number of other bodies: Department of Peacekeeping Operations (DPO); the United Nations Development Program (UNDP); the Office of the United Nations High Commissioner for Human Rights (OHCHR); United Nations Volunteers (UNV) program; the United Nations Office for Project Services (UNOPS); United Nations Educational, Scientific and Cultural Organization (UNESCO); United Nations Entity for Gender Equality and the Empowerment of Women (UN Women); and the International Organization for Migration (IOM).

## **Second: 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>[235]</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. 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>[236]</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.

Although, at first glance, the procedures for providing electoral assistance through UN supervision seem self-evident, the parameters and variables that actual supervision could take are not precisely defined. The definition that the United Nations gives to its election supervision role indicates that it contains a primary role, which is the ratification and approval of the electoral process at each stage. The UN also plays an additional role, estimated according to each context, which is direct participation in the development of electoral mechanisms, with a non-exhaustive list of examples. This role would open the door to unspecified interventions, especially since the United Nations

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

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

could at any moment express its dissatisfaction with the process and impose a set of “mandatory recommendations” to complete the supervised election process, which cannot take place without UN approval of all its stages.

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>[237]</sup>

### 1. 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.

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

In Namibia, Canada, France, the Federal Republic of Germany, the United Kingdom, and the United States submitted a proposal to the President of the Security Council for the settlement of the Namibian situation in 1978. The settlement proposal contained a negotiated compromise that allowed South Africa, through a director-general appointed by it, to administer the elections, but under UN supervision and monitoring through the Special Representative of the Secretary-General, who would be assisted by the UN Transition Assistance Team (UNTAG).<sup>[238]</sup> The United Nations Transition Assistance Team was composed of a military component and a civilian component, and was responsible for preparing the appropriate environment for a free and fair electoral process in which citizens participated freely and without intimidation under the supervision of the United Nations.<sup>[239]</sup> 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>[240]</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>[241]</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>[242]</sup>

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[238] United Nations Peacekeeping, 'Namibia-UNTAG: Background' (United Nations Peacekeeping) <https://peacekeeping.un.org/sites/default/files/past/untagFT.htm>, accessed 12 May 2021.

[239] UN Security Council, 'Security Council Resolution 435 (1978) [Namibia]' (UNSC 1978) S/RES/435 (1978) para 3; UN Security Council, 'Security Council Resolution 632 (1989) [Namibia]' (UNSC 1989) S/RES/632 (1989) para 2.

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

[241] 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.

[242] 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.



In Syria, subjected to a one-party regime over the past five decades, with the Baath Party taking power in 1963 and Hafez al-Assad successfully taking over the country in a coup in 1973, the country entered the tunnel of one-party dictatorship (although there were other parties nominally sharing power, which remained marginal and ineffective). No real political change in the government has happened, which led to the fading of the democracy, despite the holding of elections of all kinds (presidential, parliamentary, municipal) and at the times provided for in the constitution and the law. These elections have remained largely formalistic and lacking in integrity and transparency.

This was the case in Namibia, where its discriminatory regime precluded the existence of democratic traditions. It was therefore essential for the UN mission to develop the legal systems and effect post-conflict societal, military, and political change in order to ensuring the conduct of electoral processes in an atmosphere of free and fair democratic participation without intimidation. In order to achieve this, long negotiations took place with the authorities, led by the Special Representative of the Secretary-General and under the supervision of the Secretary-General personally, seeking a proper implementation of the settlement agreement.<sup>[243]</sup> Before commencing the electoral processes, the Special Representative had to ensure that a number of actions had been taken in the country, including the cessation of hostilities, the abolition of all discriminatory and freedom-restricting laws, legislation and measures that impede the freedom to participate in elections, the release of political detainees to participate freely in the elections without fear of arrest, in addition to ensuring the voluntary safe return of refugees to participate freely in elections without arrest, with the help of the United Nations High Commissioner for Refugees (UNHCR).<sup>[244]</sup> These negotiations resulted in the political parties in Namibia unanimously agreeing on a code of conduct in which they pledge not to adversely affect the course of the electoral process and to support the endeavours of the UN mission in this regard.<sup>[245]</sup>

As such, the UN-supervised elections were accompanied by a ceasefire, the release of detainees, and the guaranteed equal participation of refugees and displaced persons. This is what is yet to be explicitly stated in the Syrian case. Moreover, the UN missions had a role in ruling out the effects of discriminatory provisions and laws before initiating the electoral process. It is useful to refer to some discriminatory articles in the Syrian local systems to highlight the importance of reconsidering them before starting the elections. The Syrian Election Law No. 5 of 2014 indicates that the right to a secret, direct and equal vote is guaranteed freely and individually.<sup>[246]</sup>

[243] Namibia-UNTAG: Background, *ibid.*

[244] Proposal for a Settlement of the Namibian Situation, UN Security Council, *ibid.*, articles 7-8.

[245] Code of Conduct for Political Parties during the 1989 Election Campaign in Namibia on 12 September 1989, CONSTITUTIONNET and IDEA. [https://constitutionnet.org/sites/default/files/code\\_of\\_conduct\\_governing\\_the\\_1987\\_election\\_campaign.pdf](https://constitutionnet.org/sites/default/files/code_of_conduct_governing_the_1987_election_campaign.pdf) Accessed 30 August 2021.

[246] General Elections Law of 2014, *ibid.*, Article 3.

However, a person convicted of a felony, a heinous misdemeanor or a breach of public confidence shall be deprived of his right to vote unless rehabilitated. They are also prohibited from running for the presidency, even if rehabilitated.<sup>[247]</sup>

Looking at the current Syrian context, large numbers of Syrians have been convicted of terrorism-related offenses simply for their opposition to the ruling political regime.<sup>[248]</sup> Consequently, anyone who has been sentenced, albeit arbitrarily, will be deprived of participating in the upcoming electoral process.<sup>[249]</sup> In addition, the law indicates that “blind voters, and others with disabilities, who are unable to prove their opinions on the electoral paper themselves, entrust those who come with them before the Election Committee to write down the opinion they express on the ballot paper, or express their opinion orally, so that members of the Election Committee can hear them.”<sup>[250]</sup> This article contradicts the secrecy of the elections, and deprives the participants included in the article from the freedom to participate and cast their votes secretly simply because of their disability. In addition, the election of the President of the Republic is administered under the supervision of the Supreme Constitutional Court.<sup>[251]</sup> Here, it should be noted that the judges of this court are named by the President of the Republic by decree, as per the current Syrian constitution.<sup>[252]</sup> This may call into question the credibility of the Constitutional Court’s oversight and its partiality vis-à-vis the president who named its judges in the event he runs for subsequent elections. This is added to all the obstacles that prevent the participation of Syrian refugees as candidates or as voters in the presidential electoral process, whether due to charges in absentia, their exiting the country through illegal crossings, their lack of official legal documents, or a requirement for their continuous residence in Syria for ten years before their candidacy for the position of the President of the Republic, let alone other legal conditions that deprive them of an equal opportunity for effective participation as voters or candidates.<sup>[253]</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

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[247] General Elections Law of 2014, *ibid.*, Articles 5 and 30.

[248] Syria: Counterterrorism Court Used to Stifle Dissent, Free Prominent Rights Activists on June 26 Trial, Human Rights Watch, 25 June 2013. <https://www.hrw.org/news/2013/06/25/syria-counterterrorism-court-used-stifle-dissent>, last accessed 10 May 2021.

[249] Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections (2021). Research Group, Legitimacy and Citizenship Program in the Arab World, London School of Economics and Political Science (LSE), pp. 19-20.

[250] General Elections Law of 2014, *ibid.*, Article 7.

[251] General Elections Law of 2014, *ibid.* Article 10.

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

[253] Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections, *ibid.*, p. 38.

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>[254]</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 these agencies and bodies and administrative offices, and to identify the civilian police personnel needed for law enforcement in Cambodia.<sup>[255]</sup>

In addition, after consulting with the National Council, the UN mission in Cambodia had to put in place the laws and administrative procedures necessary for free and fair elections, and to adopt an electoral law and a code of conduct regulating participation in elections in a manner consistent with respect for human rights, in addition to suspending or repealing the laws that were inconsistent with the objectives of this operation. The mission also had to design and implement a voter education program, a voter registration system, and political parties and candidate lists; it also supervised equal access of candidates to the media, adopted and implemented measures to monitor and facilitate Cambodian participation in elections, political campaigns and polling procedures; in addition designing and implementing a voting system and make necessary arrangements, in consultation with the National Assembly, to facilitate the work of foreign observers wishing to monitor the electoral campaign.<sup>[256]</sup> All this was in accordance with human rights standards that guaranteed equal rights for all Cambodians to participate in the electoral process, including refugees and displaced persons.<sup>[257]</sup>

In a similar context, Annex III of the Dayton Peace Agreement on Elections indicates that the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the "Republic of Bosnian Serbs" have agreed to ensure that the conditions for organizing free and fair elections in a politically neutral environment guarantee the secrecy of the casting of votes without fear or intimidation, as well as freedom of the media and freedom to join associations and form political parties and guarantee freedom of movement, all under the supervision of the Organization for Security and Cooperation in Europe (OSCE) and its support in creating the appropriate conditions for such elections.<sup>[258]</sup>

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

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

[256] *Ibid.*, Annex 1 (Section D, 3).

[257] *Ibid.*, Annex 3, Art 3.

[258] Letter dated 29 November 1995 from the Permanent Representative of the United States of America, *ibid.*, Annex 3, Art 1.

In this regard, the Organization established a temporary election committee that supervised the creation of necessary institutional structures and frameworks to conduct elections and the adoption of electoral systems necessary to register candidates, determine their eligibility and voter eligibility, and ensure compliance with specific electoral rules and regulations.<sup>[259]</sup> In addition, the parties have signed the need to comply with the rules set forth in Articles 7 and 8 of the 1990 Copenhagen Convention, which provides, among other things, to ensure that law and government policies allow political campaigns to be conducted in an atmosphere of fairness and freedom without any form of violence and intimidation.<sup>[260]</sup>

Based on the above, it is clear that the methodology of the UN in Namibia, Cambodia and Bosnia and Herzegovina built upon existing peace agreements that resulted in an electoral process for a governing body that approved the country's constitution. On the other hand, we find that Security Council Resolution 2254 on the Syrian issue provides for a different course of action. It refers to the drafting of a new constitution for the country first, and then the holding of free and fair elections pursuant to the new constitution under the supervision of the UN.<sup>[261]</sup> Thus, the constitution being prepared by the Constitutional Committee in Syria is a constitution resulting from a committee that is not democratically elected under the supervision of the UN, as was the case in previous experiences. Moreover, international agreements prior to elections are supervised through a special UN mission headed by a special representative of the Secretary-General and with civilian and military components. The mission works first to provide a legal, political, civil and security environment for free and fair elections that take into account human rights standards and democratic participation for the various groups of the people. It therefore oversees the ceasefire and hostilities that would intimidate citizens and limit their electoral freedoms and their physical and psychological integrity, provided that it supervises the preparation of the necessary electoral laws and regulations and stops discriminatory laws. In addition, the UN mission oversees planning and logistical and security preparation for the electoral process, including setting election dates, hiring cadres, training and education related to the election process, for both electoral staff and broader society, as well as voter registration, approval of candidate lists, and supervision of election campaigns.

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[259] Ibid., Annex 3, Art 3.

[260] Ibid, attachment to Annex 3 on Elections.

[261] Resolution 2254, UN Security Council, 18 December 2015, para 4.

## 2. 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.

In Namibia, the election process was administered by the Director-General for Electoral Affairs under the supervision of the UN, and a set of decisions were identified that could only be taken by the Director-General and his election officials with the approval of the Special Representative of the Secretary-General, including: The decision to specify or change the dates of the polling days; locating polling stations and the timetable for mobile polling stations; the establishment of additional polling centers; suspending voting in a polling station; removing a person from the polling station; preventing any voter from voting at a polling station; determining the method of objecting to a voter by polling agents; accepting or reject the submitted ballot; and finally announcing the results of the poll, whether at the regional or national level. In addition, the Assistance Team has overseen all security arrangements to guard ballot papers and other voting materials during the elections, and the Special Representative of the Secretary-General has certified every stage of the electoral process to ensure that the elections are conducted freely and fair.<sup>[262]</sup>

In Cambodia, the UN Transitional Authority (UNTAC) had extensive supervisory powers over all local administrations during the course of the electoral process in order to ensure the integrity and effectiveness of the elections. The international team was also supervising the development and proper implementation of relevant laws and judicial processes necessary for the integrity of the electoral process.<sup>[263]</sup> When necessary, the Special Representative of the Secretary-General had the right to conduct investigations into complaints submitted to the electoral process administration or to initiate investigations on his own if necessary, with the power to take all necessary corrective measures for the course of the process.<sup>[264]</sup> The international team also had the power to direct the general process of the polling and counting of votes and to determine whether the elections were free and fair, and if so, the international team approved

[262] Godwin Jitubob, *Namibia: The Supervision and Control of the Electoral Process by UNTAG*, (1993) 1 *African Yearbook of International Law Online* 35. 48–59.

[263] Letter Dated 30 October 1991 from the Permanent Representatives of France and Indonesia, *ibid.*, Annex 1 (section B. 5).

[264] *ibid.*, Annex 1 (section B, 6).

the list of duly elected persons.<sup>[265]</sup> In addition to the above, the UNTAC in Cambodia had the authority to protect the electoral process from any fraud or fraud during the election, and accordingly it had the power to make all arrangements for the presence of Cambodian representatives to monitor the registration and voting procedures. The UN team also had the power to determine the timetable for the process, in consultation with the Cambodian National Council, and to take all necessary measures to ensure that the electoral system and the processes followed are effective and impartial.<sup>[266]</sup>

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>[267]</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>[268]</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>[269]</sup> It is important to recall that the judges of this court are named by the President of the Republic.<sup>[270]</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>[271]</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>[272]</sup> This would call into question the credibility of these agencies' supervision of the electoral process.

It is striking in the Bosnian experience that the OSCE has established committees to monitor and supervise elections, including: The Interim Elections Committee, which is a committee charged with supervising the entire course of the electoral process, starting with the adoption of rules and regulations related to the registration of candidates, and deciding on the eligibility and registration of candidates and voters; in addition to defining the role of local and international election observers, ensuring compliance with electoral rules and regulations, and ending with the creation, publication and approval of final election results. In order to prevent conflicts of interest and to preserve the integrity of the electoral process, a special committee has been established to look

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[265] Ibid, Annex 1 (section D, 3: J.K.L).

[266] Ibid. Annex 1 (section D: 4.5.6).

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

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

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

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

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

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

into electoral appeals to ensure compliance with the rules and regulations of the Interim Election Commission and to adjudicate complaints related to the electoral process. This commission has the power to impose sanctions on any individual, candidate, party, or other body that violates the rules and regulations of the temporary election commission, including fining parties or removing candidates from the electoral lists. The Panel of Experts in Media Affairs was also established to investigate complaints related to the media, supervise the monitoring of the security of journalists, verify fair media access for candidates, and ensure that the media respect standards of professional conduct in covering the electoral process. About 1,200 election supervisors from the OSCE have been appointed to provide technical assistance in organizing the elections and solving technical problems before and during election day. All of these operations were subject to pre- and post-approval by the OSCE. This approval was carried out through several levels to ensure that there are no conflicts of interest and to determine whether the elections were free and fair.<sup>[273]</sup> Consequently, a group of bodies that supervise the conduct of the electoral process has been formed in a way that guarantees the integrity and independence of these bodies from the influence of the ruling authority.

Certainly, the experiences of supervising the election day are not without challenges. Paul Diehl and Sonia Jurado point out that one might assume that there are two scenarios for the conduct of the electoral process: either the process is conducted with the least possible violence and in a fair and impartial manner, or the results are manipulated, voters are intimidated, and the process fails altogether. However, the reality indicates that electoral processes do not take one of these two extremes, but rather oscillate between them.<sup>[274]</sup>

For example, a number of problems occurred in the electoral process in Bosnia, where the Coordinator of International Observation stated in his initial report that problems in voter registration undoubtedly jeopardized the integrity of the elections. Thousands of people found themselves unable to vote, because they could not find their names on voter registration lists. Although the OSCE instructed the local election commissions and polling station commissions to direct voters who did not appear on the rolls to the local election commission to obtain certification and return to the polling stations, this occurred late in the day after many voters went home and gave up voting. There were also other challenges in absentee polling stations related to crowd control and voter safety, and polling had to be suspended for a while. As a result, some polling stations remained open for additional three hours to allow more voters to cast their ballots. Moreover, there were several problems related to the integrity of the elections reported

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[273] International Crisis Group (ICG), *Elections in Bosnia-Herzegovina: Introduction and Background*, Refworld, 1996. <https://www.refworld.org/docid/3ae6a6d50.html>. Accessed 17 May 2021

[274] Paul F. Diehl and Sonia R. Jurado, *UN Election Supervision in South Africa: Lessons from the Namibian Peacekeeping Experience*, 16 *Studies in Conflict & Terrorism* 61, pp. 72–73.

by the OSCE and international observers, which resulted in the dismissal of a number of officials from their posts and the invalidation of the results of some polling stations. As well as the problems of double voting by refugees living in Croatia and Serbia, where refugee voting procedures in each country were outside the administrative control of the OSCE and the Provisional Election Commission, the organization received complaints alleging that authorities in the Federal Republic of Yugoslavia had forced refugees to Union to vote in certain regions. She also claimed that some refugees had voted twice, once in the country in which they lived, and then crossed the border in Bosnia and Herzegovina to vote again.<sup>[275]</sup>

It is essential that the UN's supervisory role include the issue of non-resident voting. One of the lessons learned from the Bosnian experience that the UN can take into account in the Syrian context is the effectiveness of the work of the Subcommittee. Daniel Blessington believes that there are several factors that underlie the effectiveness of the Subcommittee as an executive body, namely: the Committee's enjoyment of real enforcement powers for its decisions and its ability to impose sanctions and fines on violating the electoral system. Without these enforcement powers the subcommittee would be ineffective. It is true that enforcement powers are very important, but they would not have been possible without the willingness and ability of the subcommittee to use these powers in innovative ways. This is due to the expertise and integrity of the individuals who made up the subcommittee. Subcommittee members were also largely insulated from national pressures due to the secrecy of the proceedings, which contributed to strengthening the subcommittee's work without fear of reprisals or interference. In addition, the representation of the three main ethnic groups in Bosnia in the Subcommittee effectively contributed to reducing bias in its quick decisions.<sup>[276]</sup>

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

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[275] Daniel J. Blessington, *From Dayton to Sarajevo: Enforcing Election Law in Post War Bosnia and Herzegovina*, *American University International Law Review*, Volume 13, Issue 3, 1998, pp 553; International Crisis Group (ICG), *ibid.*

[276] Daniel J. Blessington, *ibid.*, pp 638–642.



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.

### 3. 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.

For example, after the elections and until the definitive declaration of Namibia's independence, the Director-General remained responsible for the administration of the territory, and the Assistance Team continued to monitor and discuss its activities as necessary. At this stage, the UN Assistance Team closed some of its centers and gradually reduced the number of staff. The team also continued to monitor security and stability in the country, in addition to conducting several reconciliation exercises between the various military and political elements in the country. A tripartite Military Integration Committee, chaired by the Assistance Team, was also established to develop a concept for the Integrated Namibian Army with a view to integrating the Namibian armed personnel who fought on both sides of the war and to develop a military structure for the future Namibian Army.<sup>[277]</sup> It is worth noting that the role of the UN in supervising the post-election period in Cambodia was less efficient.

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.

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[277] Namibia-UNTAG: Background, *ibid.*

### **Third: 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.

It turns out that there is no one-size-fits-all solution to democratic transition, and the UN has succeeded on several occasions in demonstrating that it is able to adapt solutions that facilitate a successful democratic transition, based on the unique circumstances and challenges of each country (Cambodia, Afghanistan...).

Given the diversity of needs and the lack of one unified approach, the assistance provided by the UN is tailored to the countries that desire it. The following are examples of some of the different types of electoral assistance provided by the UN. It is taken from a number of UN electoral policy documents, which will be mentioned below as it is mentioned in the UN website in the Department of Political and Peacebuilding Affairs, in order to define the department's work on elections, and then suggest how to benefit from it in the Syrian case, namely: <sup>[278]</sup>

#### **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."

This type of assistance will play a major role in the framework of the UN assistance to Syria; Where can the UN Providing expertise in this field and working on developing an independent electoral commission, training cadres capable of managing the electoral process professionally and impartially, which helps to gain the confidence of the Syrian voter and increase the credibility of the elections.

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[278] Elections, Political Affairs and Peacebuilding, UN, *ibid.*

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. Given the primacy of the principle of national ownership, this type of assistance is rarely delegated and can only be undertaken in special post-conflict or decolonization situations in countries characterized by insufficient national institutional capacity. This kind of authorization is only possible through a Security Council or General Assembly resolution."

In this regard, the UN will help, if it is to do so, in alleviating the tensions and conflicts that may accompany the electoral process as a result of the severe polarization expe-

rienced by Syrian society as a result of the multiplicity of parties to the conflict, and the intense competition for power among them, and the support of international and regional parties to them in proportion to the interests of those parties. To prevent those parties, especially the Syrian regime, and certain individuals and organizations from benefiting from the huge accumulation of wealth and power that they acquired during the authoritarian phase and the subsequent stages of the armed conflict, in order to provide a neutral electoral environment, and thus provide the conduct of free and fair elections in accordance with international standards and laws.

#### 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.

It seems that what Syria went through during the revolution and the stages of the conflict — and the era of authoritarianism that preceded it — requires an international role in monitoring the elections. The monitoring of the elections is justified by the lack of trust among the political parties. And regardless of the winner of the elections, the election results will give greater credibility among the political parties and all citizens.

## 6. Supervision

Supervising the elections requires the approval of the UN for each stage of the electoral process, in order to establish the credibility of the elections in general. It can require direct participation in setting up election mechanisms, such as the date, issuance of regulations, ballot drafting, polling station monitoring, ballot counting, and assistance in dispute resolution. When the UN is not satisfied with electoral procedures or their implementation at a certain point, the EMB must act on the recommendations of the UN and make any necessary adjustments. The progress of the elections depends on the approval of the UN for each stage. The supervision of elections by the UN is also rare and requires authorization from the General Assembly or the Security Council.

It is likely that the role of supervising the elections by the UN will be extremely helpful because of the legitimacy it gives to each stage of the elections, and although this role does not include organizing the entire electoral process, it guarantees that its stages will not proceed without the approval of the UN, thus taking into account their compliance to international laws, and providing a neutral electoral environment.

## 7. Political expert panels or election experts

UN commissions entail the deployment of a small team to monitor and report on the electoral process. The team could be an electoral monitoring team consisting of experts in areas such as electoral processes or mediation, or a high-level team consisting of eminent personalities of a political or electoral nature or with mediation expertise. Drawing on its own observations as well as those of other international and national stakeholders, the team will provide an independent assessment of the general political and technical behavior of the elections. The evaluation is generally submitted to the Secretary-General or the UN Focal Point for Electoral Assistance. Unlike monitoring missions, teams do not remain in the country throughout the electoral process (the Habak visits are limited to strategically important periods) and may decide not to make their findings public. As for the mandate of the team, it falls within the purview of the Secretary-General or the UN Coordinating Body for Electoral Assistance.

In the case of Syria, Syrian CSOs can have a major role if election experts share their information and observations, and fill the gaps based on those observations during the absence of an international team. It is likely that making information available to the general public will give the aforementioned team more credibility, and support its work and the work of the international and national organizations that cooperate with it.

## 8. Coordination between election observers

The UN supports international observers in two ways: operational support; and coordination between international observers. Coordination between international observers includes a wide range of activities which can include providing logistical and administrative support for election observation efforts and other additional activities such as providing briefings, facilitating the deployment of observers, debriefing, etc. This type of support is usually provided to a number of observer groups. This type of support can be provided on the basis of a request by Member States.

It is worth noting that the importance of what the UN, through its various entities, has done in the field of electoral assistance since 1991 to the present day, lies in the number of successful projects and programs presented to the requesting countries. Since 1991, the UN has helped more than a hundred countries and has implemented more than three hundred projects electoral.<sup>[279]</sup>

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[279] UNEAD Electoral Assistance Division, Electoral Knowledge Network (ACE), available at: [https://aceproject.org/about-en/full-partners/UNEAD?set\\_language=en](https://aceproject.org/about-en/full-partners/UNEAD?set_language=en) , last accessed May 15, 2021.

## Recommendations

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 transgres-

sions 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.

## 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. Such institutions can enable people to exercise their electoral rights without discrimination, fear, or intimidation. In modern democratic countries, the institutions of the judiciary, security, and media are considered among the most vital elements that guarantee the integrity of elections, and fair elections cannot be conceived if these institutions are unable to exercise their roles during the electoral process.

Public institutions play a central role across all stages of an election, from the planning stage and throughout the voting, polling, and vote counting processes. An independent judiciary can guarantee electoral justice and is a means of monitoring the electoral process and impartially settling electoral disputes that may arise between the parties of elections. It is also essential to provide security during an election, such that voters and candidates can exercise their electoral rights and express their views freely and without fear. Likewise, the media plays a vital role in educating the electorate about various matters related to elections, shaping opinions and ideas, and enabling voters and candidates to express their opinions freely and exchange information, as well as enhancing the participation and representation of marginalized groups in society. The media's role also includes monitoring at all stages of the electoral process and assessing the state of equal opportunity for all candidates.

Undoubtedly, current public institutions in Syria are unable to fulfill their role as a guarantor of election fairness and integrity, as they fall under the complete control of the Syrian Regime and are restricted by an arsenal of legislations that contravene international standards for the work of the judiciary, security, and media. Furthermore, Syrian judicial and security agencies are used as tools in the hands of the authorities to suppress political dissidents and human rights defenders, while official media in Syria spreads hate speech and incitement against them. Consequently, any future legal reform in Syria that establishes free and fair elections in accordance with Security Council Resolution 2254 must include unambiguous elements that guarantee the impartiality of these institutions and ensure that they exercise their roles during the electoral process freely and independently, away from dominance of the security services and the executive authority.

Therefore, 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>[280]</sup> in a manner that achieves the desired electoral justice.

This justice is not limited to guaranteeing the citizen's right to vote and run for office, but all procedures related to the electoral process at all stages must be in accordance with the constitution and relevant laws. The real thing is to ensure democracy and achieve justice and equality for all, and not to involve discrimination between the parties to the electoral process. Ensuring electoral justice requires the existence of mechanisms that ensure the application and enforcement of the law in a way that preserves the rights of all in order to avoid thinking about attempts at revenge and taking their rights with their own hands that may lead the country to violence or even civil war.<sup>[281]</sup>

In order for the judiciary to play the role entrusted to it in terms of adjudicating electoral disputes and achieving electoral justice, it must meet the minimum standards required to ensure its independence, integrity, and impartiality. Without these standards, the judiciary will become part of the problem and not of the solution, because if it is subject to the authority of the ruling party in the country, or the authority of specific persons,

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[280] 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.

[281] A good example of this is the violence that followed the Kenyan presidential elections in December 2007, which resulted in the deaths of more than 1,150 people. (Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide, Report of the World Commission on Elections, Democracy, and Security, 2012, p. 23).

it will settle the electoral dispute in a way that favors this party or those persons at the expense of others, and it will be used to cover up the falsehood of the elections taking place in the country.

Therefore, this section attempts to shed light on the standards that must be available in the judicial body charged with adjudicating electoral disputes, and allegations related to violations and crimes that may occur during the electoral process, starting from the moment the elections are announced and ending with the counting of votes and the announcement of the results, and whether the mentioned standards Available in the Syrian judiciary or not? Will this judiciary be able to fulfill its role to ensure free, fair, and transparent elections in accordance with the requirements of the Security Council Resolution No. 2254 of 2015? If these standards are not met###, what are the reasons and shortcomings that led to the absence of these standards? What are the available solutions to overcome all those obstacles that prevent it from performing its role in the elections that are supposed to be held in accordance with the parameters of the aforementioned UN resolution?

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

The judicial bodies in most countries assume the tasks of adjudicating electoral disputes and ensuring that any dispute is settled legally in line with constitutional principles. This approach provides the possibility to avoid broad personal standards of judgment and rules out the opportunistic political negotiations often witnessed when the tasks of adjudicating electoral disputes is entrusted to legislative bodies or political councils.<sup>[282]</sup> The latter may be the opponent and the judge at the same time if some of its members run for elections. Therefore, the judiciary should be in charge of making the final decision regarding citizens' freedoms and rights<sup>[283]</sup> including electoral ones.

There are countries that assign the task of adjudicating the electoral dispute or appeal to the ordinary courts that follow the judicial authority while this power is often granted to the Supreme Court in the country, either by direct jurisdiction or by ruling in appeal cases regarding judicial decisions issued earlier by lower judicial bodies. Some other states expressly assign this task to bodies with constitutional jurisdiction, some of which are considered a part of the judiciary while others are not. Some states grant jurisdiction in the final decision on electoral appeals to the administrative court, while other states have established courts specialized in electoral disputes.

[282] Jesús Orozco-Henríquez Ayman Ayoub, and Andrew Ellis at, *Electoral Justice: The International IDEA Handbook*, 2012, p. 78.

[283] Basic Principles on the Independence of the Judiciary adopted by the United Nations in United Nations General Assembly Resolutions 40/32 of 1985 and 40/146 of December 13, 1985.

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>[284]</sup>

Every candidate for the presidential elections, and every candidate or political party for the People's Assembly elections, must submit a final account of his electoral campaign funds and expenses to the Supreme Constitutional Court within a period not exceeding thirty days from the date of the announcement of the final results of the elections (Article 57). However, the law was deficient in this regard, as it did not stipulate the nature of the court's work regarding the final account of funds and expenses and did not indicate the relationship of those accounts or their impact on the electoral results. In addition, the Supreme Judicial Committee submits a copy of the election results report to the Supreme Constitutional Court regarding the presidential elections, and if none of the candidates obtains the absolute majority of the votes, the President of the Constitutional Court announces the re-election between the two candidates who obtained the largest number of votes (Articles 75-79). 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, if the court decides that any of them violate the constitution###. An objection may be submitted by

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

the President of the Republic or by one-fifth of the members of the People's Assembly regarding the constitutionality of a law before it is issued, and one-fifth of the members of the Assembly have the right to object to the constitutionality of a legislative decree within fifteen days following the date of its presentation to the Assembly. In addition, any of the parties to any case have the right to challenge any ruling issued by any of the Syrian courts by arguing that the legal text applied by the court whose decision is being appealed is unconstitutional. If the court that looks through the appeal sees that the argument is valid and needs to be settled, it shall cease its proceedings regarding that case and refer it to the constitutional court to make a decision regarding it.<sup>[285]</sup>

## 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 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.

[285] The Syrian Constitution of 2012, previous reference, Articles 146-147. and Article 11 of Law No. 7 of 2014 regulating the work of the Supreme Constitutional Court.

## **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>[286]</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 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>[287]</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.

[286] 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.

[287] 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.



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>[288]</sup> These criteria can be summed up as follows:

### 1.1 Independence and Impartiality

It is imperative to secure the functional, administrative, and financial independence of the entity or body to which the task of adjudicating the electoral dispute is entrusted, without any bias or restrictions, improper influences, temptations, pressures, threats or interventions, direct or indirect, from any party or for any reason.<sup>[289]</sup> The majority of countries in the world have stipulated in their constitutions and electoral laws the independence of bodies dealing with electoral issues, whether they are constitutional, administrative, or ordinary courts or specialized courts in electoral issues. However, this does not mean that all these countries have adhered to this principle and preserved the independence of those entities or bodies. Some of them did not put these texts into practical application, and they kept them on a merely theoretical basis in the constitution or the electoral law, and Syria is a prominent example of this situation as the President of the Republic is himself the head of the Supreme Judicial Council and the one who appoints the members of the Constitutional Court. This issue will be discussed below.

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. This also means that other government agencies or any political forces should not step in to impose retaliatory sanctions on judges who decide cases against them, or reward judges who resolve disputes in a manner favorable to their political and personal interests.<sup>[290]</sup> On the other hand, a member of the commission should not consider the electoral dispute before him/her, if he/she is not able to settle it impartially for any reason such as being personally acquainted with one of the parties to the dispute, or if he/she or one of his/her relatives has an interest or expected harm from the outcome of the judgment that will be issued in the electoral dispute at hand. If he/she feels embarrassed to consider the dispute for any reason, then he/she must refrain from considering it, which is called in the Syrian Code of Procedure, a request to step aside.<sup>[291]</sup>

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

[289] Basic Principles on the Independence of the Judiciary

[290] Jesús Orozco-Henríquez, Ayman Ayoub, and Andrew Ellis et al., *ibid.*, p. 109.

[291] Article 177 of the Syrian Code of Procedure of 2016 states: "A. In the cases mentioned in the previous article, the judge must inform the court in the deliberation room of the reason for the existing response to allow him to step aside. In cases other than the mentioned cases, the judge may, if he feels embarrassed in the consideration of the case for any reason, submit an order for his removal to the court in the deliberation room."

## 1.2 Integrity

In addition to independence and impartiality, the members of the bodies handling electoral disputes must have a high degree of integrity and rise above all temptations that may render their integrity questionable. They may not request job privileges for themselves or their relatives from political bodies and parties, to ensure that they stand at the same distance from the parties to electoral disputes, and this means that public officials and employees, including those in charge of managing elections, should refrain from using their positions for personal or political interests.<sup>[292]</sup>

## 1.3 Efficiency and Professionalism

Impartiality and integrity will be insignificant if the members of the adjudicating body do not have the legal expertise to resolve the electoral disputes professionally. Those chosen to fill judicial positions must be individuals with training and appropriate qualifications in law.<sup>[293]</sup> Some systems require members of the Electoral Dispute Resolution Body (EDRB) to be lawyers (and often countries require a minimum experience, such as 15 years in Croatia, Kyrgyzstan, Mexico, and Slovakia), or membership in a similar profession to hold this position. Systems for adjudicating electoral disputes entrusted to the ordinary courts the judicial power do, by their nature, have such provisions.<sup>[294]</sup>

## 1.4 Fair Legal Accountability of the Adjudicating Body and its Members

Granting immunity to members of the commission does not mean that they have become outside the legal framework of accountability, but rather that their actions must conform with the constitutional and legal framework. Any action taken against any of the members of the commission must be based on prior permission from the legislative authority, as is the case in Argentina, Brazil, Costa Rica, Guatemala, and Mexico, or by a high-ranking judicial body as in Chile where such power is exercised by the Court of Appeal in Santiago. To ensure the credibility of the system for adjudicating electoral disputes, the body must be committed to accountability to society. It shall be responsible for all its activities and shall submit periodic reports on the general performance of those activities. These reports shall demonstrate that the adjudicating body is acting in conformity with the constitutional and legal framework.<sup>[295]</sup>

## 1.5 Ensuring the Continuity of Work in the Adjudicating Body

To ensure the independence of the members of the Electoral Dispute Tribunal, they should be protected, like other judges, from arbitrary removal, and they should have no qualms about the possibility of removal from office due to any political reaction to their rulings. Whether they are elected or appointed, they must be ensured that they shall

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[292] Election Integrity Guidelines, Electoral Knowledge Network (ACE), available at: <https://aceproject.org/ace-en/topics/ei/ei20>, last accessed on 16 May 2021.

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

[294] Jesús Orozco-Henríquez, Ayman Ayoub, and Andrew Ellis et al., *ibid.*, p. 109.

[295] Jesús Orozco-Henríquez, Ayman Ayoub, and Andrew Ellis et al., *ibid.*, p. 109.

remain in their positions until they reach the mandatory retirement age or the expiry of their prescribed office term, where applicable.<sup>[296]</sup> A judge (who is a member of the Electoral Dispute Resolution Committee) may not be suspended from work or removed from his position, unless he/she becomes unable to perform his/her duties, or if he/she behaves inappropriately for the position he/she occupies.<sup>[297]</sup>

### **1.6 Transparency and Openness in the Work of the Electoral Dispute Resolution Body**

For the electoral process to be effective, the electoral dispute resolution process must be fair. Transparency in publishing detailed decisions on cases of electoral misconduct and publishing available information on types of complaints and their treatment contributes to building public confidence, as well as educating stakeholders about the consequences of election misconduct.<sup>[298]</sup>

### **1.7 Right of Defense**

The electoral dispute resolution system must guarantee the right to defense or hear the appeal for both the complainant and the person or body against whom the appeal has been filed. This also includes the necessity of allowing them to present their arguments to be heard and scrutinized by the electoral disputes' adjudication body. The adjudication system should ensure that the evidence supporting or refuting the appeal is presented by both parties in the case. The electoral law must explicitly provide for the requirements, both permanent and legal, that allow an appeal to be admissible so that appeals that are not serious, annoying, or prejudicial<sup>[299]</sup> can be excluded or punished. In France, for example, appeals related to the results of elections at the national level and referendums are dealt with by the Constitutional Council, and upon receiving a complaint or appeal, the Council refers the case to one of its departments, and if the complaint is found to be inadmissible or if the alleged irregularities cannot change the outcome of the elections, the case is then dismissed.<sup>[300]</sup>

### **1.8 The Right to Equality before the Law and the Right to a Fair Trial<sup>[301]</sup>**

All are equal before the law, and this means that every person who deems himself/herself harmed by any measure taken during the electoral process has recourse to the electoral dispute resolution body. Here, similar cases must be dealt with according

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

[297] Fair Trials Handbook, Amnesty International Publications 2014, p. 133.

[298] Frank McLachlin, *ibid.*, p. 40.

[299] That is, if those appeals are not based on a sound legal basis, are not supported by evidence, and their purpose is only to discredit the winning candidate and slander him. On the other hand, this does not mean that every appeal that has been rejected is slander and an attempt to discredit the opponent, but rather leaves this adaptation to the authority of the judiciary in the lawsuit.

[300] Jesús Orozco-Henríquez, Ayman Ayoub, and Andrew Ellis et al., *ibid.*, p. 109.

[301] General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights, Human Rights Committee, Ninety Session, July 2007.

to the same procedures.<sup>[302]</sup> In this regard, the law shall prohibit any discrimination and guarantee, to all persons alike, effective protection against discrimination on any ground, such as race, color, sex, language, religion, opinion, national or social origin, property, lineage, or other grounds.<sup>[303]</sup> In addition, this equality must include political entities and parties, as it is not permissible to grant advantages to one party or political entity over another.

### **1.9 Ensuring the Enforcement of the Authority's Provisions and Decisions**<sup>[304]</sup>

The decisions and rulings issued by the Electoral Dispute Resolution Body will be of little use unless there are effective mechanisms to implement those decisions and translate them on the ground, to ensure the restoration of the electoral rights of the aggrieved party. The credibility and prestige of the commission will be at stake in the event of failure to implement its decisions and rulings. Its existence would be meaningless, as ensuring enforcement plays an important role in maintaining election integrity.<sup>[305]</sup>

### **1.10 Ensuring Gender Representation**

Article 3 of the International Covenant on Civil and Political Rights stipulates that men and women must equally enjoy all civil and political rights stipulated in the covenant, including the right to participate in the management of the country's public affairs, and the right to vote and run for office, which is mentioned in Article 26 of the covenant, and this requires their participation in the bodies that adjudicate electoral disputes. This can be gleaned from the Commentary of the Human Rights Committee, which emphasized that states parties should ensure that the law guarantees for women the rights under article 25 on an equal basis with men and take effective and positive measures to promote and ensure the participation of women in managing public affairs and in holding public office, including taking appropriate affirmative action. States Parties shall provide statistical information on the percentage of women who have been elected to public office, including the Parliament, and to high-level positions in the civil service and in the judiciary.<sup>[306]</sup> It was emphasized during the course of the negotiation processes for Syria in Geneva that the representation of women should not be less than 30% in all

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[302] Fair Trials Handbook, aforementioned reference, p. 122.

[303] Article 26 of the International Covenant on Civil and Political Rights of 1966, and this is similar in content to Article 7 of the Universal Declaration of Human Rights, and Articles 2 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the General Assembly and submitted for signature, ratification and accession by its decision 34/180 of 18 December 1979, entry into force 3 September 1981; Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, and Article 11 of the Arab Charter on Human Rights.

[304] International Principles Relating to the Independence and Responsibility of Judges, Lawyers, and Representatives of the Public Prosecution Office, Practitioner's Guide No. 1, from the publications of the International Commission of Jurists, Publications 2007. p. 82.

[305] Election Integrity, Electoral Knowledge Network (ACE), available at: [Enforcement: Oversight and Monitoring – \(aceproject.org\)](#), last accessed May 16, 2021.

[306] Comment No. 28/68th session of 2000, regarding Article 3 of the International Covenant on Civil and Political Rights, Human Rights Committee.

decision-making institutions and structures during the transitional period and beyond.<sup>[307]</sup>

However, Syria, throughout the previous decades, did not observe these standards, and the bodies that were assigned the task of adjudicating electoral disputes, such as the Constitutional Court, the Supreme Judicial Authority for Elections, and the Administrative Courts, do not enjoy these standards mentioned because, in addition to other obstacles, the way they were formed made them far from those standards. Therefore, it is necessary to overcome all these difficulties, and then draw the required role of the bodies that will be assigned the task of considering and deciding on electoral disputes, and this is what this section will discuss in the following lines.

## 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:

### 2.1 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>[308]</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>[309]</sup>

[307] This was stipulated in the twelve basic and living principles of the Syrian parties (the Regime and the opposition), which were issued by the UN envoy Mr. Staffan de Mistura during the Geneva 3 talks of 2016.

[308] 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.

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

The term of office of members of the Constitutional Court in Syria is four Gregorian years, subject to renewal.<sup>[310]</sup> This period is shorter than the seven-year term of office of the President of the Republic who appoints them.<sup>[311]</sup> This negatively affects the independence of constitutional judges, as their term of office is supposed to be longer than the other terms of office, especially those of the President of the Republic and members of the House of Representatives.<sup>[312]</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, disqualification, 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>[313]</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>[314]</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.

A blatant example of the executive authority's dominance over the judiciary in Syria, and the lack of permanence and stability in a judge's work, is the issuance by the President of the Republic of Decree No. 95 of 2005, according to which he delegated to the Prime Minister the power to dismiss judges at his own discretion without justifying the decision. As a result, 81 judges were dismissed without mentioning the reasons for their dismissal, and without this decision being subject to any method of appeal or

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[310] The Syrian Constitution of 2012, *ibid.*, Article 143; Constitutional Court Law No. 7 of 2014, previous reference, Article 3.

[311] The Syrian Constitution of 2012, previous reference, Article 88.

[312] Constitution Working Paper, ESCWA, aforementioned reference, p. 124.

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

[314] 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.

review.<sup>[315]</sup> If a judge is unable to guarantee his rights, how can he guarantee the rights of others?

This calls for the consideration of re-forming the Supreme Judicial Council in a 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.

### 2.3 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>[316]</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>[317]</sup>

### 2.4 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>[318]</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, which is one of the core

[315] This constitutes a blatant violation of the right of defense stipulated in international covenants, as well as to the text of Article 28 of the 1973 Syrian Constitution, in which this decision was issued while in force, which stipulates that "the right to litigation and to pursue means of appeal and defense before the judiciary is protected by law."

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

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

[318] 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.

tasks of the Constitutional Court, and we also recommend the abolition of other laws that, when employed by the existing regime as a tool to get rid of political competitors, can void the electoral process of its substance.<sup>[319]</sup>

## **2.5 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 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>[320]</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>[321]</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. For example, the Supreme Constitutional Court, which has among its powers the supervision of the presidential elections and the right to consider appeals received against the Presidential or parliamentary elections, has not, as mentioned above, issued any ruling in this regard since its establishment in 1973.

## **2.6 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>[322]</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.

This aspect of Syria's judiciary goes against international standards required for the judiciary to exercise its proper role in resolving electoral disputes.

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[319] For example, we mention, but not limited to, Law No. 6 of 1964 on Protecting the Objectives of the Revolution, Law of Parties No. 100 of 2011, and Counter-terrorism Law No. 19 of 2012, in addition to the electoral law itself, which is the subject of this report.

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

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

[322] 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.



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

The Syrian judiciary faces many shortcomings that prevent it from exercising its required role in resolving electoral disputes that may arise between political parties during elections. These include corruption, lack of integrity, inexperience, bias, and the dependence and total subordination by the executive authority. Moreover, there is a fault in the structure of the Syrian judiciary as a whole, such as the Constitutional Court and the Supreme Judicial Council, in addition to the existence of exceptional courts that are exempted from adherence to legal principles and rules, and other defects mentioned in the previous paragraph. Eliminating these defects is urgent and necessary for the judiciary to play its role, especially during the prospective transitional phase that is to follow any political agreement as per the provisions of Resolution 2254. This issue certainly requires the intervention of the international community, such as the United Nations and states active in the Syrian crisis, as well as local and international organizations that have experience in this field who should provide the necessary financial, technical, and logistical support.

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>[323]</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 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

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

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>[324]</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>[325]</sup> In France, for example, the French Constitutional Council decided in 2008 not to ratify two articles of the law on electoral district division, because they contradict the provisions of the Constitution stipulated in its amendment of 2008, which relate to the creation of parliamentary seats to represent French residents outside France.<sup>[326]</sup>

### **1.2 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>[327]</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. This right must not be contingent on request, and instead, the Court must itself be given the power to consider independently as one of its main jurisdictions.

### **1.3 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.

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

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

[326] Iqbal Abdullah Amin, The Role of the Constitutional Judiciary in Oversight of the Division of Electoral Districts, Research Presented for a PhD in Public Law, University of Baghdad, College of Law, for the year 2019, p. 21.

[327] 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.

Moreover, the constitutional court has the power to consider electoral appeals related to the results of legislative elections.<sup>[328]</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. In the event of major corruption cases in the final account of an electoral campaign, the Court may also decide to exclude the winning candidate from seeking re-election, since whoever takes over the presidency is assumed to have integrity, which is incongruent with election finance corruption.

#### **1.4 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>[329]</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.

#### **1.5 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,<sup>[330]</sup> and to properly assess the extent to which it is required so that the executive branch does not invoke it in an unjustified violation of the rights of individuals

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

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

[330] As well as with the conditions and limitations of the state of emergency stipulated in Article 4 of the International Covenant on Civil and Political Rights, especially since Syria is a state party to this treaty.

or extend it without justification.<sup>[331]</sup> As for decisions and orders that may be issued under martial law and based on the state of emergency, the right to challenge the legality of these decisions and demand their abolition is within the competence of the State Council in an administrative judiciary, according to established jurisprudence in Syria.<sup>[332]</sup>

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

### 2.1 Justifications for granting a greater role to 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>[333]</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.

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[331] Ibrahim Darraji, *The Syrian Constitutional Court, its problems and how it can be a guarantor of the principles of legitimacy and citizenship*, Legitimacy and Citizenship Program in the Arab World, London University of Economics and Political Science (LSE, July 2020, p. 22).

[332] Court of Cassation Decision No. 241 Basis 552 of 1986, *Lawyers Journal*, Issue 09/1986.

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

## 2.2 The mandate of the administrative judiciary pre-election<sup>[334]</sup>

### 2.2.1 Appeals related to the correction of the electoral register (voter rolls)

Voter rolls must be prepared by an administrative committee formed in each electoral district. If a voter's name is not included, or if a name is included which should not be, said person has the right to object before the committee itself, and the decisions of the committee are subject to appeal before the competent administrative court. The decision of such a procedure should be made without the need to engage in a prolonged electoral battle. However, since participating in the electoral process and in public life is considered to be a basic human right, some believe that this decision should be subject to an appeal before a higher court than the court issuing the decision. Moreover, preparing voter rolls is usually very difficult in countries emerging from conflict as a result of the massacres and loss of life that the country has witnessed, arbitrary and forced population displacement, and increased cases of enforced disappearance, etc.<sup>[335]</sup>

### 2.2.2 Appeals relating to the rejection of candidacy

The decisions of the nomination committees to accept candidacy applications for parliamentary seats and local administrative councils, and the extent to which they meet the required legal conditions, is also meant to be subject to appeals before the same committees. If the objector is not convinced of the committee's decision, they can issue an appeal before the competent administrative court, and the latter's decision can be further subject to appeal before the Supreme Administrative Court whose decision is final. We believe that the right to run for elections must be protected at all costs, since a simple error in the acceptance or rejection of an application can have an effect on the rights of a large group of voters in favor or against this or that candidate. This could generate discontent among a large group of the public which may lead to violent outcomes, as it means potentially stripping a candidate of the ability to play a major role in the country's future.

However, opening the door to challenging candidacy application decisions before the Supreme Administrative Court may render it unable to decide on a large number of appeals within a short period of time, especially since electoral battles are timely occurrences that cannot bear much delay. For example, in the last elections held in September 2018 in the areas controlled by the Syrian regime, the number of applications for candidacy for membership of councils of administrative units reached 49,096, competing for membership of 18,478 seats and constituting a total of 1,444 councils.<sup>[336]</sup> 7,614 applications were rejected. If we assume that half of these were to appeal this decision

[334] Presidential, parliamentary, and local council elections.

[335] Mathias Hounkpe and Alioune Badara Gueye, *The Role of Security Forces in the Electoral Process: The Case of Six West African Countries*, Friedrich Ebert Stiftung, p. 39.

[336] Ayman al-Dassouky, *System Administration for Localities. What do the Results of the Local Administration Elections Tell Us?* Analytical paper, Omran Center for Strategic Studies, link: <https://bit.ly/3CTeNTB>, accessed March 17, 2021.

to the Supreme Administrative Court, it would have been impossible for the Council to make a decision on all of them during the short appeals window which barely exceeds a few days or weeks. It is worth noting that the nature of the authoritarian regime that has ruled Syria for decades, and the people's lack of confidence in the integrity of the elections, has meant that many are reluctant to run for office. This, in addition to the emergence of many areas outside the regime's control and the displacement and asylum of nearly half of the Syrian population,<sup>[337]</sup> renders elections without their participation not comprehensive, and therefore rendering their outcomes unrepresentative.<sup>[338]</sup>

### 2.2.3 Appeals to decisions made by polling stations

The current conservative election law grants the governor the right to form polling stations and polling committees, and grants stakeholders the right to appeal the decisions issued by these committees before the governorate's Election Subcommittee whose decision thereafter is final (Articles 15 and 16). The Election Subcommittee has the mandate to consider appeals against the decisions of the aforementioned committees. It is noted that the law does not grant stakeholders, such as representatives of political parties participating in elections and independent candidates and their agents, the right to object to the governor's decision to form polling centers and committees before the governor. What should have instead been the case is to give stakeholders this right if one or some committee members do not meet the required legal conditions. Moreover, if the appeal were to be rejected by the governor, his/her decision would be challenged before the administrative court in the governorate, whose decision would then be final. It is of utmost necessity that members of polling committees play a role in the success of the electoral process and ensure that it is conducted under the best conditions,<sup>[339]</sup> a point which is also stipulated in Algerian electoral law.<sup>[340]</sup>

### 2.2.4 Appealing the decree or decision calling for elections

In theory, the administrative judiciary has the mandate to consider appeals that may be received against the decree or decision calling for presidential elections by electoral bodies, anywhere between 60 and 90 days after the issuance of such a decision. The appeal before the Supreme Administrative Court can be done in the event that the call violates a law or one of the legal principles such as equality between candidates, or if the call for elections does not occur when it should, or if there is delay in its issuance. In Lebanon, this type of appeal is submitted to the State (Shura) Council –which is the administrative judiciary, within a two-month window following the publication of the decree. It may also appeal to the Constitutional Council following an election, by way

[337] For more details and to know the total number of displaced Syrians (refugees and internally displaced persons), see: Operational Data Portal, Refugee Cases, Personnel Concerned, UNHCR, last update dated 15 March 2021, available at the following link:

<https://data.unhcr.org/en/situations/syria>, accessed March 16, 2021.

[338] International Foundation for Electoral Systems - IFES, Syrian People's Assembly Elections, July 2020 Assessment, Non-publishable reference.

[339] Al-Daraji Jawad, The Role of Judicial, Administrative and Political Bodies in the Electoral Process in Algeria, *ibid.*, p. 34.

[340] Article 36 of the 2012 Algerian Electoral Law, called the Organic Law 12-01 of January 12, 2012.

of payment with a challenge to the validity of the results.<sup>[341]</sup> As for appeals received against the decree calling for elections of the People's Assembly and local administrative councils, as stated in Article 25 of the Syrian Election Law, must be put before the Supreme Administrative Court, whose decision thereafter is final, as is the case in Lebanon and France.<sup>[342]</sup>

The mandate to consider appeals received during the conduct of local administrative council elections

The disputes that may occur between the candidates during the electoral process include objections to electoral campaigns or claims that the electoral campaign of some candidate contains materials that offend the dignity of a competing candidate such as demeaning, insulting, or bigoted expressions, or those that incite to violence, or media coverage that is not even across candidates, or election ads put in places other than those specified for them, and other such allegations. The administrative jurisdiction should monitor such claims and come to final decisions in their regard, all the while preserving the right of the affected party to have access to penal jurisdiction, if the act is deemed to constitute a penal offence.

The administrative judiciary has the competence to consider allegations of violation with regard to the proper conduct of elections. This is the case whether the allegations are made by competing candidates or their supporters, or by the polling center committee supervising the election, or allegations regarding the polling committees neglect of their duty of impartiality towards candidates, their inability to supervise the electoral process competently, or otherwise if they commit violations that affect election outcomes. Other allegations can be concerned with candidates resorting to fraudulent or illegal means to obtain votes, or preventing other voters from accessing polling centers, and other irregularities or violations. In the event that the administrative court acknowledges the occurrence of such violations, it has the right to call for re-election in the electoral district in which these violations took place, as well as the right to refer a copy of the papers to the Public Prosecution to initiate a case before the criminal judiciary against whomever is said to have committed the violation. Stakeholders must have the right to take their claims before the criminal court, regardless of the administrative court's view regarding the referral to the criminal court, as long as the claimant has adopted the status of a personal claim. The same applies to violations that may occur during the counting and announcement of results.

[341] Electoral Disputes: The Experiences of Lebanon and France, Publications of the Lebanese Association for Democratic Elections (LADE), 2018, pp. 6-7.

[342] Ibid.

## **2.3 The mandate of the administrative court to settle disputes about the validity of local elections**

As for the consideration of appeals received regarding the results of the local administrative council elections, the administrative judiciary must have jurisdiction on this matter as stipulated in the current election law, which states that all appeals in one electoral district must be submitted to the Administrative Court. Its decisions are subject to appeal before the Supreme Administrative Court of the State Council, and the latter's decision is final. In all the cases mentioned, a maximum period for considering appeals and objections to the administrative judiciary should be set which does not exceed a few working days, with the aim of ensuring the speedy resolution of such electoral disputes, as well as securing the country's legal stability and avoiding setbacks that may occur during the process of a democratic transition, for it is illogical to prolong the consideration of electoral disputes for months or years.

We do not mean here to undermine the powers of the Independent Election Management Body and grant this mandate instead to the administrative judiciary. Rather, we aim to achieve some coordination between the two bodies, so that the independent EMB is able to appoint sub-committees, nomination committees, polling center committees and others that it deems necessary while supervising and monitoring their work, and considering their regulatory decisions and correcting them, if necessary, as well as undertaking other organizational tasks. The Administrative Judiciary, meanwhile, is entitled to object to the decisions of these committees at all stages, including with regards to the appeals received against the results of local administrative council elections, and to the decisions of these committees in the preliminary stages of the presidential elections and the elections of the People's Assembly.

As for the decisions issued during the course of the presidential and parliamentary elections, as well as their outcomes, they fall under the jurisdiction of the aforementioned Supreme Constitutional Court.

## **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.



### 3.1 The concept of electoral crime

An electoral crime is defined as an act or omission that affects the proper conduct of an electoral process. This could take place before the voting process, such as someone intentionally registering their name or the name of someone else in the election list unjustly or violating the laws regulating electoral campaigns. It could, otherwise, take place during the electoral process, such as the use or threat of force to prevent a person from expressing his/her opinion or offering a bribe to voters or election officials. It could also take place after the voting process, such as through the stealing of election boxes or the destruction of ballot papers<sup>[343]</sup>. This means that the crime can occur during the preparatory phase of an election, throughout the voting process, or during the announcement of results.

### 3.2 Electoral crimes in Syrian law

Syrian electoral law states the majority of electoral crimes except for those related to electoral regulations such as unlawful registration or repeated registration and some others which should be included. The penalties prescribed for each crime are, in many cases, not proportionate to the severity of the crime committed, and will therefore not achieve the desired purpose of the penalty, which is to achieve deterrence, publicly and privately. For example, the stipulation of a prison sentence of one to three years for anyone who breaks a ballot box before the ballot papers therein are sorted, scatters them, destroys them, and substitutes them with other papers. Or the stipulation of a prison sentence of ten days to three months for anyone who bribes or attempts to bribe for a vote or asks someone to abstain from voting in exchange for money, gifts or donations<sup>[344]</sup>. This type of crime should be dealt with severely, especially as it affects the will of voters and wastes the right to vote, which can lead to undesirable results, especially if the affected people use violent means to express their dissatisfaction with the occurrence of these crimes.

### 3.3 Consequences of proving electoral crimes

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? What if a final judgment was issued by the criminal court convicting a candidate of receiving foreign funds to finance his/her electoral campaign,

[343] Jawad al-Daraji, *The Role of Judicial, Administrative and Political Bodies in the Electoral Process in Algeria*, *ibid.*, p. 45.

[344] Articles 112-113 of Law 5 of 2014 from the Syrian Law on General Elections.

or of personally or inciting others to storm an electoral center or several polling stations and destroy the ballot boxes? Will this ruling be binding on the High Elections Committee or the Supreme Administrative Court, as the case may be, and lead to re-election in that electoral center or centers? Or will said candidate begin their work as a deputy in the House of Representatives, a local council member, or even as a head of state?

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. If it is proven that someone was indeed involved in the crime, be it as perpetrator, instigator, partner, or interferer, then said candidate must not only be subject to the prescribed penalty but must also be barred from running for any upcoming elections for a period of no less than five years, for example, under the condition that this decision be subject to reconsideration. In other cases, the discretionary power of the High Elections Committee may call for new elections or declare the next candidate with the largest number of votes as winner, thus replacing the disqualified candidate who committed the crime. The exclusion of said candidate is therefore consistent with the rules of justice and fairness, as whoever cannot be entrusted with the proper conduct of the electoral process can also not be entrusted with the rights of voters and the interest of the country. Regarding this matter, Tunisian legislation states that members of any electoral list who receive foreign funding lose their membership in the Assembly of the Representatives of the People, and a candidate for the presidency of the Republic who receives foreign funding is punished with imprisonment for a period of five years. Moreover, anyone who receives a prison sentence of more than one year may also be subject to an additional penalty which deprives him/her of the right to vote for a period of no less than two years and not more than six years.<sup>[345]</sup>

### **3.4 Courts competent to investigate electoral crimes**

The aforementioned crimes fall under the category of misdemeanors, so the jurisdiction of the penal magistrate's courts or the beginning of the penalty, as the case may be, is that the penal magistrate's court has jurisdiction over all violations and misdemeanors for which the penalty of imprisonment does not exceed one year, and the court of first instance is concerned with looking into crimes that range in prison terms. It can last from one to three years, and, as we mentioned above, some types of electoral crimes should be dealt with severely and receive a penalty appropriate to the negative impact they may have on the conduct of the electoral process. 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.

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[345] Tunisian Electoral Law of 2014, Articles 163-164.

In order to ensure the proper conduct of elections, and to preserve the political stability of the country, the statute of limitations for electoral crimes should be set in a short period of time, such as one year, starting from the day following the announcement of the electoral results. The criminal judge looking into electoral crimes should abide by the specific interpretation of the legal text in question, in order to not tamper with what is stipulated in said text<sup>[346]</sup> so that no penalty, precautionary or corrective measure is imposed for a crime that is not included in the law at the time of its commission (Article 1 of the Syrian Penal Code).

### 3.5 Specialized Public Prosecution

Some countries have a public prosecution specialized in electoral matters as part of the judicial institution responsible for prosecuting crimes. In some cases, a special office is established to cover this matter within the judicial institution, since electoral crimes have a significant impact on the country's future political fate and prosecuting these types of crimes requires a certain amount of professionalism and experience. It would be preferable for the Provincial Public Prosecutor to have the final decision as to whether or not to prosecute these crimes. For example, in Mexico, the Office of the Special Prosecutor for Electoral Crimes is part of the Attorney General's Office, while in Panama, the relevant Public Prosecutor's Office for electoral crimes is an independent office in its own right and is responsible for following up on investigations of electoral crimes.<sup>[347]</sup>

[346] Decision No. 2285 Basis 5787 of 2007, Syrian Court of Cassation, Misdemeanor Chamber, Lawyers' Code of 2010, Nos. 3-4.

[347] Jesús Orozco-Henríquez, Ayman Ayoub, and Andrew Ellis et al., *ibid.*, p. 65.

## Recommendations

### 1. In the Framework of the Constitution

- Stipulate in the Constitution the supremacy of international treaties and agreements ratified by Syria over Syrian laws and enable the judiciary to apply those agreements to any disputes, including electoral disputes.
- Stipulate in the Constitution the general principles of judicial independence, the separation of powers and the complete independence of the Supreme Judicial Council from the executive authority. This requires the abolition of the current Judicial Authority Law and its replacement with a new law that grants the judicial authority the lone right to form the Supreme Judicial Council and choose its members without any interference from the executive branch.
- Stipulate in the Constitution that the Supreme Judicial Council has the jurisdiction to appoint, promote, dismiss, transfer and discipline judges without any interference from the executive authority, so that the jurisdiction of the Ministry of Justice is limited only to providing the logistical matters required for the proper functioning of the courts.
- A constitutional provision that grants the Supreme Judicial Council the power to participate in setting the budget for the judicial authority.
- A constitutional provision prohibiting judges from affiliating with any political party while partaking in judicial work.
- Not giving the power to appoint members of the Constitutional Court to the President of the Republic (the head of the executive authority), as is the case in the current constitution, and granting this power to either the Supreme Judicial Council, the People's Assembly, or both together. The term of office for members of the Constitutional Court should be longer than the term of office of the authority that appoints or elects them.
- Expand the powers of the Supreme Constitutional Court and grant it the jurisdiction to independently consider the extent to which Syrian laws, including the electoral law, correspond with the constitution and with international treaties binding on Syria. In addition, grant [the Supreme Constitutional Court] the power to express opinions on draft laws and decrees, and for said opinions to be binding on the legislative authority.

- Abolish all exceptional courts and place a constitutional ban on the future establishment of exceptional courts. Stipulate in the Constitution that civilians and minors not be tried before the military court and limit the jurisdiction of military courts to trying military personnel only for crimes and violations committed while performing military duties. Emphasize that the Supreme Judicial Council is the only body supervising the military court.

## **2. In the Framework of the Law**

- Repeal laws that obstruct the work of the judiciary and other bodies responsible for adjudicating electoral disputes and that prevent them from fulfilling their role as one of the guarantors of free and fair elections. This includes laws that grant security personnel immunity from prosecution.

- The new electoral law must clearly and explicitly state the jurisdiction and role of the judiciary as a guarantor of the electoral process, by doing the following:

- Explicitly stating that the role of the Supreme Constitutional Court includes the power to investigate appeals made against the results of parliamentary and presidential elections, to decide on the validity of applications for candidacy for presidential elections, and to consider appeals related to the validity of the division of electoral districts. It can also decide to bar the winning candidate from re-election.

- Explicitly stating the competencies of the administrative judiciary with regards to the appeals that may be received against the decisions of the electoral administration in relation to local council elections, as well as the power to challenge decrees or decisions calling for presidential, parliamentary, and local elections (convocation of electoral bodies).

- Clearly and explicitly stipulating in the electoral law the types of electoral crimes, the penalties prescribed for each of them, and the legal consequences that may result in the event that they have been committed, such as depriving the perpetrator of the right to run for a certain period of time or canceling the election results in a certain electoral district or districts, as a case by case basis.

### 3. In the Framework of Policies and Regulations

- The need to ensure representation of both sexes in the bodies supervising elections, as well as in the bodies that handle electoral disputes, so that the representation of either sex is not less than 30% of the total members.
- Provide assistance in raising the efficiency of judges and bodies dealing with electoral disputes, with regards to electoral laws and international standards required to ensure the integrity and independence of the judiciary in those disputes, by providing the necessary training for them at all levels, by inviting them to training workshops and informing them of the most successful international experiences in the field, and to provide sufficient teams of experts to do so.
- Provide the necessary financial and logistical support to enable the bodies dealing with electoral disputes to perform the role required of them as best they can.
- Provide sufficient teams of international observers and distribute them to the electoral centers according to what is required both in terms of need and fairness. Their role is to monitor the electoral process, review the mechanisms for considering disputes that may arise as a result of that process, and prepare the necessary professional reports on the matter which the judiciary can rely on as evidence while looking into those disputes. All this in a way that fulfills the requirements of Resolution 2254, which stipulates that elections must be held under the supervision of the United Nations and in a manner that responds to the requirements of governance and the highest international standards in terms of transparency and accountability, and includes all Syrians who have the right to participate, including those living in the diaspora.
- Verify the integrity and efficiency of the judges currently employed, as well as those who left their judicial positions within the last ten years and enable those who wish to return to practicing judicial work to do so. Equally, bar judges who took positions in the exceptional courts since those courts were used as tools to suppress opponents of the ruling system.

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

It is necessary to provide security at all stages of the electoral process, and this is not only limited to preventing the occurrence of violations and crimes expected during the course of those processes, but it is rather necessary to provide security in the hearts of actors and stakeholders, so that everyone feels that they can express their opinions freely, and act according to the laws without fear of reprisals for their legitimate actions. UN Security Council Resolution 2254 expressed 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...”. And 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.

The task of providing the required electoral security will rest primarily on the shoulders of the internal security forces (the Police), and to a lesser extent the security services and the Army. However, can these forces perform this task, taking into account its legislative and organizational reality, in addition to the chaos that Syria has been going through since the outbreak of its armed conflict. Will they be able to achieve standards of transparency and fairness in the upcoming elections, especially since they are accused of committing acts that may amount to war crimes and crimes against humanity throughout the conflict years? Or is it necessary to make certain reforms in the legislation governing the work of these forces, as well as in their current structure? And if those reforms are needed, what kind of reforms are they, and how can they be done in light of all these complex conditions that Syria is experiencing?

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, will enable the parties of the electoral process to exercise their rights to vote, be elected, to campaign and other peaceful, legitimate actions related to the process, in a way that guarantees the fairness of the elections and the validity of its results. To achieve the aforementioned security, law enforcement forces must carry out a set of actions and activities to reduce the risks and concerns that may arise in all stages of these operations (stages of preparation, voting, counting votes, announcing the results, and deciding on electoral disputes). This shall be done by providing the necessary protection for stakeholders in the electoral process, such as voters, candidates, electoral management staff, party representatives, media staff, civil society representatives and observers. As well as securing facilities used in the electoral process, such as the centers where electoral lists are designed, meeting centers for active actors, advertising and campaign centers, polling and vote counting centers, committees and courts that adjudicate electoral disputes, and other public facilities used in elections. As well as protecting materials and mechanisms used in elections, such as voters and candidates' registries, ballot boxes, etc., and vehicles used to transfer said materials and personnel involved in the management of electoral processes.<sup>[348]</sup>

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>[349]</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>[350]</sup>

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[348] Guidelines for public security providers in election, published by Organization for Security and Co-operation in Europe, in 2017, pp 14.

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

[350] 10 Basic Human Rights Standards for Law Enforcement Officials, Mawarid Magazine, Amnesty International, No. 18 of 2012, p. 14.



## 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.

It is necessary to put in place devices and forces capable of dealing with these risks to prevent such acts that pose a threat to the required safe and neutral environment, and to limit their effects if they occur, and to reduce the cycle of their negative effects on the electoral process. It is also important to improve the management of said devices and forces to minimize the harm as much as possible, and not being drawn into violence and counter-violence that may lead the country to unacceptable limits of conflict. Of course, this requires a legal and legislative framework that defines the tasks of these forces and the limits of their tasks. It also requires that these forces enjoy the confidence of the public to accept, willingly, the results of the elections and the precautionary and remedial measures taken by those forces entrusted with managing the aforementioned electoral risks. All of what was mentioned above requires many criteria in those forces and their actions, and this is what the report will discuss in the following lines

## 3. The Forces Responsible for Guaranteeing Electoral Security<sup>[351]</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. What is meant by the Internal Security Forces (the Police) are those forces affiliated with the Ministry of Interior. Legislative Decree 1623 of 1970 regarding the formation of the internal security forces organized the main structure of the Ministry of Interior, where the Minister of Interior leads all Police units and issues the necessary decisions and regulations to organize the work of the Ministry. The minister shall have assistants whose duties and powers are determined by decisions and orders issued by him. The Internal Security Forces are considered among the agencies that assist the Attorney General, according to the eighth article of the Syrian Code of Criminal Procedure.<sup>[352]</sup>

[351] 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.

[352] Syrian Code of Criminal Courts Procedures, Legislative Decree 112 of 1950.

As for the Army, it includes male and female volunteers who have enrolled in military courses to serve in it, and males liable for military service who have completed eighteen years of age. The Army is made up of land, naval and air forces. What's meant with Security Services are those forces besides the Army and the Police, which are the Intelligence Division (the Military Security Division), the Communications Department, the Air Force Intelligence Department, all of which are affiliated with the Ministry of Defense, and the General Intelligence Department (formerly the State Security Department), which is an independent security agency. The Political Security Division is organizationally linked to the Ministry of Interior, but it actually dominates all the ministry's units and agencies, and the Minister of Interior has no actual power over it.<sup>[353]</sup>

## **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**

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. It should be as specific as possible regarding the participation of security forces in electoral processes, and it must clearly and specify

[353] Sasha Al-Alou, Ministry of Interior in Syria: Reality and Reform Necessities, Omran Center for Strategic Studies, January 22, 2019, available at: [https://omrandirasat.org/publications/research/studies/ministry-of-interior-in-Syria-reality-and-necessities\\_of\\_reform.html](https://omrandirasat.org/publications/research/studies/ministry-of-interior-in-Syria-reality-and-necessities_of_reform.html) , accessed on April 18, 2011.

the services expected from those forces. Those laws and instructions are supposed to be largely in line with international and regional standards for rational conduct in matters related to ensuring the security of electoral processes.<sup>[354]</sup>

In most countries, the legislative framework for the role of security forces in electoral processes often includes some general and brief rules regarding the interference of security forces in providing electoral security, and they are often formulated in one or two articles in the electoral law. The Syrian election law mentioned in this regard that Internal Security forces may intervene when necessary and at the request of the head of the polling center committee to maintain public order (Articles 17-63). This deficiency is often filled by circulars, decrees and decisions issued by the responsible authorities managing the electoral processes in the period preceding the electoral processes or during it. Some African countries have witnessed similar experiences in this regard.<sup>[355]</sup>

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>[356]</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.

## 1.2 Subordination of the security forces to civil administration

It is necessary to ensure effective civilian external oversight of the work of the Police and law enforcement personnel, guaranteeing that they do not have the power to investigate reports filed against the security forces themselves. This may lead to situations in which the victim is even reluctant to report the abuse directly to the Police for fear of reprisals, or simply because the victim believes that reporting the abuse will not lead to any serious investigation.<sup>[357]</sup> It is important in this context to emphasize that the forces responsible for law enforcement and security during the conduct of electoral processes, must work under the supervision of the Independent Electoral Committee and in coordination with it.<sup>[358]</sup>

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

[354] Mathias Hounkpe and Alioune Badara Gueye, *ibid.* pp. 18.

[355] *The ibid.*, pp. 46.

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

[357] Mervat Rechmawi, Use of Force and Firearms by Law Enforcement Officials, *Mawarid Magazine*, *ibid.* p. 45.

[358] Mathias Hounkpe and Alioune Badara Gueye, p25 *op.*

command structure of each security sector agency, thus ensuring that there is a civilian who takes political responsibility for the actions of each agency and is responsible for receiving reports from it. The South African constitution, for example, states that there must be separate members of the cabinet and responsible for both the defense force and the Police.<sup>[359]</sup>

As for the leadership of the security forces, security services and the Army in Syria, it is often led by a person who belongs to the same corps and is close to the ruling regime, and favored by the rest of the security services, which operate in an atmosphere of hostility and competition.<sup>[360]</sup> Therefore, there is no civil administration for these forces.

### 1.3 Integrity and impartiality

To ensure a smooth electoral process and achieve legitimate competition between candidates in the electoral battle, law enforcement officials, including, as we mentioned, the Police forces responsible for ensuring electoral security, must have the highest levels of integrity and reliability. Therefore, they must refrain from committing any act of corruption, and must confront all these acts and combat them with determination<sup>[361]</sup>. Corruption, like abuse of power, is inconsistent with the profession of law enforcement officials, and the law must be fully enforced with respect to any law enforcement officer who commits an act of corruption, because governments cannot expect to enforce the law on their subjects if they are unable or not willing to enforce the law on its own employees and within its own agencies.<sup>[362]</sup> Therefore, they must not accept any material or moral offer from any of the parties and opponents or their representatives in the electoral processes.

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.<sup>[363]</sup> The Police should also avoid excessive and inappropriate law enforcement in minority

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[359] Sumit Bisaria and Sujit Chaudhry, Security Sector Reform in Constitutional Transitions, Policy Paper No. 23, IDEA, 2021, p. 16.

[360] Syrian security services and the necessities of structural and functional change, a research paper issued by the Omran Center for Strategic Studies, available at the link: <https://www.omrandirasat.org/publications/research/studies/security-intelligence.html> , accessed April 24, 2021.

[361] Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly Resolution No. 34/169 of 1979 of 17 December 1979, Article 7.

[362] Code of Conduct for Law Enforcement Officials, Commentary on Article 7, Mawarid Magazine, Amnesty International Publications No. 18, Spring 2012, p. 37.

[363] 10 Basic Human Rights Standards for Law Enforcement Officials, Mawarid Magazine, *ibid.*, p. 12.

communities, which may take the form of patrolling in numbers that are disproportionate to certain groups or communities or displaying threatening behavior towards them, like deploying heavily armed units there.<sup>[364]</sup> In this regard, security forces and electoral authorities are prohibited from covering up atrocities and other abuses by the Police, groups loyal to the ruling party, or some groups loyal to a particular candidate.<sup>[365]</sup> Security Forces must avoid allegations of being partisan in order to be effective. And if the security forces are found to act in a partisan manner, this will increase tensions and undermine their duty in the process, while their mission is to defuse those tensions.<sup>[366]</sup>

It is known that corruption and abuse of power are widespread and systematic among all Syrian security forces, all of which follow the ruling regime and revolve in its orbit. There is no neutrality whatsoever. Given that most of the forces responsible for providing electoral security are affiliated with the Arab Socialist Baath Party, and the President of the Republic is the Commander-in-Chief of the Army and Armed Forces<sup>[367]</sup>, 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 who were participating in the funerals of the fallen demonstrators in the past days.<sup>[368]</sup> Despite the partiality of the Army and the internal security forces (the Police); they were allowed to vote in accordance with Law No. 8 of 2016, amending Article 6 of the Election Law And since there is no text that prevents Security Services from voting, this means that they enjoy this right because the original status of things is permissibility.

#### 1.4 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

[364] International Standards on Policing, Handbook of Police Work in Democracies, Publication of the Geneva Center for the Democratic Control of Armed Forces, 2008, p. 17.

[365] Abdullah Khalil, The Role of the Police in Democratic Societies, Mawarid Magazine, previous reference, p. 52.

[366] Principles of elections and security, Electoral Knowledge Network (ACE), Available at the link: <https://aceproject.org/ace-en/focus/elections-and-security/64562864062762f-62764464662a62e62762862762a> ,, last accessed May 16, 2021.

[367] Syrian Constitution of 2012, Article 105.

[368] Year of Revolutions, The State of Human Rights in the Middle East, and North Africa, Amnesty International 2012, available at: <https://www.amnesty.org/en/wp-content/uploads/sites/9/2021/06/mde010012012ar.pdf>, last accessed on April 18, 2021.

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>[369]</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. Police officers and other competent authorities must allow representatives of the Bar association, at the local or national level, as well as members of the House of Representatives at either levels, international bodies, or relevant international officials, to visit all Police stations and facilities, including places of detention, for the purpose of inspection, and also allow them to make unannounced visits<sup>[370]</sup>. These visits must also cover places of detention belonging to the security services and the Syrian Army.

In Syria, there is no room to talk about accountability for individuals and officers of the security services in all its branches, the same applies for the Army and the Police, as Article 14 of Legislative Decree No. 14 of 1969 (containing the creation of the State Security Department) stipulates that no one working in this department may be prosecuted for crimes that they commit while carrying out the specific tasks entrusted to them or in the course of carrying them out except by virtue of a prosecution order issued by the director. Decree No. 64 of 2008 amended Article 47 of the Penal Code and Military Procedures and stipulated that prosecution orders against officers, non-commissioned officers, members of the Internal Security Forces, members of the Political Security Division and Customs Police are issued by a decision from the General Command of the Army and the Armed Forces. Army members can only be prosecuted after obtaining a warrant of prosecution from the Commander-in-Chief of the Army and Armed Forces for officers and by the Chief of General Staff for individuals (Article 53 of the Military Penal Code), which means that all of them are far from being held accountable, unless the ruling authority wants to hold them accountable. The Army and Security Services' detention centers were immune from any surprise visit or inspection.

### **1.5 Competence and professionalism**

To ensure competence and professionalism of the Police personnel responsible for guaranteeing a smooth electoral process, attention should be paid to the necessity of having certain criteria for the appointment of police officers. This requires a review of admission criteria in Police colleges and a revision of the curricula for preparing and qualifying their personnel. What can be taken in this regard is the proposal that enrollment in police colleges is restricted for those who have completed university educa-

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

[370] 10 Basic Human Rights Standards Addressed to Law Enforcement Officials, *Mawarid Magazine*, *ibid.*, p. 26.

tion, not just high school<sup>[371]</sup>, that they be selected through appropriate selection procedures, and that they have appropriate moral, psychological and physical qualities.<sup>[372]</sup>

The state must work on creating some kind of training programs to qualify police personnel in the field of human rights.<sup>[373]</sup> Effective training of the forces responsible for electoral security will help provide a safe environment for the elections and will reduce 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.

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

The forces entrusted with providing electoral security must use peaceful means in performing their duties, whenever possible, before resorting to force. Force may not be used unless it is proven that other means are incapable of performing the task, or that there is no hope of achieving the desired result. 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>[374]</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. It must be used in a proportionate manner to the magnitude of the offense or crime that occurred during the electoral process and in a manner that limits the expected electoral risks. The use of force must not pass without investigation or accountability in order to ensure that this use was not arbitrary.<sup>[375]</sup>

The ones who violate human rights in Syria the most are the members of those 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.

[371] Alaa Qaoud, Transformation from the security apparatus of the ruling regime to the security institutions of a modern state, Mawarid Magazine, previous reference, p. 73.

[372] Service and Protection, Human Rights and Humanitarian Law, Handbook for Police and Security Forces, Publications of the International Committee of the Red Cross, First Edition 2014, p. 143.

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

[374] 10 Basic Human Rights Standards for Law Enforcement Officials, Mawarid Magazine, Amnesty International, No. 18 of 2012, p. 14.

[375] Service and Protection, Human Rights and Humanitarian Law, previous reference, p. 243.

## 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.

Therefore, in the phase that will follow the expected political agreement, and after the formation of the transitional governing body with full powers and the drafting of a new constitution as stipulated in the UN resolution, it is necessary for decision makers to think seriously about this dilemma and find appropriate solutions to it. As mentioned, these forces, along with their current deficiencies, will be a factor in undermining the electoral process, especially since many of the leaders and symbols of these forces are accused of committing acts that amount to war crimes and crimes against humanity, and of being affiliated with the ruling regime in Syria<sup>[376]</sup>. But on the other hand, we cannot talk about free and fair elections without the presence of forces capable of monitoring and controlling the risks that may arise during the electoral processes, and without ensuring the security needed for the elections. This complex and contradictory equation requires a solution.

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[376] Many leaders and members of the security branches are accused of committing war crimes, and some countries have begun to try them, as happened with the Syrian security colonel Anwar Raslan, who received a life sentence from a German court for committing war crimes in Syria between 2011-2012, see France 24 website on the following link: <https://www.france24.com/ar/%D8%A3%D9%88%D8%B1%D9%88%D8%A8%D8%A7/20220113-%D8%A3%D9%84%D9%85%D8%A7%D9%86%D9%8A%D8%A7-%D8%A7%D9%84%D8%B3%D8%AC%D9%86-%D9%85%D8%AF%D9%89-%D8%A7%D9%84%D8%AD%D9%8A%D8%A7%D8%A9-%D9%84%D8%B9%D9%82%D9%8A%D8%AF-%D8%B3%D8%A7%D8%A8%D9%82-%D9%81%D9%8A-%D8%A7%D9%84%D9%85%D8%AE%D8%A7%D8%A8%D8%B1%D8%A7%D8%AA-%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A%D8%A9-%D8%A3%D8%AF%D9%8A%D9%86-%D8%A8%D8%A7%D8%B1%D8%AA%D9%83%D8%A7%D8%A8-%D8%AC%D8%B1%D8%A7%D8%A6%D9%85-%D8%B6%D8%AF%D9%91-%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86%D9%8A%D8%A9> Accessed on 22 July 2022



The years of war that Syria is experiencing have exacerbated the risks and challenges that may face the electoral processes. In addition to the aforementioned Syrian Army, Police and Security Forces, militias and forces that break with all laws have abounded throughout the Syrian geography, whether in areas under the control of the Syrian regime, or those outside its control. They feed on protection rackets and robbing civilian properties, and certainly it will not be in their interest to accept a democratic transition towards a state of law and institutions, given that this will deprive them of all those illegitimate gains and advantages. They may try every possible mean to disturb the safe environment required for fair elections. Add to that the exhausted Syrian economy after the war and the lack of adequate infrastructure, so the transitional governing body should take all these challenges into consideration when planning the elections.

### **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<sup>[377]</sup>. 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 that.

The first scenario is to manage, with the help of the international community, to reform these agencies and forces, expel foreign militias, disband local militias, or integrate what can be integrated into Syrian institutions, reach the international standards generally required in law enforcement forces, and in the forces responsible for providing electoral security in particular.

The second scenario is reaching the elections stage without being able to reform the security bodies, internal security forces and Army forces, and without being able to get rid of those militias spread on Syrian soil.

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[377] Elections and Security, Electoral Knowledge Network (ACE), *ibid.*

## 1. Roles Required of Law Enforcement Forces

### 1.1 The role of the internal security forces (the Police) in providing electoral security

The Police has two main legal roles, its administrative role in maintaining security and public order to prevent crimes, and its judicial role in suppressing crimes immediately or after they occur. This report addresses these two roles as follows:

#### 1.1.1 The protective role of the Police

The preventive role of the Police in the elections is to take the necessary measures to reduce the levels of security risk to the electoral process from the beginning till the end, by focusing on strengthening the operational structures of the security system, raising levels of readiness, and by providing the resources and supplies required to carry out its duties in protection and prevent electoral abuses and crimes. Noting that the forms of Police work may differ from one country to another, as it may be societal, especially in countries that consider the Police as civil security agencies, and it may be directed to work on solving security problems, and it may be based on the mentality of “intelligence”, and these forms may overlap, but it is necessary to understand the nature of this in order to know the means that the Police focus on in order to fulfill their preventive role of service and protection.<sup>[378]</sup>

On the practical level, the set of administrative and preventive measures taken by the Police and the competent forces to protect the electoral process will have a significant impact on its success, because it aims to reduce potential security risks, by focusing on organizing security tasks before and during the electoral process. These measures are summarized with planning that precedes the operation to know all the necessary details, the use of an accident and emergency management system (in coordination with the civil defense, ambulance systems and medical personnel) especially in the current circumstances, with the spread of the Covid pandemic, or in the event of the spread of epidemics or exposure to other conditions. The predevelopment of lists with the names of the participating Police officers, their places, and roles, providing them with sufficient information and necessary instructions, logistical preparation for vehicles, supplies and tools for combating riots or violence, preparing firearms, and clarifying instructions for displaying or using them, and the places and cases in which it is permitted. Those must be very exceptional. Communicating with the community days before the electoral process, setting up social media pages, the provision of media statements in advance on preparations and general guidelines for the citizens. Getting prepared to receive citizens’ observations and comments, distributing leaflets in the centers in coordination with the supervisory committees to clarify and explain electoral instructions, complaints and reporting mechanisms, respond

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[378] Service and Protection: Human Rights and Humanitarian Law, op.

to citizens' complaints and involve the competent authorities in addressing them<sup>[379]</sup>

They must secure the polling stations ahead of time, distribute the ballots, ensure the safety of the halls, entrances, and exits, and deploy their members in all electoral facilities to provide a security umbrella for the polling and counting centers, and to ensure safe access, entry and exit for voters (especially the elderly and people with disabilities). Protect the process of transporting official records and ballots, ensuring the functioning of the electoral commissions, and preventing illegal gatherings.

### 1.1.2 The remedial role of the Police in electoral processes

The remedial role of the Police in the electoral process is specially represented in voting days, by addressing security problems, preventing abuses, receiving complaints and reports, arresting people who commit flagrant electoral or non-electoral crimes and referring them to the judiciary. Noting that there is no exclusive enumeration of the type and extent of these crimes, so when the law does not explicitly criminalize some cases, Police officers must wait for instructions from the Public Prosecution, the judiciary, or the complaint of stakeholders, and this is part of the legal training that the Police must receive regarding the electoral process.

In particular, they must support the administrative or judicial authorities that supervise the electoral process, ensure the security of the electoral commissions and provide them with the necessary support, assist them in controlling electoral abuses and crimes, organize the necessary controls against anyone who tries to disrupt or influence the work of the commissions, and bring the perpetrators to justice if necessary, and intervene rapidly in the event of quarrels or violent incidents, assisting voters in implementing the procedures required for voting, and organizing the necessary measures for those who lose their required personal documents, or discover errors in their data or records. In countries that endured war and its effects of displacement, forces migration, destruction of infrastructure and loss of control over entire areas and their corresponding institutions, such as Syria, many citizens suffer from losing their civil documents, and this creates an additional burden on the security forces or the Police.

### 1.1.3 The role of the security services

Assigning certain tasks to security forces during the electoral period may be affected by political restrictions. If the security side is subject to an argument about partisan bias, then the use of these forces in some aspects of the electoral process may be counterproductive to gaining the trust of participants. For example, in post-conflict environments, the involvement of state security forces in the conflict may create a level of distrust creating the need to alternative arrangements.<sup>[380]</sup>

[379] Andrew Graham, *Repairing Police Services in Democratic Regimes to Support the Electoral Process*, pp 15. <https://aceproject.org/ero-en/topics/elections-security/police-forces-in-elections.doc>, last accessed 22 August 2021.

[380] *Elections and Security*, Electoral Knowledge Network (ACE), *ibid.*

Therefore, these forces must be subject to the authority and supervision of the judiciary and should coordinate with the electoral committee and implement its instructions.

It is not acceptable to limit the role of the security services to monitoring the electoral processes in order to measure the turnout and the participation, with the aim of identifying the extent to which citizens are subject to the ruling authority, and to ensure that there are no indications that some intend to oppose the policies of the ruling authority, and in the event of such intents, eliminate it before it floats to the surface. Their intervention in electoral processes should be focused on monitoring electoral risks, and gathering information on those potential risks, but without the monitoring process unjustifiably disturbing civilians, as was the case previously, and putting that information at the disposal of the EMB and the internal security forces, as it will be in charge of ensuring the safety of electoral processes at all stages. There should also be a hot line between these agencies and the security forces (the Police) to ensure that any risks that may endanger the integrity of the electoral processes are cordoned off, so they won't float to the surface, and if they do arise, they should be addressed with legal measures that are in accordance with international standards observant of human rights and fundamental freedoms, as mentioned in the previous paragraphs.

One of the important factors for the success of the electoral process is the high level of communication and coordination among the agencies responsible for the management and security of the elections. Security planning and analysis cannot be effective when it is done right before the beginning of the electoral process and does not depend only on reaction strategies. Considering and aborting security risks before they occur and minimizing their impact or possibility, is a strategic endeavor for both electoral authorities and their security partners.<sup>[381]</sup>

#### 1.1.4 The role of the armed forces

In addition to the functions listed below under Scenario 1, the army would be tasked with securing the borders, of particular importance on polling day. Land borders would be shut entirely, with no-one permitted entry except at official border crossings. This would be to avoid illegal entry from bordering towns and villages by those seeking to vote in a particular candidate or undermine electoral security, something which has been witnessed often in many African countries. Securing the border would also serve to reduce expected incidents of violent and acts of terrorism.<sup>[382]</sup> In the actual conducting of elections itself, the army does not, in principle, have any further role except in cases of emergency, including incidents of violence and unrest. In such cases, if the police forces are unable to adequately manage the situation (typically because of its comparably modest numbers and equipment), this report argues that army interventions should be done according to need, subject to international monitoring, and only

[381] Election Security Threats and Analysis, Electoral Knowledge Network, (ACE), available at: <https://aceproject.org/ace-en/focus/elections-and-security/62a64762f64a62f62762a-645646> , last accessed May 16, 2021

[382] Mathias Hounkpe and Alioune Badara Gueye (see above), p. 26

on the request of the Electoral Governing Body.

The deployment of the armed forces in such cases is not prohibited by international law. In fact, Comment B on Article 1 of the Code of Conduct for Law Enforcement Officials states that the army is bound in such cases by the legal framework applicable to law enforcement agencies.<sup>[383]</sup> Some countries prohibit the participation of the military in elections, with uniformed personnel required to stay in their barracks on the day of the vote; in other countries, the military participates but only according to specific arrangement; in still other parts of the world, the police may make use of military equipment and personnel as per statutory legal provisions (such as in secondment arrangements).<sup>[384]</sup> There is a unique experience of this in Togo, where a special force was established to guarantee security during elections; this was the result of the Global Political Agreement signed by political actors in Togo in 2006.<sup>[385]</sup>

## 2. Potential scenarios for the role of security forces in Syrian elections

In the case of a political agreement being reached between Syria's negotiating parties at the United Nations, the question of elections, as stipulated by UN Resolution 2254, will serve as a principal means to establishing lasting peace in the country. In order for elections to fulfil their desired objective, certain factors must be in place; among these is electoral security, which is considered one of the most significant tasks of law enforcements agencies, as mentioned above. Owing to the conditions of war and rampant insecurity in Syria, it is not easy to imagine an environment in which such elections would take place. As such, this report will lay out two potential scenarios for security in Syria following the sought-after political settlement, with the recognition that other unexpected scenarios may well also occur.

### 2.1 Scenario 1: reforms to the military and security apparatus take place prior to elections

In this scenario, law enforcement agencies would be reformed, both institutionally and organizationally, during the 18-month period set by the Security Council Resolution 2254.<sup>[386]</sup> This would involve parts of these agencies being disbanded, merged, and restructured as necessary; a suitable legislative framework regulating their operations;

[383] To serve and to protect: Human rights and humanitarian law (see above), p. 190

[384] The use of the military in the electoral process in stable and semi-stable countries, The Electoral Knowledge Network, url: <https://aceproject.org/electoral-advice-ar/archive/questions/replies-1/830848069> (accessed 12 April 2021)

[385] Mathias Hounkpe and Alioune Badara Gueye, see above, p. 46

[386] This is the period set for elections to take place as per the new constitution, taken into account that set limits were not placed in the abovementioned resolution. Up until the time of writing this report, the transitional governing body, which was given a period of six months to be established, has not yet been formed, even though the resolution was passed at the end of 2015.

a clear separation of duties between each apparatus or institution and eliminating all overlap in their functions; and placing them under civil administration and judicial review. In addition to this, all local militias would be disbanded, with some integrated officially into the Syrian state, and foreign forces and militias would be removed from the country with the well-intentioned support of the international community, and of those countries present in the country, whether present themselves or by proxy, owing to Syria's ongoing war. While a discussion of this sought-after security reform goes beyond the scope of this report, the intention here is to simply indicate these potential challenges and scenarios to be later taken into account.

If this scenario is achieved, the roles given to the forces charged with maintaining a secure environment for free and fair elections would be assumed to be the same as those discussed above. It should be considered that these bodies do not have experience in human and electoral rights, nor in how to manage the risks threatening the peace and security of the electoral process without infringing upon these rights. This would require the intervention of the international community and the forces active in Syria to provide the necessary support, training, and advice in the period prior to elections, making use of the relevant experiences of other countries.

This report recognizes the difficulty of gaining the desired reforms and measures relating to security and the military, given that these forces have enjoyed huge gains and privileges that they are not likely to give up easily. They are also the most powerful in real terms, in that they have both weapons and influence, and a network of connections and mutual interests with politicians and businessmen. High-ranking members of these forces will also fear future accountability for the crimes and abuses they have been accused of. Efforts to maintain the status quo, and avoid the demand to disband, integrate, and institutionalize their unchecked ranks, will be forceful. This also applies to the foreign militias as well as Syrian militias and forces, and it would not be surprising were these various groups to later ally together to prevent these reforms and measures from being implemented, despite the ideological gulfs between them, so long as these measures threaten their existence. We can learn from Argentina's experience of transitional justice, something which then-President Raul Alfonsin tried to implement in 1983. When the Argentinian judiciary called the leading military figures to trial for crimes committed under the previous regime, the lower-ranking officers, afraid that the arm of the law would soon reach them too, began to commit acts of violence across the country, which led to a state of chaos. Alfonsin proceeded to negotiate with them, hoping to prevent the outbreak of civil war, and these negotiations resulted in the passing of two laws. The first of these laws set an end date for any complaint to be lodged against a military leader, something known as 'the end point'; the second law gave legal amnesty to any army officer under the ranking of colonel who had killed, under the reasoning that they had been implementing the orders of their superiors. This was considered a setback in the country's process of transitional justice.<sup>[387]</sup>

[387] Mohammad Adib, Transitional justice and national interest: between theory and reality, Masr al-Arabia, 19 April 2015, url:

<https://m.masralarabia.net/اضاءات/تحليلات/561983-العدالة-الانتقالية-والمصالحة-الوطنية-بين-المفهوم-النظري-والواقع-العملي/> (accessed 7 June 2021)

## 2.2 Scenario 2: Reforms to the military and security apparatus do not take place prior to elections

In the second scenario, elections are held as per Resolution 2254, but without the desired reforms to these various forces being implemented, without the militias present across Syria being disbanded, and without weapons being removed from all but the official institutions of the state.<sup>[388]</sup> Under this premise, the electoral security required to allow for a safe and impartial atmosphere would be inconceivable. Rather than the law-enforcement bodies serving to help the process of elections succeed, and a peaceful transfer of power to take place, they would instead serve to undermine it.

In such a situation, the international community, in particular the influence actors in Syria, may take a central role in neutralizing these militias, preventing them decisively from interfering in the electoral process, and in the Security Council issuing a binding resolution to hold to account those countries supporting such militias in the event of their interference in the election and its outcome. While elections are a sovereign exercise, national-level law enforcement bodies may require the support of international forces to be better able to exercise their role; this is particularly true in post-conflict transitional elections.<sup>[389]</sup> The Syrian military, too, must be neutralized such that they are not able to interfere in the political life of the country, including during election; the same applies to the security forces, with the exception of a limited and exceptional role as described above.

As per this scenario, the task of ensuring electoral security and managing risks to the smooth conduct of the electoral process would be given to the internal security forces (the police). Despite their lack of neutrality and insufficient experience in managing such issues, there is a clear law which regulates their work, and they are not immune from judicial accountability. The police are also more widely accepted by the Syrian population than the military or the security services. In the event of a lack of clarity around laws governing their operations, the Transitional Governing Body and Electoral Governing Body could issue the necessary decrees and guidance to redress this shortcoming.

Matters will not, however, be as simple as we envisage them. As mentioned above, the people and forces benefiting from insecurity and chaos will serve to obstruct reform and democratic transition. The Transitional Governing Body and Electoral Governing Body will need, therefore, to take all these factors into account, and modern technologies such as social media and [election] hotlines will need to be used to enable those seeking to make the democratic transition process, including elections, a success, to communicate with law-enforcement bodies, and ensuring they are informed about threats that could threaten electoral security. It will also be necessary to maintain confidentiality with regards information about the people [using these technologies]; political parties and civil society organizations, in particular those with experience in this field, could play an important role here.

[388] For more information about expected challenges in the transitional period, see: Murhaf Jouejati, *Reforming Syria's Security Sector in the Post-Assad Era*, Omran Center for Strategic Studies, 22 August 2014

[389] Security and elections, The Electoral Knowledge Network, (see above)

## Recommendations

The forces tasked with ensuring electoral security in Syria are ill-equipped in their current state to meet the standards of impartiality and transparency stipulated by Resolution 2254. Clear legislation regulating their organization and administrative structure, and their roles and responsibilities, is lacking; there are laws in place which protect these forces from accountability in cases of misuse of power; and their personnel do not have sufficient expertise, competency, or impartiality. In light of these weaknesses in capacity and resources, this report has put together a series of recommendations which it sees as necessary to allow these forces to properly manage the risks that could disrupt a forthcoming electoral process.

### 1. Constitutional and legal recommendations

■ The new Syrian constitution should include clear and specific principles around a) the neutrality of these forces, prohibiting them from interfering in political life, and b) the nature of the work of the internal security forces, security apparatus, and the army, stipulating legislation clarifying the duties of these forces, and prohibiting overlap in their responsibilities. The laws regulating their work should be accessible to the public, and there should be civilian oversight of these forces. Immunity should be lifted on their membership and prevented from being granted later on. This task falls to the Constitutional Committee, which is responsible for drafting the country's new constitution, and in particular the committee's Civil Society Bloc.

■ Clear laws and legislation should be issued to define the powers and duties of the different law-enforcing bodies (the police, security apparatus and the army), in particular with regards to how electoral security is ensured and electoral threats managed. The separating lines between the functions of these different bodies should be clearly drawn, with no overlap between their functions and responsibilities, and a clear organizational structure clarifying their hierarchies should also be drawn up. This should be done in a way which meets the international standards in the Code of Conduct for Law Enforcement Officials adopted by the 1979 General Assembly resolution 34/169, which should be considered an inseparable from the country's domestic laws, and all these laws and legislation should be accessible to the public. Furthermore, this legislation should prohibit members of these forces from candidacy or election. This measure would be only temporary, perhaps for a period of ten years, pending Syria becoming an institution-led country in which the principles of democracy and justice are embedded.



■ These forces should be held accountable for their actions and the violations committed during the performance of their duties, or in the course of conducting these duties. All laws and decrees granting them immunity from criminal prosecution, in particular Decree 14/1969 (which includes the establishment of the State Security Service) and Decree 64/2008, should be repealed. The detention centres run by these forces should be subject to judicial inspection and surprise visits by local and international rights organizations, within a legal framework which abides by relevant human rights standards and international agreements.

■ A law should be passed dividing the duties related to electoral security and the management of electoral threats among the different law-enforcement bodies. The internal security forces (police) would be primarily and exclusively assigned these duties, with the role of the army limited to times of necessity, as per requests by the internal security forces and the Electoral Governing Body. The role of the security apparatus would be limited to monitoring electoral threats and preparing and providing the internal security forces with reports on these on a regular basis and at suitable intervals. All these functions would perform in coordination with the Electoral Governing Body.

## **2. Political and organizational recommendations**

■ Law-enforcement bodies, especially those tasked with ensuring electoral security, should be trained on a regular and continuing basis. Amendments should be made to the training program as necessary, such that the highest levels of competence and professionalism may be met in the conducting of these duties, in a way which ensures human rights and basic freedoms are respected. These forces should be familiarized with the agreements and conventions which enshrine these rights and freedoms, in particular the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as other relevant international agreements. It should also be understood that the duties of these forces are to protect human rights and freedoms – not to serve the governing power at the expense of these rights and freedoms. This will require the help of the UN and the international community.

■ Material and logistical resources necessary to perform these duties should be provided. The international community would have a prominent role here, drawing on international experts, as well as the accumulated experiences from around the world, especially from countries which have been through similar situations to Syria. To this end, these forces should take training workshops, and those in leading positions should be sent abroad to countries with similar histories to learn about their experiences. This will require the support of international donors and organizations able to provide the necessary trainings to build this capacity.

■ The transitional governing body should disband all local militias present in Syria, integrating them into the official Syrian forces where possible, and all foreign forces which appeared in Syria during the years of the conflict should be removed. This would require the support and expertise of the international community, as well as of states which have influence in Syria, and have been on Syrian soil during the years of the conflict, especially since some of these states are considered the main backers of some of these militias.

■ All leading and symbolic figures who have operated in recent years within the structure of the security forces, police, and army, and who are accused of acts amounting to war crimes and crimes against humanity, should be dismissed. This is because the presence of these figures during the transitional period, and the period leading up to elections, would undermine the trust of the Syrian population in these elections.

## Chapter 3: Regulation of Electoral Media

The media plays a central role in all stages of the electoral process, from the preparation of the elections to the polling itself, the vote, and the vote count. The media also has a pivotal role in monitoring the fairness of elections, in public awareness-raising, allowing both voters and candidates to freely express their views, and in strengthening the participation and representation of marginalized groups in society. Therefore, freedom of the media is considered among the most important indicators of the level of democracy in states and societies.<sup>[390]</sup>

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.

This chapter looks at the roles that the media should play in Syria's electoral context and discusses the most significant challenges facing it during the transitional period. This is to offer potential solutions on how the country's electoral media may be managed, and how to enable Syria's media to effectively perform its roles as one guarantee of free and fair elections. The first section will discuss the importance of the role of the media in elections, reviewing those that Syrian media should perform. The second section will look at the international standards that regulate the media and ensure fair election coverage as stipulated by international covenants and treaties.

The third section will examine the extent to which Syrian media, as it currently stands, is in conflict with international standards which govern it and analyses how this may influence Syrian elections. This will be done by reviewing Syrian legislation which directly governs the media, such as the Publications Law, Media Law, and the Cyber-Crimes Law, or those which influence the free, independent, and impartial functioning of the media, such as the Counter-terrorism Law, and other exceptional laws. Other challenges facing journalistic work in Syria will also be examined, such as the spread of hate speech and media bias, whether public or private, in favor of the authorities, as well as a number of economic, security and political challenges which the Syrian population face, and will face, during the transitional period.

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[390] For an example, see the freedom index published by Freedom House (US), and the democracy index published by The Economist (UK); these two indices are considered the most important for assessing democracy around the world.

The final section will look at the legal frameworks of media work in Syria, examining the regulation of media access to electoral campaigns, the control of campaign ads, and the organization of the relationship between the media and the bodies in charge of managing the elections. Best practices of election-time media work, based on international standards, will also be examined, ones which would strengthen the capacity of the media to perform its role in elections. Finally, this chapter will present several recommendations to stakeholders and active parties in the Syrian context, to provide a road map of required reforms for Syria's media, so that it may perform its role as one of the guarantors of a fair and transparent electoral process.

## **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>[391]</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>[392]</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>[393]</sup>

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[391] 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)

[392] 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)

[393] 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>[394]</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>[395]</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.

### **Second: Alternative Media in Elections**

The revolutions of the 2011 Arab Spring shed light on the power of social media in political mobilization. It had a prominent role during these revolutions, as well as in the processes of democratic transition that followed. Social media is characterized by its easy access at any time, its uninterrupted flow of information, the speed at which news is disseminated, and the huge interactive power that it gives users, whether in receiving, sharing, or interacting with the content. Most significantly, however, social media has stopped the state from being the intermediary in how the media is run.

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

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

It stripped governments in authoritarian states of their total control over the media, and, in doing so, helped to free public opinion, to a certain extent, from the grips of state propaganda.<sup>[396]</sup>

Against the backdrop of the Arab Spring, alternative media had a huge impact, both positive and negative, on the electoral processes that emerged during the political transition periods of several countries, such as Tunisia and Egypt. On the one hand, political polarization intensified, allowing for the spread of hate speech,<sup>[397]</sup> which was held up by weak sources, poor credibility of information, and the ability to spread rumours and personal attacks on the candidates. On the other hand, alternative media served to foster freedom of opinion and expression, undermining the monopolization of information, and increasing how quickly this information could be transmitted.<sup>[398]</sup> It also better allowed candidates to interact with voters, and clarify their programs and aims in a timely manner. Alternative media also strengthened the ability to monitor the electoral process and document violations, with these outlets creating a safe space, outside the grip of the authorities, to observe and evaluate the elections.<sup>[399]</sup>

### **Third: International Standards and the Media**

Freedom of the media, opinion and expression are at the forefront of civil and political rights as recognized by international law and agreements. In fact, one of the first UN resolutions to be passed at its establishment in 1946 stated that ‘freedom of press is a major human right’,<sup>[400]</sup> which was also affirmed by the preamble to the Universal Declaration of Human Rights.<sup>[401]</sup>

The central framework for understanding the UN position on freedom of the media can be summed up by the following two tenets:

- Freedom of opinion and expression
- Freedom to receive and impart information

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[396] Abdel-Baset Huwaidi and Farhat Haj Bil Qasem, *Social media networks and their impact on traditional media practices in covering social movements in Algeria*, *Media and Society* 2019, vol. 3, no. 2, p. 32

[397] Mahmoud Ramadan Ahmad Abdel-Latif, *Political polarization on social media sites and its role in shaping attitudes in Egypt: a field study applied to the constitutional amendments of 2019*, vol. 2019, no. 69, 2019, p. 71

[398] Abdel-Baset Huwaidi and Farhat Haj Bil Qasem, p. 45 (see above)

[399] In every electoral process, in particular those taking place under regime control, there are social media campaigns supporting or opposing the elections, such as the electoral campaign on social media in support of Bashar al-Assad in 2014 under the title of ‘Sawa’ (‘together’); this was met by a campaign and mobilization against the election going by the name of ‘Blood Elections. The 2021 presidential election also saw significant action on social media, in particular Facebook and Twitter, either to promote the interests of the regime and the election, or to campaign against it, and monitor fraud, violations and boycotts taking place.

[400] Resolution 59 by the First General Assembly of the United Nations in 1946

[401] Universal Declaration of Human Rights, Preamble (see above)

Almost all international agreements on civil and political rights include these two rights. Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights affirms the human right to enjoy freedom of opinion and expression without interference and has the right to receive and impart information in the medium of their choice.<sup>[402]</sup> While these agreements are binding in Syria, freedom of the media is stifled by the executive, which has fought every attempt to enforce these agreements. For example, Syria made a reservation in relation to Article 41 of the International Covenant granting the Human Rights Committee (established by Article 38 of the same document) the power to receive complaints from state parties against others in the event of their contravening or violating one of its clauses.<sup>[403]</sup> Syria has also signed many regional agreements stipulating freedom of the media, such as the Arab Charter on Human Rights, Article 30 of which affirms the freedom of the media, opinion, expression, and imparting information.<sup>[404]</sup> The Cairo Declaration on Human Rights of the Organization of Islamic Cooperation also calls for the right to freely express one's opinion, but only in accordance with the principles of Shari'a. This declaration also restricts the media to work which does not violate sanctities and prophets, or undermine moral values, and includes other such broad provisions that could be widely interpreted.<sup>[405]</sup>

Returning to international law, it is notable that while Article 27 of the International Covenant on Civil and Political Rights stipulates the right of ethnic minorities to enjoy their own culture and use their own language,<sup>[406]</sup> the Syrian regime has continued to contravene this. Syrian-Kurdish citizens have been forbidden from speaking, writing, or publishing in their own language.<sup>[407]</sup>

Freedom of the media, in its understanding as freedom of expression and the transmitting of information in the medium that an individual sees fit, is not, according to international law, absolute. It is limited by several frameworks whose overall aim is to maintain peace and prevent rhetoric which could lead to an increase in extremism and violence within an undemocratic climate. These restrictions are either included in the same articles that call for freedom of the media, or there are specific articles dedicated to them. Such restrictions are also present in agreements related to political and civil rights more generally, and in other agreements on a particular human-rights or legal issue.

[402] Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, Article 19

[403] See the chapter of this report entitled 'International law and international elections', p. 31

[404] See: The Arab Charter on Human Rights, issued by the Council of the League of Arab States at the summit level by Resolution 270 (16)/2004, Article 30

[405] Cairo Declaration on Human Rights in Islam, Article 22

[406] The International Covenant on Civil and Political Rights, Article 27

[407] See above, the first chapter on the absence of a legal environment in Syria, p. 20

Article 29 of the Universal Declaration of Human Rights prohibits all discrimination in the enjoyment of any rights set out in the declaration on any basis, including race, sex, language, origin, place of birth, and opinion. Paragraph 2 of Article 29, meanwhile, states that the recognition of these rights is subject only to limitations which guarantee the respect for the rights and freedoms of others, while Article 12 includes a restriction related to the protection of individual privacy, reputation, and the reputation of one's family, and prohibits campaigns which target an individual in this way.<sup>[408]</sup>

Both the Covenant<sup>[409]</sup> and the Universal Declaration of Human Rights attempt to impose these restrictions with the aim of protecting national security, public health, public decency, and the rights and reputation of others. The Covenant includes these restrictions in the same article, that relating to the freedom of opinion and the mean, in its third paragraph, followed by an article prohibiting propaganda for war [and] any incitement of war or hatred on national, religious, or racial bases which could lead to violence, discrimination or hostility.<sup>[410]</sup>

In a context that upholds the right to freedom, expression and media, any legal measure taken against an individual or institution will follow international law in terms of the human right to a fair and independent judiciary, and no legal measure will be enacted without due proof.<sup>[411]</sup> It should be made clear that the basis within international law is the right to freedom of opinion, freedom of expression, and freedom of the media, and that the only restrictions that are placed are out of absolute necessity, in order to maintain civil peace and international understanding. This applies to General Comment 34 issued by the Human Rights Committee which was established as per Article 38 of the International Covenant for Civil and Political Rights. In this comment, the Committee expands on Article 19 of the Covenant, which relates to the freedom of opinion, expression, and media; it states that this is the rule and not the exception, and that, therefore, states of emergency which are taken account of in Article 4 of the Covenant, must not put this right at risk.<sup>[412]</sup>

From the above, we can see that the right to freedom of opinion, expression and the media is an inalienable human right from an international law standpoint and is considered the essence of all freedoms protected by the law, with restrictions only imposed upon it to safeguard international and local peace and understanding. These standards could regulate the role of the media in any country's elections, as per the parameters of international law, by inserting legal and constitutional texts into that country's legislation, thus rendering it in accordance with international standards for freedom of the media. Syria's legislation, however, appears to be based on the complete antithesis

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[408] The Universal Declaration of Human Rights, Articles 2, 12 and 29

[409] This refers to The International Covenant on Civil and Political Rights

[410] The International Covenant on Civil and Political Rights, Articles 19 and 20

[411] See for example The Universal Declaration of Human Rights (see above), Articles 8-11; the International Covenant on Civil and Political rights (see above), Article 14

[412] For more information see General Comment 34 of the Human Rights Committee to the International Covenant on Civil and Political Rights, 102nd session, Geneva 2011



of these standards; it cannot be reformed by amending one article here or one article there, or issuing a few decrees. Rather, the whole system of Syrian legislation needs to be addressed, in a way which would ultimately give rise to a free and independent media. This media would, in turn, be able to act as a guarantee for free, fair, transparent, and equal elections, based on international law.

#### **Fourth: The Reality of the Media in Syria**

Syrian legislation restricting freedom of opinion and expression emerged in line with the move by the authorities to consolidate the hegemony of the Baath Party in the country. At the forefront of this legislation was Article 8 of the 1973 Syrian Constitution, which stipulated the leadership of the Baath Party in state and society.<sup>[413]</sup> The legal framework relating to the freedom of opinion and expression and transmitting of information, including restrictions on campaigning and the role of media in elections, was established in accordance with this article. Media outlets in Syria remained restricted to those run by the state, contravening the most important international principles related to the independence and freedom of media, whereby it remained inextricably linked to serving the state and its strategies.

After Bashar al-Assad took power, a few private media organizations, owned by individuals close to the seat of power, emerged.<sup>[414]</sup> In 2001, Decree/Law 50 was passed, which regulated the output of media publications. This law gave the executive absolute power over the granting of operating licenses to any published media, including magazines, newspapers, and books. This meant that the office of the prime minister could refuse the granting of this license for any reasons relating to ‘public interest’.<sup>[415]</sup> This law also gave the Minister for Information the power to accept [or deny] the entry of any foreign journalist or foreign publication to Syria.<sup>[416]</sup> By contrast, Legislative Decree 10/2002 allowed the private sector to make broadcasts, limited to music programs and advertisements, when this had previously been restricted to government broadcast.<sup>[417]</sup> This decree also gave the sole power for granting broadcast licenses to the prime minister’s office, while the work of private television channels continued without a legal framework until 2012.

[413] 1973 Syrian Constitution (in force until 2012), Article 8

[414] The first of such organizations was the ‘United Group’, owned by Majd Behjat Sleiman, the son of General Behjat Sleiman, a close associate of Assad, and Bashar Kiwan, a businessman also close to Assad. Another was the Al-riyadiya newspaper, Sawt al-Ghad radio, owned by Aktham Douba, the son of the Security General Ali Douba. This was followed by the launch of the first private TV station, called Dunya, which contributed to Assad’s propaganda, in particular in the period of revolution after 2011; the majority shareholder of this station is Rami Makhoul, the cousin of Bashar al-Assad.

[415] Publications Law No. 50/2001, Article 12

[416] Publications Law (see above), Articles 10 and 28

[417] See Legislative Decree No. 10 on private commercial broadcasts, which was an amendment to Law No. 68/1951 regulating government broadcasts.

The role of the judiciary in Syria, as opposed to protecting the independence of the media, has fought all attempts by the media to create a space independent of the state. This was linked, moreover, to crimes punishable under the penal code, as well as other laws whose vague wording enabled the inclusion of anything perceived by authorities to be a threat in the list of indictments. Indeed, in many of its judgments, the State Security Court has relied on a set of articles in the penal code which primarily infringe upon the freedom of opinion, of expression, and of the media.<sup>[418]</sup>

Following the dismantling of the State Security Court in 2011, Law 19 for Counterterrorism was issued. Article 8 of this law stipulates that ‘the distribution of stored materials or information, in any form, with the aim of promoting terrorism or acts of terrorism is punishable by a period of hard labor, and the same punishment is given to anyone who opens or uses websites for this purpose.’<sup>[419]</sup> This law came to take the place of the state of emergency laws, and the State Security Court law, in its elimination of the freedom of opinion and expression, and its pursuit of all journalists and leading figures in the media who worked outside the scope of the authorities, in an attempt to stifle any kind of political opposition to the holders of power.<sup>[420]</sup>

Bashar al-Assad’s regime has also violated international anti-discrimination standards in not allowing any non-Arabic-language media outlet to operate in Syria, which is considered language-based discrimination. One of the conditions, moreover, of obtaining a license as per the 2001 Publications Law is that the owner and head of the publication be a Syrian Arab, signifying racial or ethnic-based discrimination.<sup>[421]</sup> Also, in Legislative Decree 26/2011, related to internet communication, the article on general principles stipulates that all websites must be written in the Arabic language, and respect Arab national identity. They must also respect ‘the higher interests of the country, public order and public decency’, with vague wording such as this able to be interpreted loosely, however the relevant parties see fit.<sup>[422]</sup>

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[418] Far From Justice: Syria’s Supreme State Security Court, a report by Human Rights Watch, 2009, url: <https://www.hrw.org/ar/report/2009/02/24/255871> (accessed 26 June 2021). The report defined 153 court cases which were based on articles 278, 285, 286 and 307 of the penal code, in a move against any form of criticism of the authorities.

[419] See Law No. 19/2012 relating to counterterrorism in Syria, Article 8

[420] Human Rights Watch published a report on the Syrian regime’s use of the Counter-terrorism law to stifle dissent and suppress peaceful activists, on a larger scale than that carried out by the State Security Court under the state of emergency. On the basis of this law, many activists and bloggers such as Mazin Darwish, the head of the Syrian Center for Media and Free Expression, were put on trial. Their indictments included the monitoring of news, broadcast online by the opposition; the publishing of names of the dead, detained and wanted in the context of the Syrian conflict; and receiving funds from western organizations. These were considered attempts to destabilize the situation in Syria. (Syria: Counterterrorism Court Used to Stifle Dissent, Human Rights Watch, see above)

[421] Publications Law (see above), Article 16: Every individual living in Syria shall be considered a Syrian Arab, regardless of their affiliation

[422] Online Public Communication Law (Law No. 26/2011), Article 5

## Fifth: The Legislative Frameworks of Media in Syria

The Syrian Constitution of 2012 provides for freedom of opinion, speech, and expression through whichever means that each individual deems appropriate. It also allocates a constitutional article specifically for freedom of the press and media and its independence.<sup>[423]</sup> A year earlier, the Media Law was issued via Legislative Decree No. 108 of 2011, a law which was in conflict with all international standards and the Syrian Constitution itself, according to the following:

### 1. Freedom and independence of the media:

The Syrian Media Law restricts freedom of information and makes its practice contingent to the executive authority by prohibiting the work of all media organizations except those that obtain a license from the National Media Council, established as per the same law.<sup>[424]</sup> The Media Council has the right to refuse or revoke the licensing of any media organization (newspaper, television, radio, website, news agency, media services company etc.)<sup>[425]</sup> and also has the right to suspend the operation of any media organization immediately without a warrant<sup>[426]</sup>, giving priority in media regulation to restriction rather than freedom of information.

Although the restrictions on the promotion of terrorism, hate speech, and inciting sectarian and racial strife<sup>[427]</sup> are within the scope of restrictions imposed by international law, Syrian authorities use these restrictions as tools to crack down on its opposition, combat dissenting opinions, and prevent the dissemination of information that the regime does not want circulated.<sup>[428]</sup>

Chapter 4 of the Syrian Media Law clarifies how the National Media Council is formed and its tasks as an independent body of the government. The Media Council is affiliated to the Council of Ministers, and the law details the organizational structure of the Council, its functions and modus operandi. However, the entity that chooses the nine members of the Media Council is left ambiguous and unclarified<sup>[429]</sup>. They were appointed in 2013 by a presidential decree<sup>[430]</sup>. Although the National Council was no more than an arm of the executive, its competence to issue licenses to the media independently of the Ministry of Information has led to granting opportunities to several media organizations to obtain licensing.

[423] See the 2012 Syrian Constitution articles 42 and 43.

[424] See Media Law issued via Legislative Decree No. 108 of 2011, Chapter IV.

[425] Ibid., Article 22, Section 5.

[426] Ibid., Article 100.

[427] Ibid., Article 12.

[428] Syria – Using the Counter-terrorism court to stifle the opposition, Human Rights Watch, *ibid.*, stated that the Syrian government uses Counter-terrorism law against peaceful activists and human rights defenders (including members of the Syrian Center for Media Freedom) on charges of "promoting terrorist acts."

[429] Law Media, *ibid.*, Article 20.

[430] See Presidential Decree No. 199 of 2013 to form the National Media Council.

The Council, up till 2016, licensed 54 magazines and newspapers, and more than 60 websites<sup>[431]</sup>. In 2016, Legislative Decree no. 23 was issued to abolish the Council and hand over all its powers to the Ministry of Information, giving the ministry the direct power over the licensing of media outlets, their operations, and the decision to revoke their license.

Because of the difficulty of controlling online media, the government resorts to further restrictions on freedom, further enabling the regime to monitor through the Online Communication and Cybercrime Law of 2012, which forces hosting providers to save addresses, names and times and facilitate tracking them under liability and punishment<sup>[432]</sup>. The law considers software to be material objects and allows them to be searched<sup>[433]</sup>. In other words, the authorities have the right to search the personal pages of social media users and all electronic content if they can. In addition, the law allows for the application of penal laws to "crimes" committed through the Internet and interprets some of these crimes as a violation of public morals, incitement to crimes against humanity, promotion of terrorism, promotion of racist content<sup>[434]</sup> and other charges punishable by the interpretation of the Counter-terrorism Court (CTC).

## **2. The freedom of journalists to practice their profession without being subjected to any harm:**

The law in Paragraph A of Article 7 emphasizes that journalistic freedom is protected and may not be infringed based on what they publish. However, it still makes this contingent on the infringement of law. Although the law limits penalties imposed on media workers to a fine;<sup>[435]</sup> it then emphasizes the possibility of criminalizing media professionals under the Penal Code<sup>[436]</sup>. In addition, the Counter-terrorism law is used with Article VIII, which provides for imprisonment and a fine for anyone who promotes terrorist means or acts, and any content opposing the authority is interpreted as a promotion of terrorist acts.<sup>[437]</sup>

One of the most flagrant violations committed by the regime in Syria is basing the practice of media on discrimination against citizens, first and foremost discrimination based on their political opinion.<sup>[438]</sup>

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[431] This information was mentioned in the documentation of a meeting with Fouad Balat, vice president of the National Media Council. Ahmed Jassim al-Hussein, Syrian State Media in Half a Century and Fouad Balat's Role, Syria TV website, April 30, 2021. link: <https://www.syria.tv/109813>, accessed on June 26, 2021.

[432] Online Communication and Cybercrime Law (Legislative Decree No. 17 of 2012), Articles 3 and 8.

[433] Ibid, Article 26, Paragraph B.

[434] Executive and explanatory instructions to articles 28 and 29 of the Online Communication and Cybercrime Law.

[435] Media Law, *ibid.*, articles 78-97.

[436] *Ibid.*, Article 99.

[437] In a testimony recorded for this report, human rights activist Hussein Greer said that he was prosecuted for publishing the names of disappeared persons, detainees, and human rights violations. They were considered terrorism promoting acts pursuant to Article 8 of Counter-terrorism Law 19 of 2012.

[438] Media Law, *ibid.*, section two of Paragraph A of Article 39.

### 3. The right to information:

The Media Law defines the right of citizens to obtain information within the three rules on which media work is based,<sup>[439]</sup> and article 9 emphasizes the journalist's right to obtain, analyze and transmit information, but limits it to the information that the Council of Ministers allows public authorities to disclose<sup>[440]</sup>. Therefore, access to information is narrowed and expanded according to the will of the executive, which does not need legal justification for withholding the information it wants to withhold. Moreover, every public body can obstruct the right to information, as it is entitled to a period of seven days before responding to requests. In the absence of a reply, the request is referred to the administrative judiciary, which can decide the case within one month of its registration<sup>[441]</sup>. Therefore, obtaining any information may take more than a month, which hinders any active media action. Obtaining or publishing information about the army can only be done with the approval of the army, which hinders any objective media work based on information about or from the army.

Consequently, Syrian legislation and laws governing media work, and those related to it, have created a one-way media that is pro-authority and hostile to any divergence against it, even if it is from within the media system supporting it (the authority)<sup>[442]</sup>, and has prompted a media that relies on violation of all international standards, which has led the media reality to be an anti-democratic and anti-pluralistic environment. It justified committing many crimes that may amount to crimes against humanity in several areas of Syria, especially those committed by government forces.

### Sixth: In the Context of the Media's Role in the Syrian Elections

Syrian legislation has not given sufficient care to the ability of electoral campaigns to provide equal opportunities for all individual candidates or on lists. Legislative decree No. 26 of 1973, which includes the Law on General Elections, provided two articles only in chapter 6 explaining the candidates' right to electoral advertisement<sup>[443]</sup> and the period of electoral silence for 48 hours before the elections<sup>[444]</sup>.

[439] Ibid., Article 3.

[440] Ibid., Article 9.

[441] Ibid., Article 10.

[442] For example, in January and February, the Syrian authorities arrested a group of pro-regime journalists, including broadcaster Hala al-Jarf, on the basis of the Cybercrime Law, for social media posts denouncing corruption and deteriorating service performance, to learn more: Arrest of journalist Hala al-Jarf for information crimes, Reporters Without Borders website: Available on the link: <https://rsf.org/ar/news/-314> The site was browsed on June 26, 2021.

[443] The 2011 General Elections Law contained in Decree 101, Articles 28-34.

[444] Syrian Law on General Elections, via Legislative Decree No. 26 of 1973, see Articles 25 and 26.

The first definition of disbursement method in electoral campaigns came through Law 66 of 2006, which sets the cap on financial spending at 3 million Syrian pounds, and obliged candidates to appoint a financial commissioner responsible for spending on electoral advertisement<sup>[445]</sup>,

but this law remained a dead letter and none of the candidates adhered to it.<sup>[446]</sup>

The Law on General Elections, via Decree 101 of 2011, provided more details of the determinants of electoral campaigning and advertising, incorporating the spending cap of Law no. 66 into the Law on General Elections, prohibiting electoral advertisement from using connotations that are sectarian, confessional, tribal, or offensive to public morals. It prohibited electoral advertisement in government institutions, places of worship and administrative units. It also prohibited the use of state-owned tools and means in electoral advertisement<sup>[447]</sup>. Although electoral advertisement had a constitutional basis<sup>[448]</sup> Then, law no. 5 that was passed in 2014 backtracked on its spending cap.

The lack of spending cap for campaigns hinders equal opportunities and equality between candidates, particularly with the Baath Party's financial capacity either at the party level or at the level of its members. The Baath Party's financial resources were accumulated over years of corruption and nepotism, making equal electoral advertising impossible for other parties or citizens. Although the electoral law prohibits the exploitation of public money, official posts, and places of worship in election campaigns, several press reports have confirmed that all state's potentials were used and clerics of different faiths were mobilized to promote Bashar al-Assad's campaign, in addition to forcing citizens to assume the costs of electoral advertisement.<sup>[449]</sup>

Syrian legislation that regulates media work in general, and election media in particular, is in contravention to all international standards, and contradicts the freedom and independence of the press. These legislations adopted speech based on hate, discrimination, and defamation against anyone who disagrees with the regime. Instead of raising awareness about the importance of elections in preserving democracy, they turned it into a tool to consolidate autocracy. They did not even abide by the explicit provisions and gave the executive the upper hand in media regulation. They took away citizens' inherent right to information, a right that is guaranteed under international law, the current Syrian constitution, and the media law. This turned the media into a tool that is neither democratic nor eligible to ensure an electoral process that meets the international requirements of integrity, transparency, freedom, independence, and equality.

[445] Law No. 66 of 2006 on Electoral Advertisement, Article 1.

[446] A testimony recorded for this report reminds former MP Mohamed Barmo of the independent category of 2007, i.e., in the first parliamentary elections after the law was passed, mentioned that his campaign exceeded 20 million, and that he did not appoint a financial commissioner and no government agency contacted him about the matter.

[447] Syrian Law on General Elections of 2011, via Decree 101, Articles 28-34.

[448] Syrian Constitution issued in 2012, Paragraphs 4 and 5 of Article 61.

[449] Amin al-Assi, "Scenes of Extortion to Renew 'Allegiance' to Bashar al-Assad" (Arabic), The New Arab, May 17, 2021, link: <https://bit.ly/3zVvfRC> The site was browsed on July 1, 2021.

It is worth mentioning that Syria's electoral law was passed in 2014, as in Tunisia. The Tunisian law emphasized that the media is a guarantor of a neutral electoral environment, particularly regarding campaigns and electoral advertisement at all electoral levels (presidential, parliamentary, local, etc.). Among the 15 terms explained by the Tunisian electoral law in its third chapter, 8 relate to electoral campaigning.<sup>[450]</sup>

Out of 16 terms defined in Syria's election law, none are campaign related.<sup>[451]</sup> The Syrian legislation does not set a cap on financial spending, nor does it regulate the relationship between the media, candidates, and their campaigns.<sup>[452]</sup> Tunisian law details the way election campaigns operate in 50 of the 176 articles. It details fiscal spending cap, government subsidy, media relationship with elections, media conduct during the electoral campaign, relationship with electoral commissions, the impartiality of media outlets and preventing the publication of information that would affect the vote.<sup>[453]</sup>

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[450] Tunisian Elections Law, Basic Law No. 16 of 2014 on elections and referendum, Chapter 3.

[451] Syrian Law on General Elections 2014, *ibid.*, Article 1.

[452] *Ibid.*, Articles 48-58.

[453] Tunisian Elections Law, *ibid.*, articles 50-100.

## Recommendations

It seems that the laws governing media in Syria are not suited for a process of reform. Syrian media requires a new legislative structure that meets the aspirations of Syrians to have a free and independent media, exercising its roles in free, fair, transparent, and independent elections and in an atmosphere of equality. Therefore, we present below a set of proposals and recommendations that will enable traditional and alternative media outlets to fulfill their roles effectively in the electoral process with the highest professionalism and in accordance with international standards of media work.

### 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>[454]</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:

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[454] 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.



- 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.
- 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>[455]</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>[456]</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.

[455] Tunisian Elections Law, *ibid.*, Article 57.

[456] 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.

■ 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.

■ 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>[457]</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.

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[457] Tunisians law bans publishing opinions and surveys throughout the election campaign. (Tunisian election law 2014, Chapter 70).

## 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.

The situation did not change much after 2011, and the constitutional and legislative changes adopted by the regime since 2011 have made no progress on the path to political pluralism and the guaranteeing freedoms and rights, including electoral rights. Despite the end of the state of emergency and the abolition of the infamous State Security Court, The Counter-terrorism Law was passed, followed by the Law on the Formation of Terrorism Court, which replaced the State Security Court and followed in its footsteps in helping the security services suppress any opposition party action or civil society activity.

The absence of a climate of political action and democratic practices has weighed heavily on the overall political participation of Syrian citizens. Therefore, any future electoral legal reform in Syria that establishes free and fair elections involving all Syrians, in Syria and abroad, in accordance with Security Council Resolution 2254, must include clear parameters that enhance the participation of all Syrians in the electoral process, in particular promoting the participation of internally displaced persons and non-residents of Syria in voting and candidacy, and strengthening the role of parties and civil society.

This section deals with promoting participation in Syrian elections through four main topics. The first chapter addresses women's political participation in elections by discussing legal, social, cultural, economic, and other obstacles that limit women's political participation, as well as proposing legal solutions and reforms required to promote and strengthen such participation. The second chapter addresses the problem of the participation of refugees and displaced persons in elections, reviewing the experiences of some countries in this context, and proposing solutions, strategies and legal reforms required to ensure that such participation is strengthened. The third chapter discusses the opportunities and challenges regarding the ability of political parties to participate in the electoral process, and the legal reforms needed to promote such participation. The fourth chapter reviews the role of Syrian civil society in elections, particularly in the transition period.

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

This section focuses on women's political participation from the point of view of the electoral system, as one of the most important tools that can effectively strengthen their participation or reduce it.

Women's political participation is a wide-ranging research topic that encompasses many theories, ideas, and opinions. Therefore, the focus will be on the electoral system, its connection with women's political participation and the main influences affecting it. Influences like the electoral system's ability to reform part of the injustice that is often associated with women's political participation, which is linked to all aspects of women's lives like being denied citizenship rights, their right to an education, reproductive rights, protection from violence, etc.

The electoral system has a central role, especially when it is built on the foundations of promoting women's political participation, which is not limited to the principles and standards of equality; it goes beyond it to enshrine a set of mechanisms that allow for overcoming decades of marginalization of women's participation in politics. As well as ineffective cosmetic forms of participation, all of which are mainly influenced by the public and private status of women in their country in terms of gender discrimination, the spread of violence against them, and other determinants that affect directly and indirectly women's political participation.

The reality of women in each country is linked to its political system. Challenges vary greatly between a democratic context and an undemocratic one. This poses serious questions about the possibility of promoting women's political participation within an undemocratic context. International conventions have therefore focused on linking women's political participation to the cause of democracy, particularly since they have also enshrined fair election standards through secret ballots, equal universal suffrage, periodical elections, oversight, transparency, and an independent electoral body<sup>[458]</sup>. These criteria can therefore be found only within the context of a democratic political system, so that the approach to fair elections in undemocratic political contexts is meaningless. The integrity of elections in democratic systems is strengthened within the process of building the rule of law<sup>[459]</sup>, a principle that is essential for the protection and activation of human rights in general, and women's rights in particular.

Women's political participation in the electoral system can therefore be approached by examining this participation first within the context of the political system, and then within the electoral system itself, while taking into account the circumstances that frame women's lives and directly or indirectly affect their political participation.

[458] Deepening Democracy: A strategy to improve the integrity of elections around the world, Global Commission on Elections, Democracy & Security, September 2012. P. 20.

[459] Ibid., p. 20.

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.

Hence, two basic things can be outlined, including all practices that may be effective and useful in promoting women's political participation through the electoral system:

- Quotas as a temporary measure that is discontinued when equal opportunities and treatment targets have been achieved.
- Taking gender in consideration in the electoral process by mainstreaming equality between women and men throughout the electoral process.

## **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>[460]</sup>. It should be noted that the Syrian State is party to most of these conventions, such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration.

### **1. Universal Declaration of Human Rights**

The Universal Declaration of Human Rights provided that human beings enjoy all their rights equally without any discrimination on the basis of sex<sup>[461]</sup>. It stressed the right of every person to participate in the public affairs of their country and hold official and public positions on an equal footing, through fair elections held periodically by universal suffrage, on an equal footing between voters and by secret vote<sup>[462]</sup>.

### **2. International Covenant on Civil and Political Rights**

The International Covenant emphasized that women and men are equal in enjoying civil and political rights<sup>[463]</sup>, participating in running their country's public affairs, whether

[460] 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.

[461] Universal Declaration of Human Rights, *ibid.*, articles 2 and 7.

[462] *Ibid.*, Article 21.

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

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>[464]</sup>. The Covenant also emphasized equality before the law, protection, and the prohibition of any form of discrimination on the basis of sex.<sup>[465]</sup>

### 3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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>[466]</sup>

The Convention also called on States to take temporary measures until the cultural and social reality that prevents equality is changed, and it provided for the so-called procedures (special discrimination), which are intended (positive discrimination), which can be provided for in constitutions, laws, or decisions. Those are temporary measures and shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.<sup>[467]</sup> The Convention also required States to work to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women<sup>[468]</sup>. The Convention also contained detailed provisions requiring States to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies, and to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; and to participate in non-governmental or-

[464] Ibid., Article 25.

[465] Ibid., Article 26.

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

[467] Ibid., article 4.

[468] Ibid., Article 5.

ganizations and associations concerned with the public and political life of the country.<sup>[469]</sup>

#### 4. Security Council resolutions

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>[470]</sup>. Security Council Resolution No. 2254 of 2015 on Syria also emphasized the promotion of meaningful participation of Syrian women in the political process.

#### 5. Beijing Platform for Action 1995<sup>[471]</sup>

The Beijing Conference stressed that women's empowerment and full participation on an equal footing in all aspects of society's life, including participation in decision-making and access to positions of power, are essential for equality, development and peace<sup>[472]</sup>, and that all barriers to women's active participation in all areas of public and private life are removed through their full and equitable share in economic, social, cultural and political decision-making<sup>[473]</sup>, which was seen as a priority goal for the International Community<sup>[474]</sup>. The Beijing Platform for Action also stated that women's advancement and equality between women and men were a human rights issue and a condition for social justice and should not be seen in isolation as women's issues. It is the only way to build a viable, just, and advanced society. Empowering women and achieving equality between them and men are prerequisites for achieving political, social, economic, cultural, and environmental security for all peoples<sup>[475]</sup>. The conference called on Governments, the international community and civil society, including non-governmental organizations and the private sector, to take strategic action in critical areas of concern, such as inequality between men and women and in the sharing of power and decision-making at all levels.<sup>[476]</sup>

The low proportion of women among economic and political decision makers at the local, national, regional, and international levels reflect structural and attitudinal barriers that need to be addressed through positive measures. Governments, transnational and national corporations, the mass media, banks, academic and scientific institu-

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[469] Ibid., article 7.

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

[471] The Beijing Declaration and Platform for Action was unanimously adopted on September 15, 1995 by governments participating in the Fourth World Conference on Women, and then adopted by the UN General Assembly on December 8, 1995( 42/50).RES/A The Syrian government is committed to the Beijing platform, link: <https://archive.unescwa.org/our-work/beijing-declaration-and-platform-action>, accessed on June 26, 2021.

[472] Ibid., Item 13.

[473] Ibid., item 1, chapter 1 of the mission statement.

[474] Ibid., item 10, chapter 1 of the mission statement.

[475] Ibid., Section 41 of Chapter III (Critical Areas of Concern).

[476] Ibid., section 44 of Chapter III (Critical Areas of Concern).



tions, and regional and international organizations, including those in the United Nations system do not make full use of women's talents as top-level managers, policy makers, diplomats, and negotiators<sup>[477]</sup>. In that context, the Conference emphasized measures, where appropriate, in electoral systems to encourage political parties to integrate women in elective and nonelective public positions in the same proportion and at the same levels as men. Protect and promote the equal rights of women and men to engage in political activities and to freedom of association, including membership in political parties and trade unions. Review the differential impact of electoral systems on the political representation of women in elected bodies and consider, where appropriate, the adjustment or reform of those systems.<sup>[478]</sup>

## 6. 2030 Development Agenda

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>[479]</sup>

International agreements have linked the political participation of women, on an equal basis with men, to the issues of development and democracy. The Beijing Conference emphasized that achieving the goal of equal participation of women and men in decision-making would lead to a balance that more accurately reflects the composition of society, which is a necessary condition for consolidating democracy and encouraging proper democratic application. Equality in political decision-making performs an influential function without which it is highly unlikely that a real integration of the equality dimension in government policymaking is feasible. In this respect, women's equal participation in political life with men plays a pivotal role in the general process of the advancement of women. It is not only a requirement of justice and democracy; but also, a necessary condition for taking observe the interests of women. Without the active participation of women and the inclusion of their perspective in all levels of decision-making, the goals of equality, development and peace cannot be achieved.<sup>[480]</sup>

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

[477] Ibid., Section 186 of the Women in Positions of Power and Decision.

[478] Ibid., Section 190 of the Strategic Goal "G".

[479] 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.

[480] Declaration of the Beijing Platform for Action, *ibid.*, Clause 181 of the Women in Positions of Power and Decision paragraph.

- 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>[481]</sup>
- The role of appropriate electoral systems in increasing the rate of women's political participation.

## **7. The Document on Common Items Between the Regime and the Opposition Which Was Issued During Geneva Talks**

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.<sup>[482]</sup>

## **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,

[481] Declaration of the Beijing Platform for Action, *ibid.*, Strategic Objective “G”.

[482] Lama Kannout, *The Syrian Women's Political Participation between the Matn and the Margin*, the Syrian Women's Lobby, 2017, 1st edition, p. 119: [https://docs.euromedwomen.foundation/files/ermwf-documents/7294\\_Syrian-Women-Political-Participation-Between-Matn-And-Margin.pdf](https://docs.euromedwomen.foundation/files/ermwf-documents/7294_Syrian-Women-Political-Participation-Between-Matn-And-Margin.pdf). Website accessed May 9, 2021.

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.<sup>[483]</sup>

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 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%. In addition, a woman won the presidency of the council by acclamation in the current legislative cycle, and she is an active member of the Baath Party,<sup>[484]</sup> but she resigned after a while.

Although women have enjoyed the right to vote for nearly seventy years, their presence in Parliament remains at a shy 12%, accompanied by the absence of a national plan aimed at enhancing women's political participation, especially since women are still far from decision-making positions, and women's access to the parliament in Syria is mainly linked to their affiliation with parties under the NPF, while few of them are independent.

On the other hand, the presence of women in the executive authority cannot be linked to raising women's political participation, since they only express the regime's rhetoric, not to mention that the appointment process under a non-democratic regime is based on loyalty to the authority.<sup>[485]</sup> Thus, 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>[486]</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.

Since several articles of the Penal Code criminalize political activities,<sup>[487]</sup> the regime often used it to undermine its opposition, through exceptional courts, mainly the notorious field and military court, and prisons in which all forms of torture and kidnapping of opposition members are practiced, such as Palmyra and Saydnaya prisons. In this context, a wave of comprehensive public protests broke out in March 2011 across all Syrian territories against the regime. Protestors had various goals, ideologies, and attitudes;

[483] The Syrian Constitution of 1973, previous reference, Article 8.

[484] In the first session of the People's Assembly of the first regular session of the second legislative cycle... Dr. Hadiya Khalaf Abbas won the presidency of the council and Najdat Anzour as her deputy, Sinan Agency on June 6, 2016, available at the link:

<https://www.sana.sy/?p=391260> Website accessed on April 19, 2021.

[485] Lama Kannout, previous reference, pp. 23 and 71.

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

[487] For example, articles 285, 286 and 288 of the Syrian Penal Code.

however, they agreed on the demand for political change in Syria. At this stage, two things can be distinguished: the continuation of the stagnation of political life in the areas controlled by the Syrian government in Syria; and the beginning of a process of political action in other areas in Syria and abroad, in addition to political setbacks in some areas outside the control of the regime and under the control of de facto forces backed by various international bodies.

## 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.

They also emphasized facing a backward mentality in dealing with women and their issues, mainly their presence in these bodies, by stereotyping their roles and exercising guardianship over them.

In the same context, the formation of the Syrian Constitutional Committee confirmed the lack of a political decision by the regime and the opposition towards promoting women's political participation, despite the fact that the percentage of women in the committee was close to 30%.<sup>[488]</sup> Raising that percentage was by increasing the number of women in a third of the civil society, the members of which were selected by the UN. This remains a negative indicator that raises serious concerns about the rights of women in any new Syrian constitution agreed by those parties.

In addition, 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>[489]</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>[490]</sup>

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[488] Lama Qunoot, *The Political Participation of Syrian Women*, previous reference, p. 23 and 71.

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

[490] 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.

#### 1. Legal Constraints

International agreements affirm the right to equality between women and men and have always linked it to activating women's political participation. This equality is not only related to the political participation of women on an equal basis with men; but also, the human rights of women, which constitute the reality of women in a country. Do women enjoy their human rights fully and without discrimination the only foundation that makes the political participation of women effective and equitable?

The Syrian constitution stipulates in several articles equality and equal rights among citizens, and prohibits discrimination against all persons the basis of gender.<sup>[491]</sup> It also singled out women with an article that talks about providing all opportunities to achieve effective and full participation of women in the country's political, economic, social and cultural life, and removing all obstacles that prevent their development and participation in society.<sup>[492]</sup> These constitutional articles, which we should find reflected in the laws, demonstrate the contradiction within the legal system in Syria, and reveal the absence of the rule of law. The reality of Syrian women is governed by a legislative system that discriminates against women in favor of men.<sup>[493]</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>[494]</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>[495]</sup> and non-Muslims, the Penal Code,<sup>[496]</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.

[491] The Syrian Constitution of 2012, previous reference, Articles 19 and 33.

[492] The Syrian Constitution of 2012, previous reference, Article 23.

[493] 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.

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

[495] 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.

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

The legislative system in Syria is one of the first challenges for women, as it deprives them from their rights and condones discrimination against them, and it is one of the most important obstacles that must be dealt with in the context of paving the way towards effective political participation for women.

## 2. Social Obstacles

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. Some regions of Syria prevent women from leaving the house without an escort. There are other customs that prevent women from education, and usually insist on separating males and females in everything, from school to work. All this means that the separation comes at the expense of women and not at the expense of men. Males are not prevented from going to school because it is mixed, but many women have been deprived of education for this reason. The stereotyping of women in maternal roles and socially accepted roles reinforces the exclusion of women from public affairs. 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. It is not only a matter of enacting strict laws, but rather a process that requires decades to reproduce a just social system that respects the rights of women. 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.

The political path in a country is the first factor affecting the political participation of women, and the absence of democracy in its narrow and broad sense does not only kill political life; rather, it directly affects the full and equal enjoyment of inherent human rights and the rights of women in particular. The Syrian legislative system provides evidence against itself in this context, and does not give much room for interpretation, even if we assume that there is a desire to change the situation. Hence, the battle for complete equality and the prevention of gender-based discrimination is a political

battle in the first place, and it is a battle towards achieving democracy as a political context in which human rights and women's rights flourish.

The importance of discussing women's political participation in all its details, causes, challenges, and opportunities highlights the role of electoral systems in facilitating or impeding women's access to national political decision-making positions. However, it should be emphasized that obstruction is not only related to an affirmative action and an apparent text; rather, this obstruction is closely related to the basic logic of justice in the sense that equality between women and men should not assume, at least for now, that men and women start from one point. Instead, justice requires considering the reality of women, working to reduce preliminary differences, and then building an equality path, given that equality is not achieved through texts only and does not give immediate effects. Therefore, this report focuses on the effectiveness of women's political participation through the electoral system, how it affects this participation, what are the general criteria in this system, and the criteria of each country and political context separately.

#### **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>[497]</sup>

Despite the presence of a quota of 50% for workers and farmers in Syria, other forms of Legal quotas are lacking. This is accompanied the Syrian state's failure to abide by its international obligations, as successive electoral laws have failed to raise the percentage of women's representation in Parliament, for several reasons, perhaps most notably:

- The absence of democracy and sham elections.
- The majoritarian system does not allow for a high percentage of women parliamentarians.

[497] 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

■ The multi-member electoral district system makes it difficult for women to access the Parliament, because it requires horizontal alliances to secure a relative majority to win, i.e., alliances with a portion of the prevailing forces in the electoral district, which are traditionally based women's votes and derive a large part of their power from the nature of this vote.

■ The absence of any actual organization of electoral media and advertising, as well as electoral spending, which negatively affects all candidates in general, and women candidates in particular, as a result of inequality of opportunity.

## 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.

The women's quota system differs in principle and in application from the quota system for minorities, because the international encouragement for its adoption came from the principle of equitable representation of both sexes, in addition to the fact that women do not constitute any form of minority in the society. It is noted that the equitable representation of women in decision-making positions was previously non-existent and is still lacking to this day in most countries.

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. Today, women's quota is also used as a fast track following the historical exclusion of women from politics, as is the case in Jordan or Afghanistan. In these two cases, the gender quota represented a launch for women to enter politics. In other cases, quotas are



introduced to further enhance women's gains in access to decision-making positions, or to prevent backlash. The Scandinavian countries represent a model for the gradual increase in the number of women, and the South Africa and Rwanda New Fast Track Model.<sup>[498]</sup>

The women's quota represented a shift from one concept of equality to another. The classic liberal idea of equality was the idea of "equal opportunity" or "competitive equality." For example, giving women the right to vote was considered sufficient and the rest was up to the woman. However, after feminist pressure in the past few decades, a second concept of equality; equality of outcome, was put forward. The argument is that simply removing formal barriers does not produce real results in achieving equal opportunities, especially with direct and indirect discrimination against women.<sup>[499]</sup> Based on experience, acknowledging equality is not enough; measures must be taken that allow achieving equality as an outcome. It is also preferred to use the term "positive action" or "equality measures" when talking about quotas; because quotas are not a form of discrimination, but rather an attempt to compensate for structural discrimination.<sup>[500]</sup>

The application of the quota, as a temporary and necessary measure to raise the level of women's representation, is one of the main mechanisms that aim to achieve equality between men and women, especially with the persistence of societal, political, and cultural obstacles that prevent their access. 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. In South America, a leading region with regard to women's quotas, constitutional or legal changes were made to introduce women's quotas into politics. In Asia, Africa and the Balkans, many different types of quota systems have been introduced. In the West, European quotas are mainly in the form of voluntary party quotas, with exceptions in France and Belgium. In Eastern and Central Europe, very few parties pass quota regulations, and there are no legal regulations for gender quotas in the Parliament.

In the Arab world, the quota is reserved for various groups (religious, ethnic, and tribal), while in Syria, we find that the quota is namely reserved for workers and peasants at a percentage of 50% of parliament members.<sup>[501]</sup> Recently, a number of countries have included women as a group for which certain seats must also be reserved. As a result of the gender quota system, a radical change has occurred recently in the global rank-

[498] Julie Ballington and others, *Women in Parliament: Beyond Numbers*, *ibid.* p 141.

[499] *Ibid.* p.144.

[500] Julie Ballington and Francesca Binda, *The Implementation of Quotas: European Experiences Quota Report Series*, International Institute for Democracy and Electoral Assistance 2005, p14.

<https://www.idea.int/sites/default/files/publications/implementation-of-quotas-european-experiences.pdf>. Accessed 26 May 2021.

[501] The Syrian Constitution of 2012, previous reference, Article 60.

ing of certain countries, based on the percentage of women's representation in parliaments, such as Rwanda, Costa Rica, Argentina, Mozambique, and South Africa. These countries moved to very high ranks in the ranking of countries according to women's participation in parliaments, after the five northern countries) Denmark, Finland, Iceland, Norway, and Sweden( had taken the top rankings alone for a long time.<sup>[502]</sup>

## 2. Attitudes Towards the Quota

Although global experiences have revealed that dropping legal restrictions on women's right voting and nomination is not enough for them to reach the parliamentary bodies in appropriate numbers and the fact that the quota system inevitably expands opportunities for women's political participation, its adoption still faces objections and obstacles in a number of countries. In this context, and despite the widening circle of support for the quota; some still oppose the introduction of a quota system as a way to increase the political presence of women.

### 2.1 Opposition to the Quota

Despite the clear justifications put forward by proponents of the quota system, there is criticism directed at the quota system for women in elected councils, justified by its opponents by:

- The quota system contradicts with the principle of equal opportunities for all, because it gives women a certain privilege.
- Political representation should not be a choice between social groups, but between ideas and party programs.
- Quotas are undemocratic because voters must be able to decide who they want to elect.
- A quota system means that politicians are elected because of their gender rather than their qualifications, and that qualified candidates are left out.
- Many women do not want to run just because they are women.
- The introduction of a quota system creates major conflicts within the party organization.

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[502] Julie Ballington and others, *Women in Parliament: Beyond Numbers*, p. 145.

■ Quotas for women will be followed by demands for quotas for other groups, which will lead to a policy of representing only the interests of the groups.<sup>[503]</sup>

## 2.2 Support to the Quota

Opinions in support of the quota stem from various backgrounds, most notably the reform of a historical defect that led to the exclusion of women from decision-making positions in direct and indirect ways. Thus, support is based on the fact that:

- Women's quota is not a discriminatory measure, but a mechanism to overcome actual barriers to effective political participation. Considering the right of women to equal representation with men, and in order to achieve an effective exercise of this right, it is necessary to consider the political, social, and economic challenges that women face in order to achieve representative justice.
- Women's experience is essential in political life.
- Men cannot represent women's interests, and many women are needed to represent the diversity of women and their different demands.
- Elections are about representation, not educational qualifications.
- Women are as qualified as men, but women's qualifications are reduced and curtailed in a political system that is dominated by males.
- Several internationally recognized conventions on gender equality have set targets to support women's political representation, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 1995 Beijing Platform for Action.
- The Quota based is also justified by the lack of just justifications for the presence of men at a rate of more than 80% in parliament seats in the world.<sup>[504]</sup>

[503] Ibid.

[504] Julie Ballington and others, *Women in Parliament: Beyond Numbers*, ibid. p. 141-144

**Table No. 25: Comparison between the pros and cons of the quota**

Pros	Cons
Experiments have proven that quotas are the most effective way to achieve a better gender balance.	Quotas distort the idea of representation and are not in the interest of women.
Quotas can limit the leadership of conservative parties.	Quotas benefit the wives, daughters, and sisters of traditional politicians, not women who have built constituencies for themselves.
When some women are elected, they serve as role models for other women.	Women elected by quota are treated with less respect and have no real power.
If women are represented in the Legislative Council, they will be able to contribute to removing some of the organizational obstacles that prevent women from being elected.	Quotas reduce the efficiency of the legislature.
Quotas are not intended to discriminate, but rather eliminate an existing discrimination.	Quotas discriminate against men.
Quotas give voters the opportunity to elect both women and men, rather than limiting freedom of choice.	Quotas strip the freedom of choice from voters.

### 3. Multiple Quota Types

In view of the legal text that enshrines it, the extent to which it is mandatory and the methods of its application; quota types vary and can be categorized as follows:

#### 3.1 Constitutional quotas and legislative quotas

The quota mechanism is stipulated in the constitution or the electoral law in order to overcome the obstacles that prevent women from participating in parliaments, and this method means allocating a certain quota for women from the total seats of the Representative Council (in a mandatory manner); i.e., in accordance with the provisions of the constitution, and then it is known as “the constitutional quota”. A quota is “legislative” when the electoral law or laws stipulate mechanisms to ensure the equal presence of women in parliament and local councils, by requiring the allocation of a certain percentage of seats, or the reservation of a certain number of seats for women in Parliament.<sup>[505]</sup>

#### 3.2 Voluntary Quotas and Mandatory Quotas

Quotas are voluntarily adopted by political parties without a law. This type of quota depends on the freedom of political blocs and parties to nominate females on their lists, and thus women are subject to the desire of the party or political bloc to add them to their lists. In addition, women’s access to electoral seats through this model is often weak, for the reasons mentioned above, and because it depends on adding female candidates to party lists and on the political strength of the female candidates.

This type is based on a kind of self-organization of political parties that adopts the principle of quotas on their party lists, such that it seems “voluntary” and at a first glance, more democratic; because it is not imposed by law, as is the case in the mandatory quota. However, this type is linked to the strength of the feminist movement and the strength of individual women’s participation.

In Syria, which lacks democratic experience and multiple party activity and where women are subject to legal discrimination and a negative view of their participation in political life, it is not possible to raise the level of women’s participation except through the adoption of a mandatory quota. It is worth mentioning here that this type cannot achieve a paradigm shift, unless the electoral system is proportional on the one hand, and the quota is applied qualitatively, not just quantitatively, on the other hand. That is, the quota is not just about allocating a percentage of positions on the list, but also is allocating it fairly across the list, i.e., at the beginning, middle and end of the list.

[505] Hadi Al-Sheeb, *Female Parliamentarians under the Women’s Parliamentary Quota System, Case Study of the Palestinian Representative*, Arab Democratic Center for Publishing, Berlin - Germany, 2017, p. 42.

### 3.3 Success Quota and Candidacy Quota

Success quota or quota of reserved seats from winners: According to this type of quota, the constitution or law must provide for the reservation of seats for women in legislative, local, or even executive councils. In pursuance of the constitution, women get their own seats in legislative and local councils. A certain number of seats are allotted to women among the representatives in a specific legislature, either under the constitution or legislations. In Rwanda, 30% of the seats elected by special procedures are reserved for women according to the constitution, and in Tanzania, 20% of the seats are reserved for women, which are reserved for political parties, in proportion to the number of parliamentary seats of the winning party in the elections. Reserved seats can also be determined by appointment, as is the case in Kenya and some Arab countries.<sup>[506]</sup>

Some opponents argue that the concept of reserved seats, despite aiming to set a minimum level for women's participation in elected bodies, comes at the expense of the principle of freedom of competition between candidates of both sexes. Hence, its adoption would lead to the announcement of the victory of women who received fewer votes than male candidates. This would sometimes give a negative impression of women's participation, as if it contradicts the will of the public. In addition, some believe that this would practically lead to setting the upper limit for women's participation.<sup>[507]</sup>

In addition, the success quota does not constitute an incentive for political parties and forces to empowers their female cadre or double the percentage of women candidacy. It is also considered a counterproductive measure by making the seats not reserved for women (the absolute and overwhelming majority of seats) as seats reserved for men. In addition, it weakens the representative powers of female parliamentarians by making them act as second-class representatives, whose process of "appointment" was carried out through a "protectorate" made up of some seats.

Quotas for Candidacy or Quotas for Reserved Seats from Candidates: In this type of quota, the legislative or constitutional provision requires reserving a certain percentage of the seats on the nomination lists, so that political parties and blocs are legally bound to nominate a certain number of women on their lists. The electoral law usually specifies the minimum or maximum number of female candidates on the lists and determines the minimum percentage of candidates for elections that must be women.<sup>[508]</sup>

This type has many advantages, especially since it does not directly affect the principle of freedom of competition between the sexes on one hand, and women are not subject to the whims of political blocs in accepting women as candidates on the list. At the

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[506] Julie Ballington and others, *Women in Parliament: Beyond Numbers*, op. p 143.

[507] : *Handbook for Monitoring Women's Participation in Elections*, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights 2012. P.22.

[508] Julie Ballington et al., *Empowering Women for Stronger Political Parties*, *ibid.*, p. 23.

same time, the legal reservation of seats on the lists would increase the chances of women winning a good number of seats.<sup>[509]</sup>

However, to enhance the chances of female candidate wins, there are many procedures that need to be followed, especially in terms of locating and ranking female candidates on the lists. The best way to ensure that female candidates win seats is if a 30% quota is adopted, for example, and the names of female candidates are arranged according to the principle of a woman after every two men on the list, as voters may choose the first names on the list, leaving the names at the bottom of the list with little chances of winning. It is also preferable to adopt a “minimum quota” system, which allows women to win a higher number of seats than the legally established limit, while “upper limit quota” doesn’t.<sup>[510]</sup>

It assumes that neither sex should occupy more than 60% or less than 40% of positions on the party list or on the decision-making body. While the women’s quota sets a maximum for men, the gender-neutral quota sets a maximum for both sexes. Gender-neutral quota rules are sometimes used as a strategic option to refute the arguments of opponents of the quota system that they discriminate against men.<sup>[511]</sup>

#### 4. 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.

The currently prevailing electoral system plays an important role in the political representation or non-representation of women. International experiences confirm that proportional systems encourage and secure women’s representation more than majority systems. If the majoritarian system leads to traditional forces monopolizing the results because of their material capabilities and direct and indirect support from the authority, then the proportional electoral system is best able to ensure sustainable representation of women. 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.

[509] Walid Hussein, The Women’s Quota: A Temporary Solution to a Chronic Problem, Heinrich Böll-Stiftung, Germany, April 27, 2017, available at:

<https://lb.boell.org/en/2017/04/27/lkwt-lnsy-hl-mwqt-lshkly-mzmn> Website accessed on April 13, 2021.

[510] Walid Hussein, Women’s Quota, previous reference.

[511] Julie Ballington and others, Women in Parliament: Beyond Numbers, *ibid.* pp 143,

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 introduction of quotas that require a minimum of 30% of each gender in an electoral list does not automatically lead to women winning 30% of the seats and is affected by:

#### **4.1 The Quota is Affected by the Nature of the List: Between the Open List and the Closed List**

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. Political parties may fulfill the requirement that 30% of their candidates are women, but they may place them at the bottom of the lists, which may undermine their chances of winning. In addition, if the number of seats to be filled in a constituency is small and many parties are running for election, top men will often be elected because they usually hold the top positions on the party lists.<sup>[512]</sup> In Iraq for example, according to Article 4(3) of the 2004 Elections Law, political parties must organize their lists such that at least one out of the first three candidates on the list is a woman, and no less than 2 candidates out of 6 are women. As a result, in 2005, 31% of women were elected as MPs. It is considered one of the successful experiences in terms of arranging the lists by alternately listing the names of men and women<sup>[513]</sup>, or what is known as “Zebra” list. The same list was adopted in the general elections in Tunisia in 2014, (50% of both sexes). However, despite the adoption of this mechanism, women's representation did not exceed 31% of the number of seats, as a result of circumventing the law by having men preside over the electoral lists.

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[512] Guide to Monitoring Women's Participation in Elections, previous reference, p. 21.

[513] Julie Ballington and others, *Women in Parliament: Beyond Numbers* ibid. p. 151,150



## 4.2 Influence of quota on electoral thresholds

In proportional systems, electoral thresholds are among the main influences on the election of women. The threshold establishes the minimum percentage of votes that a party must achieve in order to participate in the distribution of seats. The higher the threshold, the more difficult it is for small parties and women candidates to win parliamentary representation. It is always necessary to re-evaluate electoral thresholds, especially when they are at high levels, and to examine their impact on women's political participation.<sup>[514]</sup>

Based on this, the quota system on its own is not sufficient. For it to have results within the electoral system, it must be compliant and applicable. Also, the rules pertaining to the arrangement of candidates on lists are necessary to establish the quota of candidates. On the other hand, this mandatory quota cannot bear fruit without the presence of Penalties for non-compliance. These penalties may include rejection of candidate lists that do not comply with the quota system. Without these rules, the quota may be a formality. On the other hand, adherence to these rules has proven to be extremely effective in increasing women's political representation.<sup>[515]</sup>

In summary, one of the most important challenges that accompanies the adoption and implementation of quotas, whether voluntary or mandatory, is the threat of rendering women's representation nominal, formalistic, or symbolic. In India, women were categorized based on the "by proxy" quota system, by which they can sit on local councils instead of their husbands. Research on women's quotas has yielded many cases of symbolic women's representation, especially if elected women have no real power in their districts, parties, or political institutions. However, there are many success stories of women who have felt completely isolated and powerless at first, but eventually gained trust and influence. It is, therefore, crucial to the effectiveness of women politicians that women's movements or international organizations offer capacity building programs.<sup>[516]</sup>

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[514] Guide to Monitoring Women's Participation in Elections, p. 20.

[515] Julie Ballington and others, *Women in Parliament: Beyond Numbers*, *ibid.* pp. 151.

[516] *Ibid.*, p 149.

## Recommendations

To enhance the participation of women in Syrian elections, it is necessary to work on:

- Eliminating all forms of discrimination against women in the Syrian constitution and laws and adopting the International Bill of Human Rights at the forefront of the constitution.
- Combating all forms of violence against women, especially domestic, sexual, and political violence, by defining and describing the acts of violence and creating institutional mechanisms that provide redress for victims and prevent impunity for criminals.
- Adopting a constitutional quota mechanism by stipulating the application of a candidacy quota ranging between 40% and 50%. This can be implemented by adopting a proportional election system and closed lists in major or middle districts with a prior arrangement (man/woman) regardless of the number of seats in the constituency.
- Working on gendering the entire electoral process, by promoting a gender perspective among political parties, managing the electoral process, financing electoral campaigns for women and empowering women, and setting meaningful regulations for the media that contribute to strengthening women's political participation.
- Working to provide technical and financial support to Syrian women's organizations, to help them play their pivotal role in advocacy, mobilization, raising awareness. Enabling women and leaders to enter the electoral battle and doing whatever is necessary to support them.

### **1. Constitutional and legal guarantees for women's political participation**

Establishing the principle of quota in the forthcoming Syrian constitution: The Constitutional Committee should ensure that the quota principle is approved in the text of the forthcoming constitution such that this principle becomes a binding constitutional value for the upcoming electoral law, and in every subsequent amendment to the law, including setting a quota for candidacy ranging from 40% to 50% of the constitutional text.

Establishing the details of the quota principle in the electoral law: After the modulation

of the new election law that stipulates the adoption of an electoral quota of no less than 40% and up to 50%; The technical rules of law should ensure their effective access to women. In the event, for example, that a candidacy quota of 50% is adopted, procedures must be put in place to regulate the arrangement of candidates, otherwise the quota will not achieve the percentage stipulated in the law.

## **2. The best options for applying the quota in Syria**

The remaining best option is to apply a candidacy quota ranging from 40% to 50% considering the adoption of the proportional election system through closed lists in major or middle districts with a prior arrangement (man/woman) regardless of the number of seats in the district. This system can be a quota form that will contribute to achieving the actual participation of women by 40% to 50% in candidacy without the need to adopt a quota for reserved seats, which, although it achieves the desired goal in representing women, gives negative impressions about the mechanisms of women's access to elected bodies.

If the proportional electoral system is adopted, and the districts are also major and middle, in the nomination method through open lists (that is, the order of the candidates is by calculating the preferential votes obtained by each candidate), the quota form of 40% to 50% in candidacy can be important. The number of seats in the constituency, provided that the preferential vote for women is calculated as two votes, because the adoption of the preferential vote considering the political and social reality of Syrian women will inevitably give preference to male candidates.

If the electoral system is a mixed system, and major or middle districts are based on the proportional system and the method of nomination through closed lists, the quota form can be 40% to 50% for candidacy with a prior arrangement (man/woman), and for the same districts if the method of candidacy is with an open preferential vote, the quota can be a form of 40% to 50% in the candidacy, and the preferential vote of women is calculated at the value of two votes.

In case the mixed law is adopted, and the districts are minorities based on a majority system while the nomination method is individual candidacy, the quota form can be reserved for 40% to 50% of the seats and the majority system for women can be distributed among the districts.

If the electoral system remains a majority in multiple constituencies, as is the case currently in Syria, although this electoral system does not guarantee accurate and correct representation, it is necessary to exert pressure to bypass it towards a proportional system or a mixed system. If this is not done, the quota form can be reserved for 40% to 50% of the seats in parliament for women to be distributed among all districts.

The quota of between 40% and 50% has been confirmed based on the unfortunate reality of the political participation of Syrian women. This was compounded by the behavior of the political and legal system over decades and the failure of the Syrian opposition to provide better alternatives. This clearly reveals the percentage of women who were recommended by both the regime and the opposition to the constitutional committee. This raises serious concerns about the loss of women's claims to their rights during the political negotiation process and the transitional period. Hence, the commonly proposed 30% quota does not seem to be compatible with the reality of Syrian women's political participation. Therefore, it is necessary to establish a quota of no less than 40% and up to 50% to achieve a quick and immediate transition in terms of women's political participation, especially with the opportunity to build a new political system. In Syria, we will get there sooner or later.

### **3. Strengthening the role of women's organizations**

Civil society organizations and women's organizations play a crucial role in promoting women's political participation through mobilization and advocacy, in addition to the oversight they exercise over the electoral process and the commitment of all parties to the quota and the positive measures accompanying it. The process of empowering and supporting women on the path to activating their political participation is one of the most important issues on which women's organizations operate.

The experience of Rwanda confirms the pivotal role that women's organizations can play in enhancing women's political participation through the electoral system and within the electoral process itself. Women in Rwanda established a networking process and societal organization throughout Rwanda which contributed to raising the percentage of women running for elections, and consequently the percentage of those who were able to reach Parliament.

Because the issue of elections was not given attention in Syria in the past years, unlike attention given to the constitution, citizenship and democracy and the like, we realize there is a lack of information and attention alike that can be due to decades of faulty elections. The subject of elections is a technical one that often cannot be simplified.

From here on out, the steps taken by Syrian organizations to provide qualitative training on the issue of elections and on the gendering of the electoral process are of value. Over the past three years, the Syrian Women for Democracy Gathering<sup>[517]</sup> has worked with dozens of activists on the issue of elections and the promotion of the gender perspective in elections.

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[517] An example of the activity of Syrian women's civil society organizations. Some of the work of the Syrian Women Gathering for Democracy can be found on the following link: <https://cswdsy.org> Accessed 22 July 2022

These efforts constitute a first step in the right direction. Without awareness and dissemination of knowledge, much cannot be achieved. After the diligent work of women's organizations and other civil society organizations, we can move to work on the mechanisms that Syrians can adopt towards strengthening this participation, be it community organization or mobilization and advocacy for women's participation. Of equal importance is the role of women's organizations in connecting with political parties and empowering women candidates.

Therefore, securing technical and financial support for Syrian women's organizations is very important in this regard, and pushing for the creation of women's organizations specialized in electoral issues can be of great benefit in enhancing women's political participation, especially when these organizations can effectively play their role in monitoring the electoral process.

#### **4. Beyond electoral quotas, toward full gendering of the electoral process**

Following the fact that for many years, the quota constituted one of the most important options offered to enhance women's political participation, today mainstreaming of a gender perspective in the entire electoral process is a must to achieve effective results in terms of enhancing women's political participation through the electoral system. This mainstreaming applies to all stages of the electoral process, its mechanisms, and institutions, in addition to political parties. These best practices are reflected in successful experiences of some countries, which contributed to the development of more specialized and focused knowledge on the issue of women's political participation within a particular electoral system. These practices produced a set of mechanisms that facilitate mainstreaming the social outlook in the entire electoral process.

The Electoral Management Bodies' analysis of gender equality requires a set of measures:

##### **For political parties**

The party's adherence to the principles of democracy and transparency in its internal policies are essential factors in the process of promoting women's political participation.<sup>[518]</sup> The following items can be identified as best practices in this regard:

- Party policies should address the issue of gender equality even in the party's founding documents.
- Take measures to ensure the effective participation of women in the leadership councils by establishing an internal quota in the party itself.

[518] Guide to Monitoring Women's Participation in Elections, *ibid.* p 27.

■ Set goals to raise the level of women's participation in party conferences by providing the opportunity to hold women's forums for women delegates in party conferences and establishing women's divisions and sections that are integrated into party structures, having specific roles and responsibilities, and having adequate funding.

■ Mobilize party support for the women's quota system and incorporate it into the party statute.

■ Establish guidelines for the selection of candidates based on the principle of gender equality.

■ Work with civil society organizations to supervise the implementation of the quota.

■ Train women candidates in skills such as fundraising, campaign development, campaign slogans and messages, media relations, and outreach to voters.

■ Enhance the presence of women in the management of electoral campaigns and ensure the exposure of women in the campaigns by providing additional media coverage.

■ Ensure the presence of women as party delegates to monitor the elections inside the polling stations, especially in the centers designated for women.

■ Determine and distribute party positions that are a priority for women and that may also attract a larger number of women voters to these parties

Provide information to voters with specific messages that focus on the importance of women's votes and women's right to vote.

■ It is good practice for the party to evaluate the results of its policies related to the dissemination of social outlooks after the elections to prevent negative practices, and to adopt issues related to women's rights such as violence against women and women's political, economic, and other issues such as goals and political agenda of the party.<sup>[519]</sup>

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[519] Julie Ballington et al., *Empowering Women for Stronger Political Parties*, *ibid.*, pp. 4, 5 and 6.

### Regarding the administration of elections:

- Promote gender equality as a strategic objective throughout the electoral process and the day-to-day work of the EMB.
- Conduct a survey or evaluation to identify areas where you are working effectively to achieve gender equality outcomes and to identify areas for improvement.
- Develop or modify its strategic plan to include gender equality outcomes and activities.
- Allocate the necessary infrastructure and resources to promote a gender perspective through a specialized committee or network of gender coordinators
- Pursue gender balance in all positions, including senior management and leadership, and join forces to ensure temporary staff are aware of gender issues during primetime electoral periods.
- Ensure that employment policies guarantee equal opportunities for men and women, and that employees obtain the necessary leave and entitlements to achieve a balance between work and family obligations.
- Provide adequate opportunities for professional development and training on gender equality while mainstreaming a gender perspective for all employees and ensuring that equality is included throughout training of employees.
- Apply systems and mechanisms to ensure obtaining disaggregated data by registering male and female voters, at all stages of the electoral cycle, starting with voting.<sup>[520]</sup>

### Regarding election monitoring:

- The election observation mission should assess the level of women's membership in the bodies responsible for election monitoring and their assumption of leadership positions in these entities. This should include the Central Election Commission as well as lower-level electoral bodies.
- After the statistics, the Election Observation Mission should also assess whether women act as leaders and decision makers and the extent to which they influence leadership or other positions they hold.

[520] Julie Ballington et al., *Inclusive Electoral Processes, A Guide for Electoral Management Bodies on Promoting Gender Equality and Women's Participation*, *ibid.*, p. 54.

■ Conduct an assessment of the extent to which electoral commissions are aware of gender considerations at all levels and the extent to which they are integrated into their work.<sup>[521]</sup>

### For the media

■ Women's equal access to the media vis-a-vis man is necessary to enhance women's political participation, provided that this access achieves equality in terms of time and topics, as some media may receive women as a source of opinion and information and provide them with fewer opportunities to appear as guests on political programs

■ Female candidates may receive less coverage of their political positions and more on personal attributes and appearance than their male counterparts.

■ As candidates, women may often be portrayed within their traditional roles as wives and mothers. Such images may be imposed by the media or may be promoted by political propaganda controlled by the parties or the candidates themselves. For example, women candidates often use their status as mothers and caregivers to justify their positions on issues such as education or childcare. Sometimes the media diminishes the significance of women's issues when it includes them in a section related to women's news, as if they are not general political and societal issues related to women and men alike.<sup>[522]</sup>

■ Carry out proactive public awareness campaigns that highlight the benefits of women's political participation to society as a whole. It is also possible to provide incentives to political parties to increase the visibility of women in election campaigns, such as giving parties free or additional time in the media to promote their candidates.<sup>[523]</sup>

### Funding election campaigns for women

One of the most important challenges faced is women's access to financial resources for electoral campaigns. Their lack of availability may prevent them from running in elections. Therefore, the following are preferred practices:

■ Establishing fundraising networks for women and organizations would have an enormous impact on the access of women candidates to funds.

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[521] Guide to Monitoring Women's Participation in Elections, *Ibid*, p. 22.

[522] Guide to Monitoring Women's Participation in Elections, *Ibid*, p. 32.

[523] Julie Ballington et al., *Empowering Women for Stronger Political Parties*, *ibid*. p. 33.



- Establishing an internal fund in the parties that support women candidates.
- Providing benefits to women candidates who are running an effective election campaign requires a certain level of funding, time, and flexibility. These are available to only a few people, especially women who take care of their families. In many families, women assume the primary responsibilities of raising children, which requires significant time and effort combined with the long working hours required for election campaigns.
- Restricting the level of spending on nomination and election campaigns.
- Increasing government funding for political parties if they raise the percentage of women candidates on their lists or adopt a women's quota.
- Allocating specific funding for the training of women.
- Implement gender-sensitive financial policies.<sup>[524]</sup>

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[524] Julie Ballington et al., *Empowering Women for Stronger Political Parties*, *ibid.* pp. 26-30.

## 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>[525]</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. As such, the issue of the political participation of the displaced and refugee communities, and others who reside outside their places of origin, becomes a central issue that cannot be avoided or ignored because of the political, economic, and social consequences on the post-conflict phase.<sup>[526]</sup>

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:

1. 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>[527]</sup>
2. 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>[528]</sup>
3. Restoring national identity and social cohesion and building peace in a more sustainable way,<sup>[529]</sup> especially when the state recognizes within its constitution or laws and

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[525] 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.

[526] Armend Bekaj and others, Political Participation of Refugees: Bridging the Gaps, International Institute for Democracy and Electoral Assistance (IDEA), and Robert Bosch Stiftung, Stockholm, 2018. p12. <https://doi.org/10.31752/idea.2018.19>. Accessed 13 August 2021.

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

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

[529] 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.

legislation the right of safe, voluntary, and dignified return of all displaced and refugee men and women without discrimination or exclusion.

4. An indication of the commitment of the state and its institutions, laws and legislation to international charters, mechanisms, and treaties, especially if this is accompanied by an increase in the inclusion of the state's electoral law and its respect for the right to political participation without discrimination based on national origin or place of residence or any other reason that led to displacement, asylum, migration and expatriation.<sup>[530]</sup>

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 marginalization and exclusion of nearly half of the total population<sup>[531]</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 has been confirmed by most international agreements related to the Syrian issue, such as Security Council Resolution 2254 (of 2015), the main regulator of the political process in Syria, whereby Article (4) stipulates the need to hold “free and fair elections that will take place, pursuant to the new constitution, within 18 months under the supervision of the United Nations... and includes all Syrians who are entitled to this participation, including those living in the diaspora.” In addition to the Vienna Statement, issued in 2015 by the International Support Group for Syria<sup>[532]</sup> Paragraph 7 stipulated, “The formation of a credible, comprehensive, and non-sectarian government, to be followed by the drafting of a new constitution and the holding of elections. These elections should be held under the supervision of the United Nations... and they must be free and fair, and all Syrians, including expatriates, are entitled to participate in it.”

To begin with, 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. It then presents general determinants particular to the Syrian refugee and displacement crisis and its relationship to the negotiated political solution backed by the United Nations. Also, it analyzes the Syrian constitutional and

[530] Carlos Navarro, “The Political Rights of Migrant Workers and External Voting” in *Voting from Abroad*, The International IDEA Handbook, Andrew Ellis and others, IDEA, and IFE. Stockholm, 2007, p. 174.

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

[532] The International Working Group for Syria includes China, Egypt, the European Union, France, Germany, Iran, Iraq, Italy, Jordan, Lebanon, Oman, Qatar, Russia, Saudi Arabia, Turkey, the United Arab Emirates, the United Kingdom, the United Nations, and the United States.

legal texts, and studies the legislative, executive, and procedural constraints that impede and restrict the participation of Syrians not residing in their original places of residence in voting and running for presidential and legislative elections. Finally, this section presents a set of proposals and recommendations, in medium and long form, that guarantee the participation of external refugees, internally displaced persons and expatriates within the constitutional and legal framework and the context of political and constitutional negotiations supported by the UN.

## **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. They link the right to political participation of all female citizens and citizens residing inside or outside the political borders of their countries, to other basic human rights, such as the right to freedom of opinion and expression, peaceful assembly, and community organization at the level of individuals and institutions.

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.

The exclusion of restrictions on the right to enjoy political rights and freedoms based on the place of residence was clearly stated in the International Covenant on Economic, Social and Cultural Rights. Its introduction stipulated that “everyone shall be able to enjoy his/her economic, social and cultural rights, as well as his/her civil and political rights” without restricting this empowerment and its political ramifications to place of residence or the political borders of the country of origin. Although Article 2 of this Covenant did not explicitly state the refusal of discrimination based on national origin or place of residence, it only prohibited discrimination “on grounds of race, color, sex, language, religion, or political or other opinion” national or social origin, wealth, lin-

age, or any other reason; 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.”

Similarly, Article 7 of the International Convention on the Elimination of All Forms of Discrimination against Women urges states to take “all appropriate measures to eliminate discrimination against women in the political and public life of the country” and to guarantee equal rights for women, including the right to “vote in all elections” and public referendums... participate in the formulation of government policy... participate in any non-governmental organizations and associations concerned with the public and political life of the country.” (Article 7 - Clauses A, B, C), without linking the right to political participation and participation in elections to the current place of residence or national origin.<sup>[533]</sup>

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.<sup>[534]</sup>

It is worth noting that the increase in violent local conflicts in the last three decades, and the resulting large displacement and refugee movements, in particular the large and unprecedented influx of Syrian refugees during the past ten years, played a major role in forcing the international community to reconsider the relevant regulatory and legal frameworks for refugees and expand concepts related to international, regional and local rights, duties and policies towards refugee communities outside their countries of origin. This was clearly demonstrated by the adoption by the United Nations General Assembly, 2016, of several international charters and agreements aimed at restoring the 1951 Basic Refugee Agreement. Among the key complementary agreements is the New York Declaration on Refugees and Migrants, which was adopted on September 19, 2016, and the Compact for Migration and the Global Compact on Refugees adopted subsequently in December 2018.

The New York Declaration on Refugees and Migrants is one of the most important international measures and policies aimed at strengthening and developing the 1951 United Nations Convention and the 1967 Protocol Relating to the Status of Refugees.

[533] International Convention on the Elimination of All Forms of Discrimination against Women, *ibid.*

[534] This Convention was adopted by United Nations General Assembly Resolution No. (45) of December 18, 1990.

The United Nations High Commissioner for Refugees, Filippo Grandi, stated that this declaration “fills a longtime gap in the international protection system represented by sharing responsibility for refugees.”<sup>[535]</sup> The New York Declaration states in its preface that “although the legal framework regulating the treatment of refugees is separate from that which governs the treatment of migrants, both groups have the same universal human rights and fundamental freedoms,” including “the possibility of civil registration and documentation” (paragraph 71) and the right to equal political participation and through efforts to integrate refugee communities into the general political life of their countries of origin (paragraph 12/d.) The Global Compact on Refugees (2018) also considers that the refugee situation is constantly changing and becoming more complex, especially with the increase in the average period of stay of refugee communities in their host countries. This requires taking additional and continuous measures and policies to reach a satisfactory solution to the situation of refugees in their countries of asylum at the humanitarian, political and economic levels.

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

This report distinguishes between three basic types of Syrians outside their places of original and habitual residence: external refugees, internally displaced persons, and expatriates or migrants. 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”. Also, a refugee is each person who “does not have a nationality and outside the country of his habitual residence... and cannot, or does not, because of that fear, want to return to that country.”

This report also relies in its definition of a “displaced person” on the Guiding Principles Document on Internal Displacement, which was included in the report of the Representative of the Secretary-General of the United Nations, Francis Deng, in 1998.<sup>[536]</sup> Article 2 of this report defines displaced persons and internally displaced persons as “persons or groups of persons who have been forced or compelled to flee or to leave their homes or places of habitual residence, particularly as a result of or in order to avoid the effects of armed conflict or situations of generalized violence,” human rights violations,

[535] New York Declaration on Refugees and Migrants, Comprehensive Refugee Response Framework, UNHCR UNHCR. Available at the link: <https://www.unhcr.org/ar/596322f94.html>, last accessed August 2, 2021.

[536] Further promotion and promotion of human rights and fundamental freedoms, including the question of the Commission's program and methods of work: human rights, mass displacement and displaced persons, “Report of the Representative of the United Nations Secretary-General Francis M. Deng” submitted pursuant to Commission resolution 1997/39 Guiding Principles on Internal Displacement, United Nations, Economic and Social Council, Commission on Human Rights 54th session, E/CN.4/1998/53/Add2, September 27, 2002.

natural or man-made disasters, and have not crossed the internationally recognized borders of the state”.

As for the definition of an expatriate or an immigrant, this paper uses the set of definitions contained in the first part of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, where Article 2 of this Convention defines a migrant worker as “a person who will engage in or will continue to engage in an activity in return for compensation.” This definition also includes members of the migrant worker’s family, who are defined in Article 4 of the Convention as “persons married to migrant workers or with whom they have a relationship, in accordance with applicable law, as well as their dependent children and other dependent persons recognized as members of the family.”

Based on the previous definitions, 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>[537]</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.<sup>[538]</sup>

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

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

[538] Statistics of the United Nations High Commissioner for Refugees, Ibid.

local conflicts and strife.<sup>[539]</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. As such, most of the international agreements related to the Syrian conflict, especially Security Council Resolution 2254, clearly and explicitly focused on the need to involve all Syrians, inside and outside Syria, in the political and negotiating process. Also, involving them in the ensuing constitutional or legal reform or elections, and transitional post-political solution period. Article 4 of this resolution emphasizes the need for a UN-facilitated political process that “sets a timetable and process for drafting a new constitution” with a view to holding “free and fair elections to be held, pursuant to the new constitution, within 18 months under the supervision of the United Nations. It includes all Syrians who are entitled to this participation, including those living in the diaspora.”

### **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**

##### **1.1 Presidential Elections**

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. Where this article states that “every citizen who is not residing on Syrian territory has the right to exercise his/her right to elect the president of the Syrian Arab Republic in the Syrian embassies in accordance with the provisions of this law, provided that his/her name is included in the electoral register, and there is no legal impediment to exercising his/her right in the election.”

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



The law also defines the procedural process for the participation of residents outside the country's territory in the presidential elections. 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 previous conditions and restrictions may seem logical and realistic in the normal conditions of countries with stable security and politics, but the uniqueness of the Syrian conflict and the resulting unprecedented waves of internal displacement and external asylum impose a different constitutional, legislative and legal approach about the political rights of a large group of people. This group is equivalent to half of the country's population in the pre-conflict period who no longer reside in their original places of residence. Therefore, 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, for the following reasons:

### 1.1.1 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 financial 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.

### **1.1.2 Linking the registration of the ballot and the electoral register to a valid passport with an official seal from the border crossings**

This has led to the cancellation of the right to political participation for many refugees who were forced to leave Syria through unofficial border crossings for fear of persecution and security accountability by the Syrian regime. Additionally, approximately 70% of Syrian refugees in Lebanon, Jordan and Iraq are over 14 years old and do not have valid official documents such as a national ID, family book or passport.<sup>[540]</sup> Moreover, many Syrians were either deprived of their civil and political rights, including passports, as is the case with a number of political opponents, or were prevented from acquiring Syrian citizenship, as is the case with the undocumented Syrian Kurds.<sup>[541]</sup>

### **1.1.3 Denying the right to vote to those convicted of security and political felonies**

Article (5 - Clause 3) of the General Elections Law states that, “He who is deprived of the right to vote... has been convicted of a felony, a heinous misdemeanor, or a breach of public confidence,” without the law or its executive instructions setting any clear criteria or determinants that justify the heinous misdemeanors or breach of public confidence that would deprive citizens of their right to vote. Moreover, this article gives Minister of Justice the power to interpret and define these misdemeanors and felonies. The Minister is a representative of the executive authority appointed by the President of the Republic, and not to an independent body or judicial authority. The Syrian regime has always relied on politicizing these articles to suppress its opponents and deprive them of any political participation in public life, by linking them to articles related to undermining the prestige of the state and weakening national sentiment stipulated in the Penal Code and the Anti-Terrorism Law. This allows them to issue many judgments in absentia. Many refugees and displaced persons are accused of various charges of political origin, which prevents their participation in voting and running for elections.

[540] The Right of Syrian Refugees to Legal Identity: Dusty Effects on Return, Brief Note, Norwegian Refugee Council, January 2017, available at: <https://www.nrc.no/globalassets/pdf/briefing-notes/syrian-refugees-right-to-legal-identity-implications-for-return-arabic.pdf>. Website accessed April 13, 2021.

[541] Jordi Tejel, *Syria's Kurds: History, Politics and Society*. Routledge, 2009.

## 1.2 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.

Although Article (59 - Clauses 4 and 5) allows, in principle, the transfer of the electoral domicile, the civil registry, within a governorate or from one governorate to another, the reality of the situation requires this transfer to be accompanied by a prior permission from the security and intelligence authorities of the Syrian regime, which may subject a large segment of the internally displaced to arrest or security harassments. In addition, forcing the voter to transfer his/her civil record from their original to the current place of residence has political consequences related to the demographic change of the original communities. It deprives them of their right to return to their cities and villages from

which they were displaced. It also has a serious legal consequences related to civil rights such as the ability to update civil record records in cases of marriage, divorce, or death, and even the right of inheritance and real estate rights.

## 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, for the following reasons:

### ■ **The candidate has enjoyed Syrian citizenship since birth:**

This condition prohibits all those who have not been registered, who were deprived or stripped of their Syrian citizenship in the 1962 referendum, and specifically Syrians of Kurdish nationalism, from running for the presidency. Also, the addition of the condition that the candidate's parents should have had this nationality from birth, excludes a number of those who obtained their Syrian nationality under Legislative Decree No. (49) of 2011, because the parents of those did not obtain this right to citizenship, either because of death or for political and legal reasons that prevented them from benefiting from this decree.

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.

### ■ **Enjoying civil and political rights and rehabilitation:**

Over the past five decades, the Syrian regime has relied on depriving many its opponents of their civil and political rights. It is one of the tools of systematic political repression that is still used to this day. In addition, depriving any of these opponents of the right to run for office "even if he is rehabilitated" closes the door on hundreds of political, civil, and academic activists from running in the future, even if their civil and political rights are restored to them.

### ■ **Permanent and continuous residency for ten years inside Syria:**

The requirement to reside for a specified period within the political borders of any country may be considered one of the traditional conditions for eligibility to run for any elections in countries that are politically and security stable, and that do not have huge numbers of citizens residing outside their territories. But dropping this condition in its current form without adapting it to consider the specificity of the Syrian conflict will inevitably lead to depriving millions of Syrians who sought refuge outside the country after the 2011 uprising, in addition to the millions of expatriates who emigrated over the preceding decades, from running for the position of President of the Republic. This necessitates finding constitutional formulations and more flexible legal alternatives to deal with the condition of continuous residency and its imposed duration, such as suspending it for a limited and temporary period within the provisions regulating the electoral process during the political transition phase.<sup>[542]</sup>

[542] Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections, previous reference, p. 15.

### ■ **The candidate should not hold a nationality other than the Syrian one:**

As in the case of the legal obstacles and limitations associated with the condition of permanent residence and related to ten years within the territory of the state, this condition reinforces the deprivation of millions of Syrians, whether they are refugees, expatriates, or immigrants, from running for the post of President of the Republic. Especially those who were able to obtain other nationalities in their countries of asylum and foreign residence. Thus, the legal flexibility in dealing with this condition, even if temporarily, may reduce the percentage of those who are deprived of their political right to run for the presidency. Noting that the Tunisian constitution, and the resulting amendments to the electoral law, was able to arrive at an innovative and unconventional solution to create a legal framework regulating Tunisian citizens for non-Tunisian nationality holders, when, in chapter (74) of it, it gave the option to a candidate for the president of the republic “to give up the other nationality when Declaration of his election as President of the Republic.”<sup>[543]</sup>

### ■ **Not to marry a non-Syrian:**

This condition has two main problems. The first is linguistic and idiomatic related to the use of gender-insensitive formulations, which implicitly assume that the candidate for the post of President of the Republic must be a man with a non-Syrian wife, which prevents Syrian women, inside and outside Syria, from running for this position. The second is related to the contexts of asylum or expatriation, which often lead to the marriage of Syrian men and women to husbands and wives of non-Syrian nationalities.

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[543] Legal Obstacles to the Participation of Syrian Refugees in the Presidential Elections, previous reference, p. 15.

## Recommendations

### 1. Constitutional framework

The consolidation of the concept of political participation in public life on an equal footing among all male and female citizens, inside and outside Syria, including external refugees, internally displaced persons, and expatriates, must be linked to several constitutional principles that create a constitutional, legal, and political environment conducive to such participation. It must also remove all legal, legislative, and executive obstacles that limit it.

Moreover, any future constitution in Syria must explicitly and unequivocally recognize the political and civil rights of internally displaced persons and external refugees. It should also consider the political, social, and economic dynamics related to the unprecedented displacement and refugee movements that the country has witnessed over an entire decade. Especially since the issue of Syrian displacement and asylum and its repercussions cannot be viewed as an urgent, immediate, and short-term matter. Rather, it may continue for decades after the political agreement, as in what happened in Bosnia and Afghanistan. This requires an innovative and unconventional approach to Syrian constitutional reform through the inclusion of several constitutional articles related to:

- Ensuring the right of all Syrian women and men, residing inside or outside the country, to participate in all presidential, legislative, and local referendums and elections, on an equal footing and without discrimination or exclusion based on race, color, sex, language, religion, political opinion, or non-political, national, or social origin, wealth, ancestry, place of residence, or the political, legal or international status of the country or territory to which a person belongs.
- Ensuring the right of safe, voluntary, and dignified return for all refugees and displaced men and women, to their places of original residence or to any other place on the territory of the Syrian state that they choose with their free, individual, and informed will. Considering the right of return is an inherent right that does not fall into a statute of limitations.
- Establishing an independent constitutional body called the Displaced and Refugees Commission, consisting of independent legal, judicial, social, economic, and cultural figures. The Commission for the Displaced and Refugees would be tasked with all measures, means and procedures that guarantee the right of safe, voluntary, and dignified return, integration of the displaced and refugees into public life economically, politically and socially, and guarantee the right of all Syrians to recover any homes, lands or property they were deprived of in an arbitrary or illegal manner.

■ Reducing the restrictions on eligibility to run for political positions, including the position of the President of the Republic, in a way that allows the widest possible participation of refugees and residents outside the territory of the state, through:

■ Include a constitutional article giving the right to a holder of a nationality other than the Syrian one to run for the presidential elections, provided that the candidate renounces his other nationality before submitting an application for candidacy.<sup>[544]</sup>

■ Abolish the requirement that the candidate's parents enjoy Syrian citizenship since birth.

■ Include a clause within the “transitional provisions” chapter of the constitution, stipulating the suspension of the ten-year permanent residence requirement for any candidate for any political position, for a period of two electoral cycles (ten years or 14 years) from the date of the adoption of the new constitution.

## **2. Legal framework**

■ Cancel all legal, legislative, and procedural provisions and articles that contradict the constitutional provisions, or those that would restrict the right of free, fair, and transparent electoral participation for all Syrians and Syrians residing outside their original places of residence, inside or outside the country.

■ Ensure that the entire electoral process in the post-political agreement phase, inside and outside Syria, be under the direct supervision and regulation of the United Nations, in accordance with Security Council Resolution 2254.

■ Ensure that the Syrian constitutional reform process, either through the Syrian Constitutional Committee supported by the United Nations or through other constitutional negotiating mechanisms that may arise in the future, be linked to a broad legal reform process. This process would involve the widest possible segment of the Syrian refugee and displacement communities in the process of developing a temporary or long-term electoral law. This law would guarantee their rights and reflecting their demands and aspirations. In addition, any new electoral law in Syria must consider the following pivotal issues:

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[544] For reference, see: The Tunisian Constitution of 2014, previous reference, Chapter 74.



### 3. Organizing the voting process from abroad

- Giving the right to all residents outside the territory of the state to participate in the presidential, legislative, and local elections from their current place of residence.
- Keeping Syrian embassies and consulates from any direct role in any electoral process during the transitional phase, the post-political agreement phase, while giving the supervisory and regulatory role for voting from outside the country exclusively to the United Nations, or any other international agency or institution designated by the United Nations, in a manner that guarantees:
  - Protection of right to elections and voting for all refugees from their current place of residence without forfeiting their refugee status and the ensuing legal rights and obligations such as the right to protection and residence and the right to individual and informed voluntary return.
  - Giving the right to voters residing outside Syrian territory to register themselves in the electoral register as voters from a foreign country, without forcing them to deal directly with Syrian embassies or consulates, either by registering in widely available electronic voter registers and supervised by the United Nations, or by submitting a written request to UNHCR offices in the host country, if available.
  - That the United Nations work with the governments of countries with refugee and expatriate communities to establish central electoral centers at the level of 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 witness a large presence of the Syrian community.
  - The voting process from abroad must take place at least one week prior the date of the elections inside the country. It is necessary that the United Nations undertake the process of counting the votes from abroad, or that it keeps the ballot boxes safe and confidential and announces the results at the time of the final counting of all the votes, inside and outside Syria.
  - Should all the above fail, consideration can be given to allowing absentee elections by sending the voters their electoral papers by direct mail to the electoral centers connected with their civil registry and electoral district inside Syrian territory. This is especially necessary for those residing in remote places where there is no heavy presence of the Syrian community. In this regard, it should be noted that absentee elections, especially in the case of Syria, may open the way for fraud, exclusion, and electoral manipulation by state agencies. Therefore, if this procedure is adopted, emphasis must be placed on increasing the supervisory role of the United Nations and the oversight of civil society on assembling and sorting electoral district boxes inside Syria.

## 4. Organizing the voting process for migrants and the internally displaced

- The new electoral law should abolish linking the right to vote in local and legislative elections to the electoral domicile - the civil registration registry - in a way that gives migrants and the internally displaced the freedom to choose the most appropriate procedure for them to exercise their electoral right according to the following:
  - Return safely and voluntarily to vote in person within the electoral district corresponding to their original place of residence, if that is available security, logistical or political.
  - Elect candidates for the electoral district relative to their current place of residence, even if it is outside their region or governorate of origin.
  - Elect candidates from the electoral district relative to their original place of residence, but from their current place of residence, even if it is outside the original region or governorate.
- Ensure optimal implementation and broader representation, these options require several of the following logistical and legal measures:
  - The displaced person must submit a request in advance to the administrative body supervising the update of electoral records, such as the United Nations, informing them of his/her desire to vote and elect from his/her place of residence, either for candidates from the electoral district of his/her original place of residence or for candidates from the electoral district of his/her current place of residence.
  - The polling stations in all the sub-electoral districts that are inside the Syrian territory should contain special boxes for election votes from outside the framework of the governorate or the region in which the sub-electoral center is located. This will allow the displaced to vote from their current place of residence for candidates from the electoral district of their original place of residence if they choose to.
  - The UN must be up to date on Syrian civil records to register all refugees and displaced persons and their families and to provide them with identification papers to ensure the right to run for office, vote, and design the electoral system.

## 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>[545]</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. They provide a greater opportunity for diversity and access of the most vulnerable groups in societies to the legislative power through elections<sup>[546]</sup> as in the example of the condition of the presence of women on the electoral party lists.<sup>[547]</sup> It can also provide an opportunity to integrate social groups by requiring the presence of parties in more than one region of the country in a way that can ensure ethnic diversity in societies within the same party.<sup>[548]</sup>

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. There are no real free and fair elections if there is no plural party system that gives the same opportunities and capabilities to competing parties. The importance of political party work based on competition and openness increases in the stages of transition and democratic consolidation.<sup>[549]</sup>

[545] 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.

[546] Norm Kelly and Sivakur Ashyaghpur, *Ibid.*, p. 3.

[547] Many electoral systems have a legal quota for women on party lists, such as Iraq, Afghanistan, Belgium, and others (Norm Kelly and Sivakur Ashiyagpur, *ibid.*, p. 3).

[548] For example, the Nigerian constitution stipulates that the leading bodies of any party must represent the federal character of the Nigerian state with the members of those bodies belonging to at least two-thirds of the states of the country: (Kenneth Ganda, *Political Parties and Democracy Considered in Practice and Theory: Passing the Parties Act*, National Democratic Institute. Washington, 2006. p. 19, box 12, available at: [adopting\\_party\\_law.qxd](https://www.ndi.org/sites/default/files/adopting_party_law.qxd) ([taalamsharek.org](https://www.taalamsharek.org)). Website accessed on July 23, 2021.

[549] Michael Johnston, *Political Parties and Democracy in Practice and Theory: Political Finance, Party Politics, and the Consolidation of Democracy*, National Democratic Institute, Washington, 2006, p. 1. Available at: [political\\_finance\\_policy.qxd](https://www.ndi.org/sites/default/files/political_finance_policy.qxd) ([taalamsharek.org](https://www.taalamsharek.org)). Website accessed on July 23, 2021.

Because of the importance of a pluralistic, democratic party system to ensure free and fair elections capable of representing society, this chapter of the report focuses on the party system in Syria and the relevant legislation that constitutes its pillars, features, and detachments, whether those that affect it indirectly, or those directly concerned with it, such as the parties' laws and elections. This importance is compounded by the heavy presence of a discriminatory political reality in favor of the ruling Baath party in Syria. It is considered one of the most extreme protectionist party systems models in terms of protecting the Baath party and giving it a discriminatory advantage to the highest extent<sup>[550]</sup> so much so that it was able to guarantee its leadership in society constitutionally until 2012 through Article 8 of the 1973 Constitution. It clearly states the party's leadership of the state, society. As for Article 84 it stipulates the proposal of the regional leadership of the Baath Party as the head of the executive authority/the president of the republic, and its submission to a popular referendum.<sup>[551]</sup>

Despite replacing the leadership of the Baath Party by pluralism in the 2012 constitution that is currently enforced in Syria<sup>[552]</sup> with the issuance of a law organizing the parties, the discriminatory reality of the party has not changed, as will be later discussed in this chapter.

The first section of this chapter focuses on international standards for the formation of political parties in terms of the freedom to establish political parties and the restrictions that can be imposed on their policies and discourses according to international law. It also summarized standards related to their relationship to elections to create a safe, neutral, and harmonious electoral environment with international references.

The second section sets out to form a broader understanding of the Syrian legislation that regulates partisan work and its relationship to the elections and the extent of their lack of conformity with international standards of management and authority.

The third and final section calls for best practices and policies based on international law and democratic experiences. It proceeds to suggest some measures in the constitutional and legal frameworks that are likely to lead to the creation of equal capabilities and opportunities for all political parties to participate in free, fair and transparent elections as stipulated by international law, including Security Council Resolution 2254 on Syria.

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[550] Kenneth Janda, *ibid.*, p. 14.

[551] The Syrian Constitution of 1973, previous reference, Articles 8 and 84.

[552] The Syrian Constitution of 2012, previous reference, Article 8.

## **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, freedom and socialism<sup>[553]</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. They can even be persecuted and subject to penalties up to the death penalty, as this chapter will show later.

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.

Those gatherings may consist of a group of citizens who agree on specific opinions and programs but don't belong to political parties or are preoccupied with public affairs in an effort to reach power or influence decision-making in the state.<sup>[554]</sup> International law guarantees citizens the right to participate in managing the country and making public policies, directly or through representatives, through a single, peaceful transfer of power through periodic, transparent and fair elections that guarantee equality and

[553] 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.

[554] A set of definitions of the political party is seen: Nouredine Haroush, Political Parties and the Democratic Building Process, p. 13.

through secret ballot.<sup>[555]</sup> The two regional agreements which Syria has signed (the Arab Charter on Human Rights, the Cairo Declaration on Human Rights in Islam) neglect to specify the mechanism for participation in managing public affairs, and only mention the right to public participation, as is the case in Article 23 of the Cairo Declaration, or to mention the nomination mechanism.

Representation without mentioning periodic and transparent elections according to Article 24 of the Arab Charter opens the door wide for the formation of authoritarian dynamics in the hierarchy of power.

The Office of the High Commissioner for Human Rights elaborated on the human right to participate in peaceful assemblies and the role of the state in this. The exercise of human rights should not be criminalized in any way, and the state should not only allow peaceful assemblies and associations, but also protect such gatherings and associations and take all measures to facilitate them. The concept of peaceful assembly to exercise the right of expression is a real alternative to the practice of blatant violence that can result from the prolonged practice of tyranny and violence by the state. According to the Commission, political parties as well as civil associations and trade unions are subject to the protection of Article 20 of the Universal Declaration of Human Rights.<sup>[556]</sup>

As in all the rights and freedoms that it guarantees, international law does not leave the right to form political parties without limitations to prevent discrimination between party members and the unfair differentiation between the parties themselves.

## 2. Restrictions on the freedom to form political parties

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. Non-discrimination among citizens based on any religious, sectarian, linguistic, or sexual basis is a basic pillar of human rights as stated in Article Two of the Universal Declaration of Human Rights.<sup>[557]</sup> Article 2 of the International Covenant, in turn, does not neglect the stipulation of non-discrimination between citizens of the state on any basis. Rather, it adds in its subsequent clauses emphasis on finding mechanisms to ensure non-discrimination between citizens.<sup>[558]</sup> The International Convention on the Elimination of All Forms of Racial Discrimination, in turn, stipulates the non-discrimination of citizens with political rights, and affirms the right to vote, run for office, and participate in the conduct of public affairs.<sup>[559]</sup>

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[555] Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights.

[556] Explanation of the Office of the High Commissioner for Human Rights, available at the link: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23954&LangID=E>. Website accessed on July 23, 2021.

[557] Universal Declaration of Human Rights, *ibid.*, Article 2.

[558] International Covenant on Civil and Political Rights, *ibid.*, Article 2.

[559] International Convention on the Elimination of All Forms of Racial Discrimination on Political Rights, *ibid.*, Clause C of Article 5.

International law emphasizes the peacefulness of parties, as well as the voluntariness of joining them.<sup>[560]</sup> Some international agreements do not mind placing legal restrictions on the practice and participation of citizens who have access to the tools of violence in the state (army, security, and police)<sup>[561]</sup> or denying participation in parties and gatherings.<sup>[562]</sup>

International law prohibits any parties that advocate hatred, war, or discrimination on racial grounds, whether in general charters and agreements,<sup>[563]</sup> or through means concerned with specific issues, such as the International Convention against Racial Discrimination.<sup>[564]</sup>

Also, any party that practices policies that lead the country to slide into violence and violate "national security, public safety, public order, the protection of public health, public morals, or the protection of the rights and freedoms of others" are prohibited by international law.<sup>[565]</sup>

The European Court of Human Rights has also contributed to explaining the extent of restrictions that a state is entitled to impose on the exercise of political action. The court decided that the parties or any political group have the right to publicly discuss any issue related to the formation of state institutions or the contents of the constitution and laws, even if it is related to the unity or fragmentation of the country as long. These dialogues should be conducted in a democratic manner and away from violence or calls for committing crimes because the basic goal of democracy is for nations to prosper through open and peaceful discussions of all political and social issues.<sup>[566]</sup>

Exercising these restrictions primarily requires a democratic society,<sup>[567]</sup> because it is possible for countries governed by authoritarian regimes to exploit these restrictions to establish their hegemony over societies. In Syria, the Supreme State Security Court issues many 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) of the type of "weakening the morale of the nation, weakening national sentiment" ... etc.).<sup>[568]</sup>

[560] Universal Declaration of Human Rights, op.cit., Article 20; From the International Covenant on Civil and Political Rights, *ibid.*, Article 21.

[561] International Covenant on Civil and Political Rights, op.cit., Article 22; European Convention on Human Rights, *ibid.*, Article 11.

[562] American Convention on Human Rights, *ibid.*, Article 16.

[563] International Covenant on Civil and Political Rights, *ibid.*, Article 20.

[564] International Convention on the Elimination of All Forms of Racial Discrimination, *ibid.*, Article 4.

[565] International Covenant on Civil and Political Rights, *ibid.*, Article 22.

[566] For more information see: The European Court of Human Rights' discussion of this issue can be found in the case of *Yazar v. the Turkish government* <https://hudoc.echr.coe.int/eng#%22i%20temid%22:%22001-60416%22>"

[567] International Covenant on Civil and Political Rights, *ibid.*, paragraph 2, of Article 22.

[568] For more on looking away from justice: the Supreme State Security Court in Syria, the report of the international human rights watchdog Human Rights Watch, op.

### 3. 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.
- 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.

Syrian legislation violated all international legal principles on the formation of associations and parties, especially those stipulated in Article 22 of the Covenant and Article 20 of the Universal Declaration of Human Rights. The international restrictions on partisan work and associations are not absolute as previously explained. However, the Syrian regime imposed wide restrictions that reached the point of banning. For more than 50 years Syria had no legal mechanism for practicing political work except under the rule of the Baath Party, the leader of the state and society. This goes against the principles of freedom and equality in political work between the parties, which the Syrian state is bound to provide. No law regulating the work of parties ever existed in Syria until 2011. Before that, the formation of parties was completely prohibited, and any political or party action outside the scope of the Baath Party was considered a violation of the law.

### 1. The stage of 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>[569]</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>[570]</sup> 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.”<sup>[571]</sup>

In its sixth national conference in 1963, the Baath Party announced the principle of leadership of the state and society.<sup>[572]</sup> Then it consolidated its authority in the 1973

[569] 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.

[570] 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.

[571] Marwan Sheikho et al., Legislative Councils in the Syrian Arab Republic from 1919 to 2000, publication by the Syrian People’s Assembly, Damascus, 2000, pp. 157-197.

[572] 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. 45.

constitution through Article 8 that explicitly says so, and Article 80, which stipulates that the regional leadership of the Baath Party nominates the President of the Republic then presents the nomination to a referendum. Article 1 of the constitution also stipulates the state's commitment to the Baath Party's beliefs such as popular democracy, socialism, and Arab unity.<sup>[573]</sup> With these constitutional articles, the Baath Party obtained absolute protection that impeded the freedom of action of other parties and placed it in a place that rises above competition. In addition, the Baath announced the formation of the NPF, which absorbed within it a group of parties that were operating before or during the period of its coup. The parties accepted the dominance of the Baath Party and subordinated to it.<sup>[574]</sup> With that, Syrian legislation violated the international standard for the freedom of individuals to assemble and form parties, and the standard for the state's neutrality towards political parties and to stand on the same distance from them.

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>[575]</sup> The State Security Court was abolished in 2011<sup>[576]</sup> and so was the state of emergency<sup>[577]</sup> in an attempt to attenuate popular anger following the outbreak of the March 2011 revolution. A new anti-terror law<sup>[578]</sup> was issued and another law to create a terrorism court<sup>[579]</sup> to compensate the Baathist dominance and Baath use of the "judicial" power as an instrument to consolidate its rule against its opponents.<sup>[580]</sup> Add to this law No. 52 that was issued in 1979 that was related to the security of the Baath Party. The law punishes anyone who prevents the Baath from "performing its duties stipulated in the constitution," despite the fact that the 2012 constitution ended the leadership of the Baath Party of the state

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[573] The Syrian Constitution of 1973, *ibid.*, Articles 1, 8 and 80.

[574] Bylaws of the National Progressive Front, Articles 5 and 6, available at:

[http://pnf.org.sy/?page=category&category\\_id=5](http://pnf.org.sy/?page=category&category_id=5), last accessed on August 7, 2021. The two articles say that the Ba'ath Party leads the front and controls half plus one of its central leaderships.

[575] 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.

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

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

[578] Law 19 of 2012

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

[580] Syria - Using the Anti-Terrorism Court to Stifle Dissent, Human Rights Watch, *ibid.*

and society, and provided for political pluralism.<sup>[581]</sup> However, the Baath Security Law is still in force today. The Baath Party was not satisfied with general and loose laws attacking its opponents and eliminating political pluralism, but it also issued a special law against its opponents (the Muslim Brotherhood), which sentenced to death anyone who adheres to the Brotherhood.<sup>[582]</sup>

These laws and many others led to granting the Baath Party supreme authority over the state and led to the production of a reality that contradicts international standards and serves the absolute authority of the Baath Party and Assad behind it.

## 2. The one-party reality imposed by the Syrian legislation biased towards the Baath Party

Since its inception until today, the Baath Party has violated the international standard that emphasizes the peacefulness of gatherings and parties and their non-possession of weapons. The party formed the first militia parallel to the violent state institutions under the name of the National Guard in 1963.<sup>[583]</sup> The Baath Party has not given up its arms until the date of writing this report. The Baath has an armed detachment of guards at the entrance to each party branch, division, or squad. It has also established many militias, the latest of which is the Baath Brigades that participated in suppressing the revolution after 2011.<sup>[584]</sup> The excessive use of weapons against demonstrations led to the formation of militias affiliated with other parties as well, imposing a political reality with weapons, as is the case in the areas controlled by the Syrian Democratic Forces and the militias affiliated with the People's Protection Units (PYD), or militias that adhere to an Islamist ideology such as Jaysh al-Islam. Armed militias violate the international standard for the peacefulness of political parties and grant a discriminatory status to political blocs that stem from them or adhere to their ideology.

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. Only the Baath Party has the right to be active among students in educational institutions.<sup>[585]</sup>

[581] The Syrian Constitution of 2012, *ibid*, Article 8.

[582] See Law No. 40 of 1980.

[583] These militias were established at the end of 1963 and their first chief was Hamad Obaid. See: Shams Al-Din Al-Kilani, *ibid.*, p. 53.

[584] Aron Lund, The Baath Battalions Move into Damascus, Carnegie Endowment for International Peace, February 13, 2014, <http://carnegieendowment.org/syriaincrisis/?fa=54167>, accessed 06 August 2021.

[585] Mahmoud Wahb, member of one of the parties of the National Progressive Front, says that the parties of the National Progressive Front cannot be active among the students.

The Baath Party spreads its ideology from the first grades through the Vanguard of the Baath Foundation, which is active among primary school students,<sup>[586]</sup> while students in middle school are automatically affiliated with the Revolutionary Youth Union.<sup>[587]</sup> At the secondary level, students are also assigned automatically to the Baath Party, whereby each student gets their party number and is considered a supporting member of the Baath Party. At the university level, all students are considered affiliated with the National Union of Syrian Students, which is one of the components of the NPF led by the Baath Party.<sup>[588]</sup> The party also has access to the army and security institutions, and no other party is allowed that access.<sup>[589]</sup> Most military and security officers are considered Baath Party members. Until the year 2000, more than 25,000 members of the army joined the Baath Party. They belonged to more than 1,600 party circles spread throughout the army.<sup>[590]</sup> The authority in Syria, during the domination of the Assad family, Baathified all government institutions, and made state jobs a factor of attraction for affiliation to the party, which made it, along with automatic affiliation at the secondary level, one of the major violations of international standards in voluntarily joining a party without coercion of any kind. That is why members of the Baath Party rose from 400 civilian members in 1963<sup>[591]</sup> to more than one million and 900 thousand in 2000. Almost 1,000 judges out of 1,307 judges in Syria were affiliated with the Baath Party, and the percentage of Baath lecturers in Syrian universities increased to more than 68% of the total lecturers, in addition to most of the civil servants.<sup>[592]</sup>

Peasants' Union is one of the components of the NPF. The Baath also made various civil society institutions auxiliary to the party, such as the Union of Journalists and the Publishers Union<sup>[593]</sup> and others. The party holds the percentage of half plus one in all the leading bodies of trade unions and professional associations.<sup>[594]</sup>

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[586] Article 1 of the Vanguard Law: We love our Syrian Arab country, our Arab homeland, and the Arab Socialist Ba'ath Party. To find out more, see the official website of the Vanguard of the Ba'ath Organization at: <http://syrian-pioneers.org.sy/>, last accessed on August 2, 2021.

[587] The Student Union was established by Legislative Decree No. 25 of 1970, and then took charge of all students' cultural, social, sports and artistic activities in preparatory schools through Legislative Decree No. 65 of 1975. The Union follows the ideology of the Baath Party and is considered one of its auxiliary institutions. More information is available at <https://ryu-sy.org/%d%20adorable5%d%20adorable%206-%d%20adorable6%d%208%ad%d%20adorable6/>, last accessed on August 2, 2021.

[588] Members of the NPF on the official website are at: [http://pnf.org.sy/?page=category&category\\_id=5](http://pnf.org.sy/?page=category&category_id=5), last accessed on August 2, 2021.

[589] The Charter of the National Progressive Front, Task 8 of the national tasks assigned to the Front, is available at: [http://pnf.org.sy/?page=category&category\\_id=131](http://pnf.org.sy/?page=category&category_id=131), last accessed on August 2, 2021.

[590] Shams al-Din al-Kilani, *ibid.*, p. 72.

[591] Hanna Batatou, *Syria's Peasantry, the Descendants of Its Lesser Rural Notables, and Their Politics*, translated by Abdullah Fadel and Raed Naqshbandi, 1st Edition, Arab Center for Research and Policy Studies, Beirut, 2014, p. 310.

[592] Shams al-Din al-Kilani, *ibid.*, pp. 72-73.

[593] See Article 3 of both Law No. 1 of 1990 (the Law of the Union of Journalists in Syria); Law No. 14 of 2005 of the Syrian Publishers Union commits the two unions to achieving the goals of the Arab Nation in accordance with the decisions of the Arab Socialist Baath Party.

[594] This was stated in an interview with former member of the People's Assembly and one of the National NPF parties, Mahmoud Al-Wahb, for the purpose of this report.

After the abolition of Article 8 of the 1973 constitution and replacing it with another that stipulates political pluralism in the 2012 constitution and the promulgation of the Parties and Elections Law in the context of seeking to attenuate the repercussions of the Syrian revolution. The Baath party sought to implicitly redefine its dominance after it was explicit in order to preserve power in its grip.

### 3. 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. The committee consists of its chairman, the Minister of Interior, a judge and three public figures to be determined by the President of the Republic. The law does not mention the decision-making mechanism.<sup>[595]</sup> Rather, the committee gets to write the parties' rules of procedure.<sup>[596]</sup> Consequently, the executive authority does not announce the parties but rather becomes the creator of their legal personality, which constitutes a violation of international standards regarding the right to freedom of party formation.

■ **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

[595] Legislative Decree No. 100 of 2011 Parties Law, Articles 7 and 8.

[596] Executive Instructions for Parties Law, *ibid*, Article 8.

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>[597]</sup> which translates as discrimination on a national basis against non-Arab minorities.

There is also discrimination on the basis of political opinion or position. Paragraph D of Article 8 of the law requires that those seeking to establish a party enjoy civil and political rights. At the same time, deprivation of these rights is one of the political criminal penalties that the regime uses against its opponents.<sup>[598]</sup>

■ **The Syrian constitution stipulates that public fund shall not be used for partisan interest,**<sup>[599]</sup> meanwhile the Baath Party uses all government institutions for its partisan interests in the presidential and parliamentary elections.<sup>[600]</sup>

■ **Article 35 of the law also states that the NPF parties are considered legally licensed to submit their papers in accordance with the law within 6 months,** and the state did not stand at the same distance from all parties after the law was issued. For example, although universities are public property, the Baath party has headquarters, branches, divisions, and squads in all the universities of the Syrian state, and they are public buildings used by the Baath for its partisan interests.

■ **Peaceful political work and the prohibition of parties that possess weapons:** According to the Parties Law, the activity of any party does not involve the establishment of military or paramilitary formations.<sup>[601]</sup> Meanwhile the Baath Party and other parties, such as the Syrian Nationalist party, have paramilitary militias that worked to suppress the demonstrators in the revolution, in addition to detachments of armed guards in front of the headquarters of the Baath Party. This behavior represents a violation of the parties' law itself and international standards that require the peacefulness of partisan activity.

■ **International law stipulates either preventing members that have access to violent tools (the army and the police) from participating in political life, or at least setting specific restrictions on their activity.** The Syrian parties' law does not require this, and no political party has the right to operate in those circles except Baath Party.

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

[598] Syrian Penal Code Concerning Political Criminal Offenses, Fourth Punishment (Civil Deprivation), Article 38.

[599] The Syrian Constitution of 2012, *ibid.*, paragraph 5 of Article 8.

[600] An example of this is the use of government media to prepare for the presidential campaign in favor of the Secretary-General of the Baath Party Bashar al-Assad: Muhyiddin Amora, Media Plan for Assad's Re-Election, Al-Jumhuriya, February 2, 2021, available at: <https://bit.ly/3COWrTZ>, last accessed on August 5, 2021.

[601] Parties Law, *ibid.*, Paragraph F of Article 5.

■ **Paragraph E of Article 5 of the law stipulates that a political party shall adopt democratic foundations.** The Baath Party clearly violated those foundations in the recent parliamentary elections. The selection of Baathist members nominated for the Baath Party was always done by the regional leadership. It then introduced partisan consultations (voting for candidates by the Baathists in electoral districts) in the 2020 parliamentary elections, but the party did not commit to democratic results, and it excluded many successful people in the consultation process.<sup>[602]</sup> In addition, leading members of the Baath are chosen without regard to the results of the elections, and it is enough evidence that Hafiz al-Assad remained the Secretary-General of the party for thirty years, for his position to be inherited by his son Bashar al-Assad in the last twenty years.

■ **Article 24 of the Elections Law states that 50% of the members of the People's Assembly must be workers and farmers.**<sup>[603]</sup> This article impedes political pluralism because it gives priority to parties with a socialist orientation over other parties.

■ **International law calls for banning all parties that adopt racist or hate speech.** However, the existing parties in Syria, led by the Baath, adopt a hateful speech against all those who object to the ruling regime. These parties' declarations and statements are filled with accusations calling for hatred and elimination. Accusation such as intruders, traitors, spies, terrorists... etc.<sup>[604]</sup>

■ **International law as well as the Syrian Parties law prohibit**<sup>[605]</sup> **forming parties on sectarian, religious, ethnic, or gender grounds...etc.** Despite that, many of the formed parties or those that are being formed in Syria are built on a discriminatory basis. Baath Party is based on nationalism, the PYD party is based on ethnicity, as well as the Arab National Front parties and the Kurdish nationalist parties.

■ **Article 77 of the General Elections Law provides for the majoritarian electoral system**<sup>[606]</sup> which gives the opportunity to the candidates who obtain the highest number of votes. This hinders the access of new parties to the parliament and contributes to supporting existing parties, especially the Baath, to dominate the parliament with all its resources and the network of relationships that Baath formed throughout its rule.

[602] Ammar Yasser Hamo, Under the Pretext of "Partisan Consultation": The Regime Reveals the Currents Within the Ruling Baath Party and Turns Against Them, Syria Direct, July 22, 2020. available at: <https://bit.ly/39zFQqZ>, last accessed on August 5, 2021.

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

[604] An example of this is the statements issued by the Baath Party during the revolution, which was full of accusations and labels that call for hate. For more information, see <http://baathparty.sy/Category.php?cid=3>, last accessed on August 10, 2021.

[605] Syrian Parties Law promulgated by Legislative Decree No. 100 of 2011, on 3 August 2011, Article 5.

[606] For a more understanding of the majoritarian electoral system and the proportional system, see the Types of Electoral Systems in the report above.

These and many other features led to the formation of a political reality in Syria that gave the Baath Party an advantage over others and gave it a greater opportunity in the future to play an important role in the transitional period. Syria cannot engage in a fair electoral process without canceling the discriminatory conditions of the Baath party.

### **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>[607]</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>[608]</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.

This absolute control gives the Baath the ability to fully control the seats in the People's Assembly and determine successful candidates, which made the People's Assembly an opportunity for corruption by selling seats in exchange for money or loyalty. Sectors were divided according to the Baathist leaders' regions of descent.

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[607] 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.

[608] 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.



Every influential member of the Baath leadership sells seats without considering the elections.<sup>[609]</sup> Given that the success of the NPF's lists is guaranteed, parties of the NPF sold their candidacies to those wishing to enter the Parliament in exchange for donations to the party or sold them directly by the party leader.<sup>[610]</sup>

Regarding the presidential elections, the 1973 constitution preserved the Baath's possession of the position under a constitutional cover. After the 2012 amendment that abolished the Baath leadership of state and society, Article 8 was replaced by a method that guarantees the Baath Party's nomination of the President of the Republic by limiting acceptance of nominations to members of the People's Assembly, which the Baath continues to control. According to the constitution, candidacy for the presidency is only accepted through written support from 35 members of the People's Assembly, and a parliamentarian cannot choose more than one candidate.<sup>[611]</sup>

Despite the promulgation of the parties' law and the new constitution, the Baath party still controls the outcomes of the electoral process in Syria, and instead of the constitutional cover, corruption and fraud have become the biggest guarantor of that dominance. The percentage of Baathists in the People's Assembly after the 2012 constitution and after the parties' law exceeded what it used to be under the 1973 constitution and its eighth article. This is due to the Baath's fear of losing control and its focus on a stronger presence in the legislative authority through fraud. It is not possible to conduct a fair electoral process in Syria because of the privileged status of the Baath that outweighs all its potential competitors. Most judges in Syria are Baathists and most members of electoral committees and pollsters are Baathists.<sup>[612]</sup> All those in charge of the electoral process in general are Baathists. The media, Ministry of Information, and the publishing and press unions are Baathists.<sup>[613]</sup>

The Baath turned the People's Assembly into a tool for social control by granting seats to its loyalists, taking into account regional balances.<sup>[614]</sup> Loyalty to the Baath and the sale of seats play the largest role in determining the successful candidates, and hence the internal contradictions and intra-party rivalries, and security and social considerations.

[609] For example, the person deciding those successful in the al-Tal district in Rural Damascus, as well as other areas of that governorate, was Abd al-Ahmar, the assistant secretary-general of the party, a native of al-Tal area. (Mohamed Barmo's interview for the purpose of this report).

[610] This was stated in the interviews of Mahmoud al-Wahb, former member of the People's Assembly and an NPF party, and Muhammad Barmo, an independent member.

[611] The Syrian Constitution of 2012, *ibid.*, Clause 3 of Article 85 relating to the acceptance of candidacy for the post of President of the Republic.

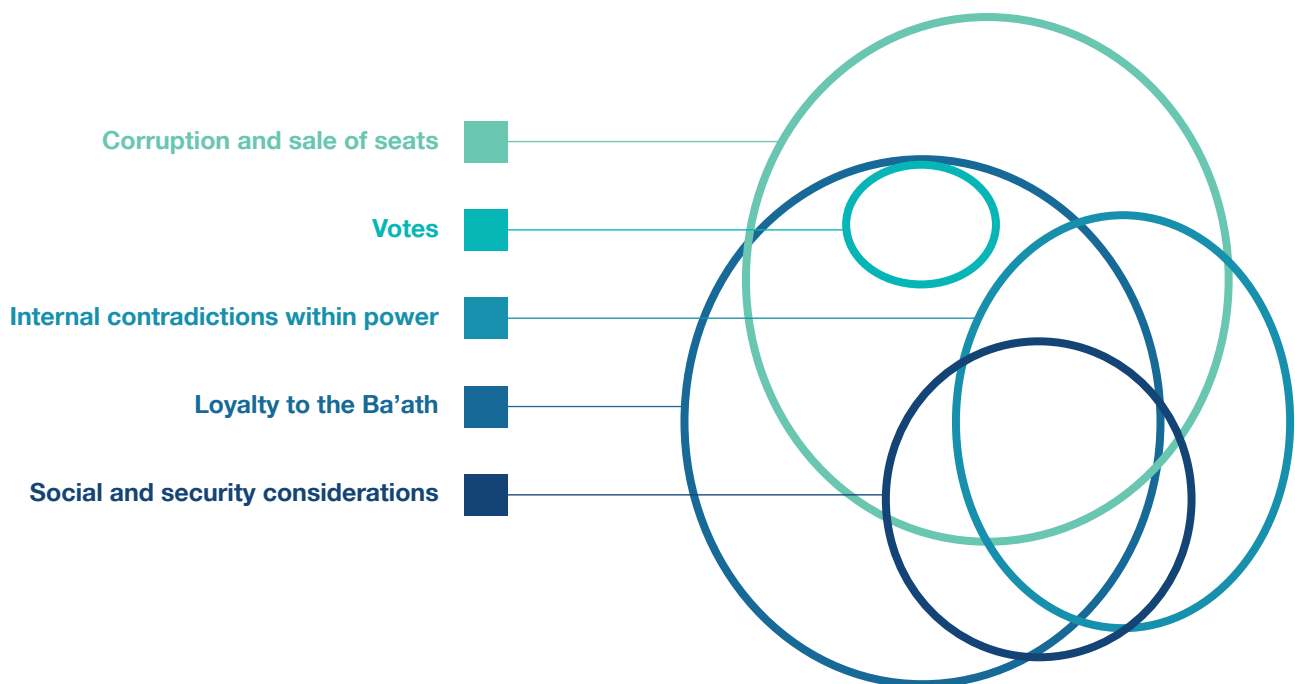
[612] Parween Ibrahim, head of the Youth Party for Building and Change - a party licensed based on the Parties Law issued in 2011 - attacked those in charge of the electoral process in the 2020 legislative cycle of the People's Assembly and committing violations in favor of the Ba'ath party, including faking new votes, or conspiring with Baathist members who dominate electoral committees and the judiciary. For more information, see Parween Ibrahim on YouTube on July 21, 2020 under the title (Arabic) "The elections are a disgrace and Syria is not the Baath farm," available at: <https://www.youtube.com/watch?v=hnVAaNYRd8A&t=168s>, last accessed on August 12, 2021.

[613] For more information on the hegemony of the Baath within the Syrian state and non-governmental media, see the section on media above.

[614] From Ali Al-Bish's interview for the purpose of this report.

Voting in the elections only plays a weak secondary role.<sup>[615]</sup> The figure above contains an approximate scheme of the factors affecting the electoral process.

**Figure 4: Factors affecting the electoral process in Syria on the basis of influence**



As previously mentioned, the new constitution of 2012 and the Law of Parties and Elections did not reduce the Baath's power, and only changed the balances imposed by the security and repressive policy that the Syrian regime followed against the people in the revolution. Parliament seats became rewards for the regime's supporters of Shabbihas and financiers.<sup>[616]</sup>

On the other hand, the media outpouring of support for the head of the regime, Bashar al-Assad, and the huge electoral campaigns that accompany his candidacy by state institutions, private events and the constitution impede a real candidacy for the presidency against al-Assad because the candidate needs the support of 35 parliamentarians in a parliament composed of al-Assad supporters. All of this does not make the presidential elections an addition to the legislative elections, but rather "democratic

[615] The scheme was drawn up and the extent of the impact was estimated based on the interviews of former independent, Ba'athist, or other party members of the People's Assembly for the purpose the report.

[616] Among the successful candidates in the 2020 elections are Hussam Katerji, head of the "Qaterji Group" militia and an oil broker between the regime and ISIS and then the regime and the SDF, Ammar al-Assad, a leader of the National Defense Militia, Khairallah Abdul Bari, founder of the Baqir Brigade, and Fadel Warda, commander of the National Defense in Salamiyah.

weddings,” as the Syrian media calls them, they emphasize loyalty to the authority and the party.

The dominance that the Baath Party has over members of Parliament, with its privileged status, cancels out any real competition, continues to lead to an electoral process that is partial and biased towards the Baath and stuffed with fraud and violations. It leads to inevitable and irreversible results that support the authoritarian position of the party. The situation has not changed after 2012, which is clearly reflected in the number of Baathist parliamentarians. The seats of the NPF parties are added to its political portfolio whose names are approved by the Baath itself. Table No. 1 shows the extent of the Baath Party’s control of Parliament and how it has not changed after the new constitution and the promulgation of the Parties Law, which indicates that these amendments were formalities, ineffective and not serious in bringing about transition or democratic transformation.

**Table No. 26: The distribution of seats for political forces (parties and independent members) in the legislative cycles of the People’s Assembly between 1973-1994<sup>[617]</sup>**

Party or list name	1st cycle 1973	2nd cycle 1977	3rd cycle 1981	4th cycle 1986	5th cycle 1990	6th cycle 1994
Baath Party	111	125	127	129	134	135
NF parties	16	34	22	31	32	32
Other parties	None	None	None	None	None	None
Independent members	37	36	46	35	84	83
<b>Total</b>	<b>164</b>	<b>195</b>	<b>195</b>	<b>195</b>	<b>250</b>	<b>250</b>

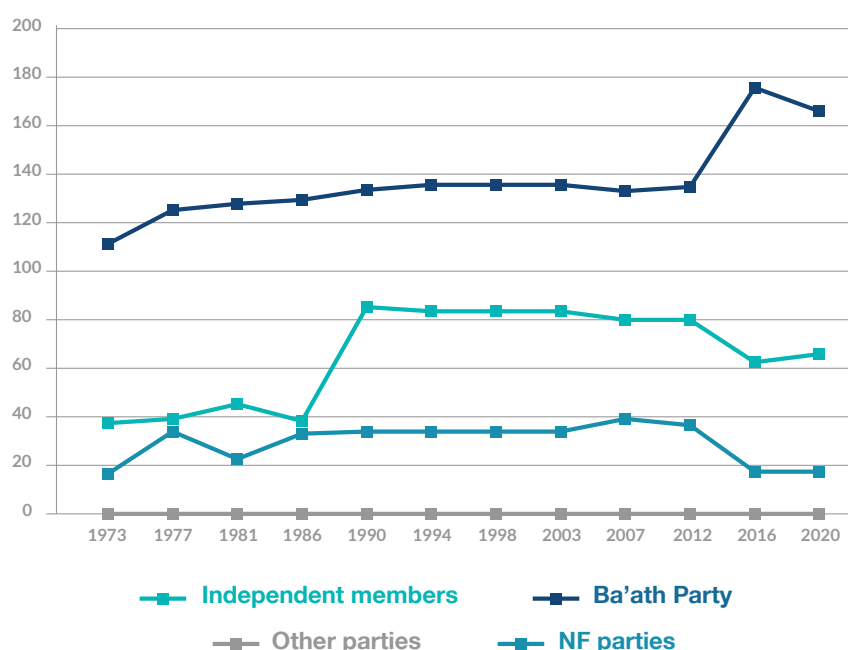
[617] For more, see: National Parliaments Database, Syrian Arab Republic People’s Assembly Historical Archive of Parliamentary Election Results, International Federation of National Parliaments website, available at: [http://archive.ipu.org/parline-e/reports/2307\\_arc.htm](http://archive.ipu.org/parline-e/reports/2307_arc.htm), last accessed on April 30, 2021.

**Table No. 27: The distribution of seats for political forces (parties and independent members) in the legislative cycles of the People’s Assembly between 1998-2020**

Party or list name	7th cycle 1998	8th cycle 2003	9th cycle 2007	10th cycle 2012	11th cycle 2016	12th cycle 2020
Baath Party	135	135	131	134	176	167
NF parties	32	32	39	37	16	16
Other parties	None	None	None	0	0	0
Independent members	83	83	80	79	62	67
<b>Total</b>	<b>250</b>	<b>250</b>	<b>250</b>	<b>250</b>	<b>250</b>	<b>250</b>

The table clearly shows how the Baathists had a stronger presence than before after three legislative parliament sessions, the implementation of the 2012 constitution, the promulgation of the parties’ law and the consequent elections. (See also Figure 2).

**Graph 10: Distribution of seats in the Syrian People’s Assembly between 1973-2020 among parties and independents**



After the promulgation of the Parties Law in Syria in 2011, 20 parties got licensed in Syria, including 10 parties in the NPF.<sup>[618]</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 NPF parties managed to get seats in local administrations and in the People’s Assembly through its presence on the NPF’s list, which has long succeeded through Baath’s illegal and arbitrary procedures and by violating all international laws as explained above. This kept the NPF parties away from their quest to attract voters<sup>[619]</sup> and sized them down. The number of members of a given party did not exceed hundreds, and they no longer represented more than small annexes and pockets of the Baath Party in power.<sup>[620]</sup> On the other hand, the parties that opposed the dominance of the Baath were excluded and prevented from engaging in public affairs and political life through a set of laws that enabled the authority to deal with its opponents with excessive brutality, as the report explained above. The parties that were licensed after the promulgation of the Parties Law could not benefit from the partisan pluralism provided by the 2012 constitution<sup>[621]</sup> because Baath dominated all authority outlets, prevented the creation of a neutral electoral environment and because of its abundant ability to practice fraud and exclusion.

The task of major parties is to be able to represent citizens,<sup>[622]</sup> to build their political will,<sup>[623]</sup> to show the extent of citizens’ confidence in the effectiveness of the party system, to be able to represent their interests and orientations through their turnout for elections and the exercise of their constitutional right and duty.<sup>[624]</sup> Despite the adoption of partisan pluralism, the continued selection of members, the sale of seats, and electoral fraud led to the ineffectiveness of parties on the one hand, and the growing weakness of citizens’ trust in the party system and the political system in general, and this is reflected by their weak turnout for elections. The rate of voter turnout and political participation has fallen to extremely low levels after adopting the constitution contrary to the expectations. In her recorded tape criticizing fraud in the 2020 elections, Barwin Ibrahim, Secretary General of the “Youth for Building and Change” Party, spoke

[618] 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.

[619] It is worth noting that the parties sought to please the regime, not the voters, according to Mahmoud Al-Wahb in his interview. When he was nominated for the list and even before the elections, he began receiving congratulations. The sentence used for congratulation was “Congratulations for the confidence of the leadership.”

[620] Shams al-Din al-Kilani, *ibid.*, p. 65.

[621] The Syrian Constitution of 2012, *ibid.*, Article 8.

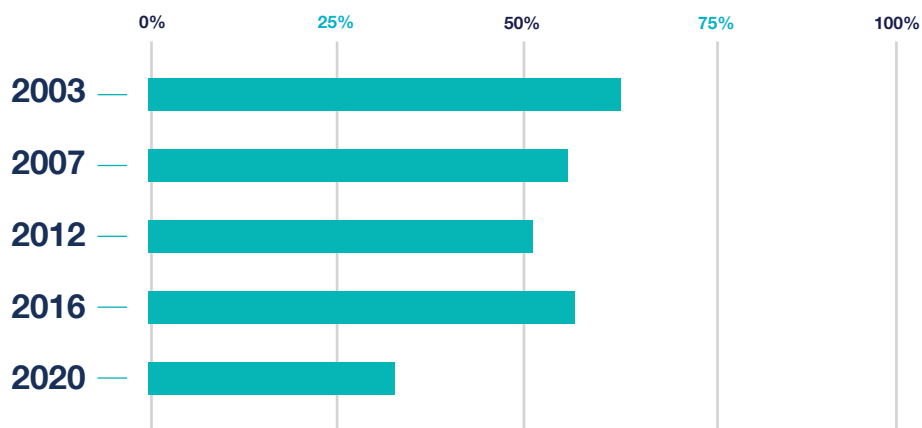
[622] Kenneth Janda, *ibid.*, p. 1.

[623] See the German Constitution of 1949 including the amendments of 2012, Article 21.

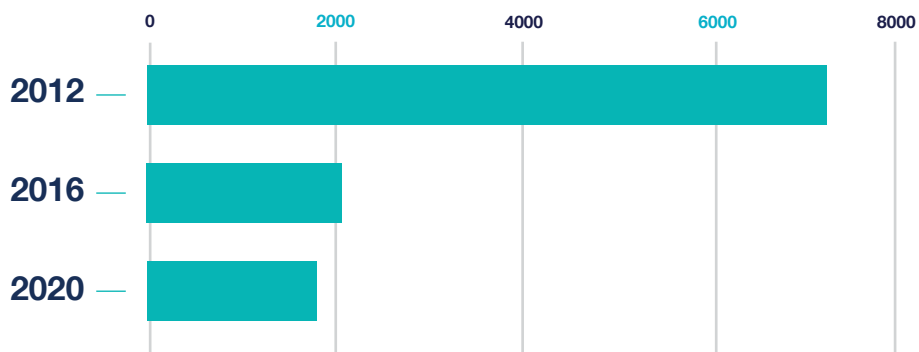
[624] The Syrian Constitution of 2012, *ibid.*, Article 49, defines elections as a right and a duty for citizens.

about how they looked the other way regarding similar electoral fraud in 2016 because it was “in the interest of the country”, which indicates the dominance of the Baath at the time, and its promotion of the beginning of “victories”, and the recuperation of control over rebel areas.<sup>[625]</sup>

**Figure 5: Rate of voter turnout between 2003-2020**



**Figure 6: Number of candidates running for People’s Assembly between 2012-2020**



[625] See video of Parwin Ibrahim on YouTube, *ibid.*

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 (Figure 3).<sup>[626]</sup> Confidence in the feasibility of candidacy and competition also weakened, and the number of candidates decreased by more than a quarter between 2012-2020 (Figure 4).<sup>[627]</sup> The decline in political participation is a clear evidence of citizens' distrust of the constitutional amendments that took place, and the lack of candidates indicates a distrust of competing and succeeding through elections.

It is worth noting that the partisan reality in Syria has other elements that emerged and grew outside the regime's authority, whether the opposition parties that found in the revolution an opportunity to practice politics and to engage openly in public affairs, or those that were formed in Syria outside the regime's areas of control, or that were formed by Syrians in exile and countries of asylum. The importance of these experiences in monitoring the political and partisan reality in Syria, but they are outside the scope of the report, which focuses on legal reform that provides parties with a safe and impartial environment for holding free local parliamentary or presidential 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>[628]</sup>

[626] National Parliaments Database, Syrian Arab Republic People's Assembly Historical archive of parliamentary election results, *ibid*.

[627] This percentage was questioned by opponents, who considered that the turnout for the elections was much less. (Legislative Elections in Syria Between 2012-2020: What Happened and What Changed?, report by the Edrak Organization for Studies and Consultations, October 2020, p. 5, available at: <https://idraksy.net/wp-content/uploads/2020/11/Syria-Parl.pdf>, accessed May 1, 2021.)

[628] 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).

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.<sup>[629]</sup>

Syria is currently suffering from the entanglement and subordination of the state to the political system, and the ruling party, which results from the saturation of the ruling party's ideology within state institutions. For a truly pluralistic political system, the state must be separated from the Baathist ideological thought across all its institutions,<sup>[630]</sup> and there must be a dismantling of totalitarian “popular” organizations that adopt the Baath party’s ideology in their systems and principles.<sup>[631]</sup>

It is clear from the experiences of the Arab Spring that the military's position within political life in the region plays a central role in the possibility of democratic transition –and in most cases a negative role.<sup>[632]</sup> In Syria, the army adopts a Baathist ideology and party headquarters are spread across the military institution. It seems likely that the removal of the army and security branches from political life and the replacement of the Baathist ideology with a national ideology that limits the military to its traditional domain will play a more positive role in democratic transition.

The process of preparing for free, fair, and transparent elections must include awareness of the need to give newly formed parties an opportunity to organize themselves and build their programs and popularity. Traditional parties (in Syria the Baath Party and the Muslim Brotherhood may be the most prominent) always have an interest in holding early elections due to their broader organizational experience and their existing popular presence. Haste in holding elections in Egypt, which was sought by both the military and the Muslim Brotherhood, had a role in the state of affairs in the country that emerged from polarization between traditional forces.<sup>[633]</sup>

The Syrian electoral system adopts a majoritarian system whereby those who obtain the highest percentage of the vote receive all the seats in local administrative councils and in the People's Assembly.<sup>[634]</sup> One of the main disadvantages of this system is that it usually entrenches the dominance of two parties over political life. Typically, one of these two parties tends towards right-wing politics and the other to the left,

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[629] The Syrian Constitution grants the President of the Republic the right to declare a state of emergency without consulting with the legislative (see Article 103 of the Syrian Constitution of 2012).

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

[631] See, for instance, the bylaws of the syndicates and unions of writers, publishers, workers, and farmers.

[632] In Egypt, the leader of the military carried out a coup d’etat in 2013, and the local militaries are involved in tensions and conflicts such as Libya and Yemen, and also plays a role in political life in Algeria. As for Syria, the military has, immediately and directly, adopted the position of the ruling regime.

[633] For more on the political debate about postponing the election in Egypt, see: “Controversy in Egypt Over ‘Constitution First’ Debate As Muslim Brotherhood Refused to Postpone Elections ; Prime Minister Believes Political Parties Need Time to Mature” (Arabic), Mustafa Suleiman, Al Arabiya website, June 19, 2011, link: <https://www.alarabiya.net/articles/2011%2F06%2F19%2F153970>, accessed on 1 May 2021.

[634] Law on General Elections No. 5 for 2014, *ibid.*, Article 77.



as is the case in the United States of America, where the Republican Party represents the right-wing forces while the Democratic Party represents the liberal and left forces, as well as the United Kingdom. Therefore, it will be difficult for new, small, emerging parties to gain access to parliament or enjoy political influence over legislation. Emerging or small parties may not be able to establish themselves through a majoritarian system. This is reminiscent of post-revolution Egypt and Tunisia, where the electoral systems and political conditions did not provide new parties with an opportunity for representation. The clearest example of such a situation are Egyptian presidential elections that took place after the overthrow of former Egyptian President Hosni Mubarak where, despite strong competitors receiving a large number of votes such as candidates Hamdeen Sabahi and Abdel Moneim Aboutouh; The final election round was decided in favor of two candidates, former regime affiliate Ahmed Shafik and Muslim Brotherhood candidate Dr. Mohamed Morsi.<sup>[635]</sup>

Conversely, a system of proportional representation can contribute to strengthening parties that reflect political and ideological disparity, and through such a system minority parties can represent themselves without the need to merge with larger ones.<sup>[636]</sup> The proportional system raises controversy in this regard as, on the one hand, it calls for countries with emerging democracies to enact laws for party politics that contribute to preserving national unity and eliminating elements of division and social strife that may lead to social tensions on sectarian, ethnic, or tribal grounds. These laws usually include provisions prohibiting the establishment of parties on an ethnic, religious, or sectarian basis, as well as stipulating that parties include diverse representation from various regions of the country in question. However, the proportional system may be a gateway to instantiate tribal, ethnic, or sectarian representation as in Lebanon or Iraq. This leads to the formation of a political community identical with the society at large, and thus the transfer of social antagonisms, and the dynamics of polarization and schism, into parliament instead of being inclusive of the interests of all citizens. Although Iraqi law prohibits the formation of parties on a basis other than citizenship,<sup>[637]</sup> all parties in Iraq have been formed on ethnic grounds. After periods of war and conflict, social groups must adhere to social protection structures that may be supra- or sub-national and can therefore be affected by sectarian and ethnic antagonism especially in a society like the Syrian society with its ethnic diversity. Social groups are more likely to seek representation on an ethnic basis,<sup>[638]</sup> and mixed systems can provide greater opportunities for such ethnic representation in individual/majoritarian elections and representation on a partisan basis in proportional systems. In Syria, for example, one-third of the parliament can be elected on an individual basis,

[635] To access the final results of the Egyptian elections of 2012, see: Official Website of 2012 Egyptian Presidential Elections, link: <http://pres2012.elections.eg/round1-results>, accessed on 1 April 2021.

[636] The Effect of Electoral System on Party System, ACE Electoral Knowledge Network, link: <https://aceproject.org/ace-en/topics/pc/pcc/pcc04/pcc04c>, accessed on 10 August 2021.

[637] Iraqi Law on Political Parties, Act No. 36 of 2015, Article 5.

[638] In Iraq, political parties represent society on an ethnic basis, as the Islamic Dawa Party, for instance, represents the Shia community.

with elections taking place in small single-member districts (sub-districts, one or two, for example, can be adopted as electoral districts) giving local communities the opportunity to represent themselves. On the other hand, and to strengthen the role of political parties, the proportional system can be limited to party lists on the basis of larger constituencies (the whole of Syria as one or two electoral districts) in order to give parties emerging on a national basis an opportunity to have voters across the entirety of national territory.<sup>[639]</sup>

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. This may be achieved through several steps such as increasing the number of founding members as a condition of party activity, or by imposing a certain quota aimed at diversity, such that the number of members belonging to a different ethnicity in the parties' leadership committees should be no less than 20%, and diversity can play a role in obtaining subsidy funding from the state.

Periods of democratic transition usually see abundant demand for political participation, and many small parties proliferate in such cases. In the first five months after the revolution in Tunisia, for example, more than 100 parties were founded.<sup>[640]</sup> In order to provide more opportunity for these parties to accumulate political experience, and thus to give more space for representation, it is better to have a lower electoral threshold. At the same time, lowering the electoral threshold may lead to the participation of a large number of parties in parliament, which leads to difficulty in forming strong coalition governments and threatens governmental stability which is urgently needed during democratic transitions.<sup>[641]</sup> 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. It is also a factor of alleviating political chaos by opening the way for these parties to engage in common experiences that may end in their merger.

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[639] For more on types of electoral systems, see the above sections of the report.

[640] Munir Sweissi, edited by Aref Jabo, "What is Behind the Excessive Formation of New Parties in Tunisia?" (Arabic), DW Arabic, 2 August 2011, link: <https://bit.ly/2Y20kq7>, accessed 10 August 2021.

[641] For more on electoral threshold, see the section on this topic above in the report.

Public liberties, and the rights of assembly and expression of opinion, are at the forefront of human rights. As such, the freedom to found political parties must be guaranteed and protected by the state, and it must not fall under any control by the ruling authority. The refusal or ban should not be on the formation of parties, but rather in response to certain behaviors or discourse such as speech inciting racism or hatred, according to clear and uninterpretable legal texts and through a judicial decision taken under a free and independent judiciary. 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...”.

All parties must enjoy equal opportunity, as this gives them a greater chance of fair electoral competition. Accordingly, party financing mechanisms must be defined to ensure fairness and equality in access to funding, as well as setting a clear ceiling for electoral campaigns that takes into account the ability of emerging and small parties to compete.

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.

## Recommendations

Based on the foregoing, some constitutional or legal texts can provide greater opportunities for stability and safety during the democratic transition, if and when it is achieved. This legal structure is likely to enhance the role of the party system in ensuring free and transparent elections based on the standards set by international law, foremost of which is Security Council Resolution 2254 which calls for political pluralism.

### 1. In the constitutional framework

- Political pluralism and democracy must be the fundamental basis for building the political system in Syria.
- Political parties are responsible for shaping the political will of all citizens. All citizens have the right to participate in the formation of parties without any condition or restriction other than those stipulated by law, and these parties do not require licenses from the executive authority to carry out their work if the conditions are met.
- The proportional system is the most appropriate system to support pluralism and democracy.
- A party may not be dissolved or banned except through a judicial decision in accordance with clear legal texts that are not subject to interpretation.
- Syrian society is diverse, and the state must support and encourage parties that reflect this diversity in their ranks.
- Any party that advocates hatred, racism, or discrimination on any grounds must be prohibited.
- Women are an essential component of society, and political parties must reflect and ensure the importance of women's participation.
- Political parties that believe in democracy must themselves adopt internal democracy in the management and leadership of the party.

## 2. In the legal framework

- Parties must be registered in the civil registry or their own register, and a party is considered able to compete in elections once it fulfills the conditions in place, without the need for any licensing from any other body.
- Voluntarily joining a party or participating in its founding is a citizen's inherent right, and no party may force citizens to party membership by any means, whether direct force, by requiring government and public sector employees to apply, or by offering private-sector jobs conditional to party membership.
- Based on the human right to assemble, parties can become active in society before they meet their conditions, but they can only participate in elections by fulfilling those conditions.
- The founding members of a party (4,000-5,000) must be from at least 7 Syrian governorates, in order to reduce the atomization of party politics and to increase the possibility of diversity in their ranks.
- State subsidy or funding for parties must be divided on the following basis: 30% according to the number of seats in Parliament, 30% according to the number of votes secured in the last elections, 30% over the proportion of ethnic diversity in the same party, and 10% distributed all parties.
- The leadership bodies within parties must reflect the ethnic diversity of Syrian society, and minorities must be represented at no be less than 20% of the total membership of these parties.
- Parties must include at least 30% women's representation in their leadership bodies and 30% in their electoral lists. The order in which candidates are listed must also alternate between male and female candidates, provided that the list begins with a man in one cycle and a woman in the next cycle.
- Internal democracy is a prerequisite for the emergence of parties, and the internal systems and bylaws of parties must reflect a democratic rotation of administration and leadership, and electoral conferences must be announced and open to the public.
- Parties are prohibited from using religious platforms to promote their ideas and programs.
- Parties are prohibited from using government positions and institutions to advance their interests.
- The budgets of parties, and their movement of funds, must be made transparent

and published on the party's official website.

- Donations are received by citizens within a certain cap or ceiling, while legal personalities and business institutions are not entitled to donate to political parties.
- Parties are not entitled to receive foreign funding under any pretext or grounds.
- Laws on electoral campaigning should take into account the livelihood conditions and the purchasing power of all citizens, in order to ensure the ability of emerging and small parties to compete.
- State media must be open to all parties in equal proportion.
- Political parties may not launch more than one media outlet.
- Political parties do not have the right to possess any weapons under any pretext and are not entitled to reach power except by peaceful means through periodic elections.
- Any party that supports, in words or behavior, a coup d'état or anti-democratic campaigns, whether inside or outside the country, must be subject to liability and legal punishment that may amount to prohibition from political practice.

A set of legal reforms and amendments that take into account the foregoing is likely to support a neutral electoral environment that provides the space for holding free, fair, and transparent elections that guarantee equality and are held through a secret ballot in accordance with international standards for legitimacy and human rights, and in accordance with Security Council Resolution no. 2254 on Syria.

## 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, this section addresses some theoretical and conceptual frameworks for the relationship between civil society and democratic transition, specifically in post-conflict scenarios. It presents a review of the most important academic studies on the nature of this relationship and its various forms and offers an assessment of the most important determinants and outcomes, both positive and negative, in countries that have experienced stages of political transition. Then, this section will move on to analyze the con-

stitutional articles, laws, legislation, and executive directives regulating the formation, work, and influence of non-governmental organizations and associations in Syria. Then it will evaluate the most important lessons learned from the experience of Syrian civil society organizations in a number of local elections in areas outside the control of the Syrian regime. Finally, this section presents a wide range of proposals and recommendations related to the constitutional and legal reform process, the path of a negotiated political solution, and potential local and international roles.

## **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>[642]</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. This report proceeds from the fact that, in order to analyze the roles of civil society in democratic transition and determining the political conditions that make these roles have a positive impact on the electoral process, this requires full and careful consideration of two main factors. The first relates to the political and social dynamics of civil society actors during the conflict period, specifically those resulting from interactions with state institutions on the one hand and the wider community on the other. The second factor relates to the constitutional and legal frameworks regulating the work, activity, and roles of civil society within the public sphere, which will be further analyzed.

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. This relationship, which is informed by the ability of civil society to create independent community representation outside the framework of official state institutions, introduces a state of bargaining or political negotiation between the state and society.<sup>[643]</sup> This provides new spaces for organized collective civil action, which in turn expands

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

[643] John Gaventa, Triumph deficit or contestation? Deepening the ‘deepening democracy’ debate. Working paper 264, IDS in conjunction with Logo Link and the Citizenship DRC, 2006, p 8.



the margin of government accountability and popular participation in decision-making.<sup>[644]</sup>

Additionally, civil society has the ability to put pressure on the state and political parties, with the aim of representing the political, economic, and social interests of a wide segment of society, and especially marginalized and excluded group, within the public space.<sup>[645]</sup> 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>[646]</sup>

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>[647]</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>[648]</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

[644] Derik W. Brinkerhoff, Exploring state-civil society collaboration: Policy partnerships in developing countries. *Non-profit and Voluntary Sector Quarterly*, 1999. volume 28, issue 4, pp.59–86

[645] Axel Hadenius and Fredrik Ugglå, Making civil society work promoting democratic development: What can states, and donors do? *World Development*, volume 24 issue 10, 1996. pp. 1621–1639.

[646] 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.

[647] 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.

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

and oversight over the performance of state institutions.<sup>[649]</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>[650]</sup>

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>[651]</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>[652]</sup>

However, despite the positive outlook that literature typical has towards the role of civil society during democratic transition in post-conflict countries, a number of practical experiences in these countries may paint a different picture. An increasing number of researchers and academics warn against taking "civil society democracy" at face value without further examining its dynamics within different contexts,<sup>[653]</sup> or assuming that civil society organizations are "inherently democratic actors."<sup>[654]</sup> This is especially the case since the concept of "civil society" and its definitions and determinants are highly contested, in addition to the fact that its relationship with democracy and elections depends on many factors, issues, and contextual circumstances which also differ from one country to another.<sup>[655]</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

[649] 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

[650] 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.

[651] 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.

[652] 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.

[653] John Gaventa, *ibid.*, p. 9.

[654] Claire Mercer, *NGOs civil society and democratization: A critical review of the literature*. *Progress in Development Studies*, Volume 2, issue 1, 2002. 5-22.

[655] Nelson Kasfir, *The conventional notion of civil society: A critique*. *Commonwealth & Comparative Politics*, volume 36, issue 2, 1998, pp 1-20.

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>[656]</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>[657]</sup> which necessarily reflects on civil society actors and their roles and agendas in transitional elections.

It is true that many civil society actors strive to achieve political demands that serve the public interest such as social justice, political reform, more bargaining power for the people, or the inclusion of marginalized groups in the public sphere. However, other such organization may emerge with the pursuit of social and economic gains for themselves or for a narrow group with undemocratic, exclusionary, or discriminatory agendas or demands.<sup>[658]</sup> However, despite its multifaceted roles and influences, the participation of civil society in any elections, whether transitional or periodic, remains a prerequisite that cannot be ignored for the deepening and consolidation of democracy, and an indicator of the future of rights and public liberties and the space for organized civil and political action in any country.

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

### **1. 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>[659]</sup> and failed to recognize

[656] 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).

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

[658] E. C. Webster, The politics of economic reform: Trade unions and democratization in South Africa. *Journal of Contemporary African Studies*, volume 16, issue 1, 1998. 39–64.

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

them as independent institutions, instead affiliating them directly with state institutions and restricting the scope of their activity. This constitution stipulated that, “The state is at the people's service.

Its establishments seek to protect the fundamental rights of the citizens and develop their lives. It also seeks to support the political organizations in order to bring about self-development,”<sup>[660]</sup> failing to give any consideration to the independence of these organizations and associations. It also defined the first tasks of these so-called popular organizations as “building the socialist Arab society and defending the system,”<sup>[661]</sup> thus subordinating them to the Baath Party’s state and a tributary to its partisan organization. While this constitution stipulated the role of these organizations as “popular supervision of the machinery of government,” the totalitarian and oppressive doctrine of the Baath Party, i.e. “the leading party in the society and the state,”<sup>[662]</sup> granted the right to exercise this “popular control” exclusively to organizations closely affiliated with it such as the General Federation of Trade Unions, the General Union of Peasants, the Students Union and other organizations overseen by its clientelist networks.

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.”<sup>[663]</sup> 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.”<sup>[664]</sup>

These constitutional amendments give a false impression of expanding the freedom and scope of work of civil associations and organizations independent of the state. 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

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[660] Ibid., Article 12.

[661] Ibid., Article 49.

[662] Ibid., Article 8.

[663] Syrian Constitution of 2012, *ibid.*, Article 10.

[664] Ibid., Article 45.

of government is void and has no effect.”<sup>[665]</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>[666]</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>[667]</sup> Neither this law, nor any other Syrian legislation, managed set a clear 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>[668]</sup> as well as articles related to undermining the prestige of the state and weakening national sentiment stipulated in the Penal Code.<sup>[669]</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>[670]</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. The competent authorities have the right to decide on licensing any association after “an investigation is conducted on the founders through the General Security Directorate.”<sup>[671]</sup> Moreover, the authority retains the right to “appoint one or more members of the association’s board of directors and specify their powers and compensation in the appointment decision.”<sup>[672]</sup> The Ministry also has the right to specify “the minimum and maximum number of members of the Board of Directors, and the maximum period during which a member of the

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

[666] *Ibid.*, Article 3.

[667] *Ibid.*, Article 36.

[668] Law No. 19 for 2012.

[669] 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.

[670] Stipulated by Presidential Decree No. 1330 of 1958.

[671] Implementing Regulations for the Law on Associations and Private Societies, Articles 6-7-8.

[672] *Ibid.*, Article 26.

Board of Directors may renew his membership.”<sup>[673]</sup> This law and its implementing regulations also oblige all associations to “inform the competent administrative authority of each meeting of the general assembly, and items on the agenda, at least fifteen days prior to its convening. The administrative authority may delegate a person or persons to attend the meeting.”<sup>[674]</sup> This administrative body was mandated to “exclude from associations of public interest any candidates for election of their executive bodies,” and to appoint a “temporary director or board of directors for the association of public interest to undertake the powers granted in its statute to its board of directors,” and the interim board of directors has the right to manage “all of the association’s funds, records, books, and documents.”<sup>[675]</sup>

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>[676]</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.

The law was not satisfied with giving the state direct power to intervene at the administrative and organizational levels of non-governmental organizations, but also reinforced this intervention by direct control over the sources of funding and support for such organizations. The law forbids NGOs from collecting donations directly from the community, except with the prior approval of the Ministry or the competent authorities.<sup>[677]</sup> It is also prohibited to accept gifts, grants, funding or any other monetary donations from any source be it local, national, or foreign, except with a prior permission either from the Ministry of Social Affairs and Labor in the event that the sources of funding are from bodies located within Syrian territory, or from the Ministry of Foreign Affairs in the event that funding is received from non-Syrian bodies or organizations outside the territory of the Republic.<sup>[678]</sup>

At the same time, the Ministry and its directorates are given the right to “merge associations with similar goals if necessary,”<sup>[679]</sup> and the right to “establish in any region a union that coordinates the activity of associations of public interest if their objectives

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[673] This article was introduced via Legislative Decree No. 224 for the year 1969.

[674] Implementing Regulations for the Law on Associations and Private Societies, *ibid.*, Article 23.

[675] *Ibid.*, Articles 47-48-49.

[676] *Ibid.*, Article 36.

[677] Law on Associations and Private Societies, *ibid.*, Article 22; and Articles 17-20 of its implementing regulations.

[678] Law on Associations and Private Societies, *ibid.*, Articles 66 and 21.

[679] Implementing Regulations for the Law on Associations and Private Societies, *ibid.*, Article 24 - Paragraph B.

are similar or approximate in that region.”<sup>[680]</sup> The Syrian regime has always relied on these articles to consolidate the Baathist ideology and monopolize the public space by preventing the emergence of independent associations outside the framework of the Baath party state which aim to represent the interests of certain groups of citizens such as students, workers, peasants, and women. These laws and legislative acts impose the dissolution of merger of associations within the federations and unions established and managed by the Baath Party Regional Command such as the General Federation of Trade Unions and Peasants, the Students’ Union, the Women’s Union, the Federation of Craft Societies, the Revolutionary Youth Union and other bodies of a union nature or bodies operating in the civil space.

## 2. Civil society oversight of elections

Although Article 10 of the 2012 Syrian Constitution stipulates the right of popular associations and organizations to exercise the role of “popular oversight,” the majority of Syrian laws and legislations are devoid of any mention of the limitations and controls on this oversight. The complete absence of the role of oversight, which civil society organizations usually have over state institutions, was evident in the Law on Associations and Private Societies in Syria. On the contrary, this law, as mentioned earlier, focused on most of its articles on the oversight of state agencies and their direct intervention in the establishment, work, and structure of associations and non-governmental organizations.

Similarly, the law governing the Central Authority for Oversight and Inspection,<sup>[681]</sup> the main legal regulator exercising control over state agencies, did not mention any real role for civil society, with its various organizations and bodies, with regard to accountability for state institutions. The law sufficed with mentioning that among the Central Authority’s tasks is “working to promote popular oversight”,<sup>[682]</sup> without giving any further detail as to who performs this task of popular oversight, what are the legal determinants governing it, and how non-governmental organizations and bodies can be protected, and their role activated to exercise community oversight.

This institutionalized and codified lack of oversight role for civil society association has also been entrenched via the Law on General Elections.<sup>[683]</sup> This law failed to grant these associations any role at any stage of the electoral process, and gave the polling center committees exclusive power to assign what oversight tasks it deems appropriate to candidates, their representatives, or the media without any mention of popular organizations or associations.<sup>[684]</sup> The implementing regulations for the Law on General Elections also restricted oversight by the media, which are independent of candidates and their electoral campaigns, to outlets that have “obtained government approval to

[680] Executive instructions of the Law on Associations and Private Societies, Article 45.

[681] Law No. 24 for 1981.

[682] Ibid., Article 5, Paragraph D.

[683] Law on General Elections of 2014, *ibid.*

[684] Ibid., Article 16, Items 5-6.

cover the electoral process.”<sup>[685]</sup>

This total and systematic exclusion of civil society from any direct role in the electoral process weakens the integrity and transparency of these elections and popular trust in them. It also increases continued restrictions by the Syrian regime on the space for civil action and on active political participation. This contributes to weakening the electoral culture of local communities and alienates them from the entire electoral process, depriving them of the ability to claim their rights, or to shape or voice their preferences which could increase their ability to establish political negotiation between them and institutions of the elected government. Of course, recognizing the right of civil society to exercise its role in monitoring elections will not automatically lead to the realization of these demands or to the expansion of the margin of political freedoms and rights. However, it will be an essential and necessary step for holding free and fair elections.

### **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 gov-

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[685] Implementing regulations for the Law on General Elections, Article 51.



ernance 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 northwestern 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>[686]</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.

Initially, most of these local government bodies were formed based on consensus among a number of influential actors and stakeholders in their local communities such as civil activists, doctors, engineers, representatives of notable or influential families, as well as traditional tribal and religious leaders. 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. 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:

- Highlighting the importance of legitimacy within the community, and its direct impact on the dynamics of local governance. 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

[686] 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.

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>[687]</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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[687] 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.

## Recommendations

### 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>[688]</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 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.

[688] See: Tunisian Constitution of 2014, *ibid.*, Article 139 which associates the concept of “civil society” to “participatory democracy.”

- 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>[689]</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>[690]</sup> and the report of the Human Rights Committee on the right to participate in public affairs.<sup>[691]</sup>
- 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.

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[689] UNGA resolution no. 144/53 issued in 1998.

[690] Report A/HRC/20/27 issued in 2012.

[691] General Comment no. 25 issued by the Human Rights Committee, no. CCPR/C/21/REV.1/Add.7, issued in 1996.

- 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.



## Glossary of Terms

### A

**Absentee vote:** Voting by those who are outside the borders of the country concerned with the elections.

**Absentee voter:** A person who is qualified to vote, and who maintains their right to vote despite not residing in their country.

**Absolute majority:** Receiving 50+1 percent of the vote.

**Alternative vote system (instant-runoff voting):** This method of voting is adopted in majoritarian systems, whereby the voter has the possibility to re-order the candidates whose names are listed on the ballot paper in order of preference.

### B

**Ballot paper:** The paper that includes the names of candidates in an electoral district.

**Blank ballot:** A protest vote in an election, leaving the ballot blank without making a choice.

**Block voting:** This is a type of majoritarian system adopted in multi-member electoral districts, whereby the voter has a number of votes equal to the number of seats in the electoral district.

### C

**Candidate quota:** Mandating legal procedures that guarantee the presence of a specified percentage of women among the candidates on electoral lists.

**Candidate surrogate:** A person who represents the candidate or the electoral list on election day, who may be located at the polling station or itinerant.

**Closed list:** This electoral list is arranged in advance such that a voter cannot add or cross out any of the names listed therein.

**Closed quota:** A quota in which women are only allowed to run for seats assigned to women and are not allowed to compete with male candidates for the remaining seats.

**Code of Conduct:** A set of ethical guidelines for behavior that regulate a group's work such that it enhances the freedom, integrity, and transparency of the electoral process.

**Constitution:** A document that contains a set of rules related to the system of government in a state, and mainly includes the foundations that govern the relationship between citizens and the ruling authority, as well as public and individual rights and liberties.

**Constitutional court:** A court competent to rule on the extent to which laws comply with the provisions of the constitution. Many countries have gone to grant this court the power to rule on challenges to the validity of general elections, especially legislative or presidential elections.

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## D

**Democratic transition:** The transition of a political system from an autocratic regime to a democracy, typically through the ballot box.

**Denial of the right to run:** Exclusion of a person from exercising the right to stand for election.

**Denial of the right to vote:** Exclusion of a person from exercising the right to vote.

**Direct election:** A mechanism by which voters directly vote for a candidate or party without going through any intermediary.

**Dominant one-party system:** Under such a system, state power is concentrated in the hands of one party.

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## E

**Election abstention/boycott:** The non-engagement of some voters or parties from the vote as an expression of their dissatisfaction with the electoral process.

**Election advertisement:** What a candidate or party disseminates in the public sphere in terms of statements and announcements in favor of their electoral campaign, in order to collect votes towards their election.

**Election campaign regulation:** Laying foundations and rules to limit the possibility of candidates' electoral campaigns transgressing the procedures and laws related to the elections.

**Election campaign:** Activities carried out by various candidates for an election, wheth-

er parties or individuals, prior to the election date, with the aim of introducing their political programs and the principles they advocate.

**Election court:** A court, a judicial body, or any other body that a voter or a candidate may resort to in order to challenge a matter that occurred during an election.

**Election fairness standards:** A set of rules and principles that give integrity and transparency to an election process.

**Election fraud:** Unlawful acts aimed at nullifying, shifting, or altering the outcomes of elections and thus the choices of voters.

**Election media:** Information related to the electoral process published and circulated by various media outlets.

**Election observation:** The regular collection of information about an election by the election management body.

**Election observer:** A neutral person tasked with monitoring the compliance of elections, and parties in elections with the laws and procedures in place. An election observer may be affiliated with an international agency or local authority.

**Election program:** The set of principles, values, and projects that a candidate or political party, during the electoral campaigns, promises to adhere and strive to achieve. This is to ensure that the largest possible number of votes is obtained on election day.

**Election quotient:** A method used in the proportional representation system to calculate the number of votes necessary to win a seat by dividing the number of votes cast in that constituency by the number of seats allocated to it.

**Election silence:** The prohibition of all electoral campaigning during election day, and during the short period of time prior to it, which is legally specified.

**Election transparency:** Providing the means that enable the parties concerned with elections to see all matters related to the progress of an electoral process.

**Election turnout:** A statistic achieved by calculating the percentage of voters among those eligible or entitled to vote.

**Electoral appeals:** Complaints submitted by candidates or others to challenge the election outcomes.

**Electoral coalition:** A gathering of parties or political forces in one electoral list to compete in elections.

**Electoral dispute settlement:** A specific mechanism for settling disputes related to the electoral process.

**Electoral district division/delimitation:** Dividing the country into electoral geographic regions and defining the boundaries separating them.

**Electoral education:** The dissemination of information and explanatory materials by the party managing the elections, or other parties, to clarify the rights and duties of voters and candidates and to explain the legislation and procedures related to the elections.

**Electoral list:** A list containing the names of a group of candidates for an election.

**Electoral Management Body (EMB):** The authority legally tasked with organizing and implementing one or all aspects of the electoral process.

**Electoral reform:** The set of amendments aimed at correcting defects in the electoral law and/or electoral procedures.

**Electoral rights:** All rights related to elections such as voting, running for office, establishing, and joining parties, and conducting electoral campaigns.

**Electoral risks:** The sum total of potential political and security actions and developments that could disturb the safe environment required for the holding and proper conduct of elections.

**Electoral roll:** A list containing the names of those entitled to vote in an election.

**Electoral security:** One of the most important guarantees to holding free and fair elections without threats or intimidation, and in a safe environment for exercising all electoral rights including voting and candidacy.

**Electoral spending cap:** The maximum financial spending on electoral campaigns. This contributes to achieving equal opportunity for candidates with different financial capabilities.

**Electoral threshold:** This is the minimum number of votes, or percentage of votes, that the law requires a party to obtain in order to have the right to compete for seats in elections.

**Eligibility for candidacy:** The legal capacity to enjoy the right to run in elections.

**Eligibility to vote:** The legal capacity to enjoy the right to vote.

**Equal opportunity:** Achieving full equality between candidates or parties, such as in the matter of competing for the votes of the electorate.

**Exploitation of state resources and institutions:** The use of public resources by a candidate or party for the purposes of an election campaign.

## F

**First-past-the-post (FPTP) voting:** A majoritarian system whereby the voter is given only one choice, such that the vote is for one person or entity from among a group of candidates listed on the ballot paper in a single-member district.

**Free list:** This enables voters to build their own list from a variety of candidates, thus allowing them to cross out or add candidates from other lists.

**Freedom of assembly:** This is the right of an individual to assemble with other individuals to express, publish, and defend their ideas, as well as the right to form or join formal and informal organizations, associations, and groups, and also includes the right not to be coerced to join associations.

**Freedom of association:** The possibility of establishing and engaging in political activity individually or through political parties or other groups or organizations.

**Freedom of expression:** The right of each person to have opinions and express them freely. It includes freedom of belief without interference, as well as the right to access news and ideas, receive them, and publicize them by all means, unrestricted by geography.

**Freedom of movement:** Freedom of travel, residence, and work in any place a citizen chooses within the borders of the state, and within the framework of respecting the freedom and rights of others. A citizen also has the freedom to leave their country and return to it whenever they wish.

## G

**General elections:** Electing representatives or officials at the national level, as opposed to local or regional elections. It usually refers to parliamentary elections.

**Gerrymandering (the manipulation of constituency boundaries):** A political term whose use originates in the United States of America. It refers to the deliberate manipulation of the electoral district boundaries in a manner that grants one candidate or political party an unjustified advantage over others on election day.

**Governmental EMB:** A non-independent electoral management body that reports to the executive authority.

## I

**Independent EMB:** An electoral management body that enjoys financial and administrative independence and legal personality.

**Indirect election:** It is based on electing intermediaries who, in turn, elect the representatives at a later stage.

**International election observer:** A person appointed by an international organization as part of a team to monitor the electoral process in a particular country, while not being a national of that country.

## L

**Legislative elections:** Elections in which voters are called to elect members of the representative body charged with exercising the legislative power in a state.

**Local election observer:** A citizen who monitors the electoral process in their country, a role that foreign residents are allowed to play in some countries.

**Local elections:** This refers to elections held at the municipal or provincial, or district levels.

## M

**Majoritarian electoral system:** An electoral system whereby the candidate or the bloc that obtains the majority of votes wins, regardless of the percentage of votes secured.

**Mandatory party quota:** A mandatory administrative or legal measure taken by the state to oblige parties to adopt a specific quota for women.

**Media monitoring:** A process of systematic evaluation of the way in which the media covers an election, especially candidates' electoral campaigns, in order to assess its role in ensuring transparent and fair elections. This evaluation is conducted through the assessment of the media's treatment of all participants in the electoral process.

**Mixed EMB:** An electoral management body that combines the independent and governmental models for electoral management.

**Mixed electoral system:** This system combines the majoritarian system and the proportional system.

**Multimember electoral district:** A geographic area that is assigned multiple electoral seats.

## N

**Negative incentivization quota:** A non-mandatory quota that does not deprive a party or list from participation in an election in case they do not adhere to it. However, the party is then punished by depriving it of the financial assistance provided to other parties in an election.

## O

**Observer Mission:** A team of foreign observers legally assigned to monitor the progress of an election process in a particular country.

**One-man system:** A political system based on the rule of one person.

**Open list:** This is a closed electoral list that grants voters the ability to rearrange candidates according to their preference.

**Open quota:** A quota in which women are allowed to choose between nomination to compete for the quota seats specified for women or outside them to compete with male candidates for other seats.

## P

**Parliamentary system:** In this system, power is concentrated mainly in the hands of the Parliament, with the government being formed by the party that wins the parliamentary majority.

**Party bloc system:** According to this system, the same method is followed to calculate the victory of candidates as in the block system, except that the vote takes place in favor of party lists instead of individuals, and each voter has one vote to cast in favor of a list comprised of several candidates.

**Political party:** A group of citizens gathered around specific opinions, ideas, or principles, or around a specific personality.

**Positive incentivization quota:** A non-mandatory quota that does not deprive the party and the list of participation but is such that the state provides financial resources to parties and lists able to nominate or elect more women on their lists.

**Preferential sound system:** It is a system used in proportional systems whereby the voter is given the right to participate in the arrangement of the electoral list for which they vote, by expressing their preference for each candidate within the list, such that the candidates have a higher chance of winning the seats allocated to their list the higher the number of preferential votes they secure.

**Presidential elections:** Elections in which voters are called to choose a President of the Republic.

**Presidential system of government:** Under such a system, the Head of State possesses broad powers.

**Proportional electoral system:** an electoral system based on the nomination of a list of candidates in each district, such that each list wins a number of electoral seats proportional to its share of the vote, according to a mathematical equation according to which the percentage of the vote is translated to a number of seats.

## Q

**Quota applied to the results:** Mandatory legal procedures to ensure the presence of a specified percentage of women in elected bodies.

**Quota:** Quotas are special measures aimed at reserving a set of seats for a particular social group or to facilitate their representation. It is a minimum number, as determined by law, of seats in an elected body or of candidates, to be allocated to a social group that does not enjoy sufficient representation in order to facilitate its access to representative bodies.

## R

**Referendum:** A tool of direct democracy, which is achieved by presenting a topic, law, amendment to a law, constitutional amendment, or a new constitution directly to voters for acceptance or rejection.

**Right to participate in elections:** A recognized right for voters and candidates to actually participate in the electoral process in all its stages, starting from the registration in the electoral lists to the counting and sorting stage, through electoral campaigning and voting. This right includes the obligation of the state to provide the necessary means to exercise it in a manner that achieves fair elections.

**Right to stand for election:** All persons, political parties and groups wishing to stand for election should be free to do so without discrimination.

**Ruling party:** The party in control of power as a result of elections or by other undemocratic means.



## S

**Secrecy of the ballot:** Measures taken to ensure that a voter can vote without informing others of their choice and without fear or pressure or intimidation.

**Secret ballot:** One of the basic principles of democratic elections, and it means the necessity of enabling the voter to cast their vote out of sight, as non-secrecy may constitute a source of pressure or intimidation.

**Simple majority:** Receiving the majority votes relative to others.

**Single-member electoral districts:** A geographical area that is assigned one electoral seat.

**Spoilt ballot:** A ballot paper that contains errors or markings that render it incomprehensible or invalid, and therefore inadmissible.

**Semi-presidential system of government:** Under which the Head of State and the Head of Government share executive power.

**Survey:** Polling the opinions of a specific or random group of people on a specific topic or topics.

## T

**Totalitarian regime:** A system of government that dominates all aspects of life in the state, under which the three powers of the state (legislative, executive, and presidential) are restricted to the head of state and/or the ruling party.

**Transition:** An interval of time that accompanies a process of political transformation, mostly from an autocratic regime to an elected legitimate authority.

**Two-round system (runoff voting):** A type of majoritarian system whereby voting takes place in two rounds, based on the principle that the winner must obtain an absolute majority of the electorate's vote.

## V

**Voluntary party quota:** The commitment of a party, a political coalition, or an electoral list, of its own initiative and volition, to adopt a specific quota for women in electoral lists alongside male candidates.

**Vote counting:** The process of counting and arranging the votes in the ballot box.

**Voter equality:** A principle according to which all voters enjoy equal voting rights without any discrimination.

**Voter intimidation:** Exerting pressure to compel voters to cast votes or abstain from voting, or to impose upon them certain choices.

**Voter registration:** A mechanism based on determining the proportion of citizens who are entitled to vote, and it is called a voter register or an electoral roll.

**Voter:** A person qualified to exercise the right to vote.

**Voting station:** The location, room, or hall in which the voting process takes place, also called 'polling station.'

**Women's quota:** Measures and principles aimed at supporting women's political participation and increasing women's representation in elected bodies. They are considered a form of positive intervention to help women overcome obstacles that limit their political participation.

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